



Commissioner for Ethical Standards
in Public Life in Scotland



Annual Report
2013/14

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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or by e-mailing info@ethicalstandards.org.uk.

Annual Report
2013/14

Foreword



FOREWORD

The Commission for Ethical Standards comprised the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.

The Commission and the Commissioners' functions were merged into a new office of Commissioner for Ethical Standards in Public Life in Scotland as from 1 July 2013.

In this report you will find details about:

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

I was appointed Commissioner for Ethical Standards in Public Life in Scotland from 1 April 2014. It is in this capacity that I am statutorily responsible for presenting this report on the work of the former Commission and Commissioner.

This report covers my predecessor, Stuart Allan's final year in post. Stuart was appointed Chief Investigating Officer in January 2002 and was responsible for investigating complaints about the conduct of councillors and members of public bodies. In April 2009, he added the role of Scottish Parliamentary Standards Commissioner to his remit, investigating complaints about the conduct of MSPs. In June 2012 he also became Acting Public Appointments Commissioner for Scotland. Stuart's term of office ended on 31 March 2014.

I thank Stuart for his hard work and commitment in these roles. He has made a significant contribution to the development and implementation of the ethical standards framework in Scotland. For his part, I know that Stuart has been most appreciative of the courtesy and support extended to him and to his staff over many years by all those involved with public bodies, and by elected members and officials in the Scottish Parliament, in the Scottish Government, and in councils.

I 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 or call our Business Manager, Karen Elder on 0131 347 3898.

Bill Thomson
Commissioner for Ethical Standards in Public Life for Scotland

23 October 2014

1. Executive Summary



1. EXECUTIVE SUMMARY

THE COMMISSION AND THE COMMISSIONER

The Commission for Ethical Standards in Public Life in Scotland was established on 1 April 2011 and comprised the Public Standards Commissioner for Scotland and Public Appointments Commissioner for Scotland.

The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 abolished the posts of Public Standards Commissioner and Public Appointments Commissioner and dissolved the Commission. It transferred their functions to the newly created post of Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”) on 1 July 2013.

Therefore, this report relates to the final three months of operation of the Commission and the first nine months under a single Commissioner.

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/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 eleventh 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. We also record the number of cases investigated. 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 or other action which is the subject matter of the complaints. 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.

- There have been 311 complaints this year compared with 192 last year - an increase of 62%. The complaints were investigated as 146 cases compared with 120 cases last year - an increase of 22%.
- Most complaints (298) continue to be against councillors rather than members of devolved public bodies (3). Ten were outwith jurisdiction.
- 75% of complaints were found, after initial investigation, not to amount to a breach of the Code.
- In 23% of complaints a full investigation was required but the conclusion was that there had been no breach of the Code.
- In respect of five complaints (2%) there was a finding that there had been a breach of the Code.
- There was a relatively high number of complaints involving alleged failure to show respect towards councillors, officials or employees (23 complaints).
- There were also 97 complaints regarding alleged misconduct on individual applications: these were investigated as 25 separate cases. There is an upward trend in the number of complaints alleging failure to register (14 complaints) or declare (43 complaints) an interest.
- The Commissioner gave evidence at six hearings called by the Standards Commission for Scotland (see table 8).

The outcomes of the investigations, including the limited number of breaches of the Code and the minimal number of cases relating to members of devolved public bodies, suggest that councillors and public body members have generally applied high standards of conduct in undertaking their official responsibilities.

There is no single reason for the significantly increased number of complaints, and the vast majority of those investigated in the course of the year have been found not to involve a breach of the Code of Conduct. Nevertheless, there are no grounds for complacency, and it is clear from the increased volume of complaints that local authorities in particular must continue, actively and as a priority, to promote high ethical standards as a part of their arrangements for corporate governance.

Codes of Conduct for Councillors and Members of Public Bodies

In February 2013, the Scottish Government launched a consultation on a revised edition of the Model Code of Conduct for Members of Devolved Public Bodies to ensure that the Model Code was consistent with the Councillors' Code (which was revised in 2010) and remains fit-for-purpose.

The Commissioner submitted evidence on the draft Model Code to the Parliament's Local Government Committee in December 2013. Parliament approved the Model Code and the Commissioner has been involved in assisting the Scottish Government with rolling out the Code during the last quarter of the reporting year.

Planning

This year the Commissioner contributed to guidance produced by the Scottish Government on the role of councillors in relation to pre-application discussions. The guidance is intended to provide greater clarity in the consideration of major developments, where councillors can be involved in discussion of policy issues separately from consideration of individual planning applications.

Complaints against Members of the Scottish Parliament

This has been the eleventh 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 21 complaints this year compared with 20 last year.
- All complaints were dealt with during the year.
- Eighteen complaints were found to be inadmissible on the grounds of being irrelevant or insufficient and not warranting further investigation.
- Three complaints were withdrawn.

There were no breach reports submitted to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament.

Having regard to the complaints received and the outcomes of the investigations, it is the Commissioner's view that Members of the Scottish Parliament have applied high standards of conduct in carrying out their parliamentary duties.

Consultations

The Standards, Procedures and Public Appointments Committee (SPPA) carried out a consultation on a proposed Members' Interests Bill. Comments were submitted by the Commissioner. The Commissioner also submitted comments in response to the Committee's consultation paper on Lobbying, and gave evidence at the committee meeting on 13 March 2014.

Other jurisdictions

There has been continuing contact with Standards Commissioners across the United Kingdom. In particular, the Commissioner was involved in assisting with the investigation of cases in Northern Ireland in which there was a potential conflict of interest for the Northern Ireland Assembly Commissioner and contributed to consultation by the NIA on Directions to the Standards Commissioner.

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 consulted formally on proposed revisions to the Code. He wished to establish how the 2011 version of the Code could be adapted better to meet the needs of stakeholders.

The Commissioner is grateful to the Scottish Government, the Scottish Parliament, public bodies and other stakeholders who took the time and trouble to participate in the consultation exercise.

Whilst the flexibility introduced by the 2011 Code had been welcomed, it had not been fully exploited. There were concerns that the appointment process was still overly bureaucratic and took too long.

The Commissioner concluded that it was appropriate to bring out a 2013 Code of Practice building on the changes introduced by the 2011 version.

The 2013 Code offers increased flexibility and encourages reduced bureaucracy. It also envisages a reduction in scrutiny by the Commissioner's office with the intent of empowering the Scottish Ministers, their officials and public bodies to adopt new and more attractive approaches to appointment activity, underpinned by the principles of Merit, Integrity and Equality and Diversity. You can read more about the changes in the 'Regulating Appointments' section.

Changes introduced by the 2013 Code will be monitored and reports made on progress.

Scrutiny of appointments

Scrutiny of public appointments varied this year depending on the version of the Code applicable to a given appointment round. Table 16 sets out how scrutiny levels varied and table 33 in Appendix B shows all rounds for which ministerial appointment decisions were made between 1 April 2013 and 31 March 2014.

There were 1,963 applications during the year leading to 125 appointments to 54 public bodies.

In all, 68 rounds were in progress during the year. Fifty-one were started during the year and 52 were completed. Table 18 provides more detail and shows an increase over the last three reporting years.



Delivering diversity

Figures for the years' 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 published in our first annual report, from 2004/05.

The figures in table 26 show that there has been significant progress in the case of applicants and appointees who declare they are disabled, with a rise from 2.4% to 13.1% representation on the boards of public bodies. Significant progress is still required, however, in respect of gender representation. The percentage of women on boards has barely risen from 34.5% over a period of almost ten years. The Commissioner welcomes the priority being given by the Scottish Government to addressing this imbalance.

The Scottish Government has established a Public Appointments and Corporate Diversity Programme. A Programme Board was convened in December 2013 to oversee the development and delivery of the programme. It is evident that Scottish Ministers continue to be ambitious in pursuit of achieving a wide range of talent to apply for and be appointed to the boards of public bodies. The Commissioner encourages the Scottish Government to continue efforts to implement actions identified in the **Diversity Delivers** strategy. Many of these are still relevant and the establishment of the Programme Board should help to refocus effort towards their effective implementation as well as the introduction of new measures intended to increase the diversity of Scotland's boards.

The Commissioner has offered to contribute to the development of the Board's activities.



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 2013/14 was £797,000 as agreed with the Scottish Parliament.

Expenditure during the year was £811,000 - £14,000 over the allocated budget. The additional resources were required to investigate the significantly increased number of complaints about the conduct of local authority councillors, as noted in this report.

During the year, the Parliament approved a budget of £785,000 for 2014/15. This will be difficult to achieve if the upward trend in complaint numbers is maintained and levels of activity remain high.

Audit Scotland have audited the accounts for 2013/14 and issued an unqualified opinion. In preparing the accounts, I have – 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

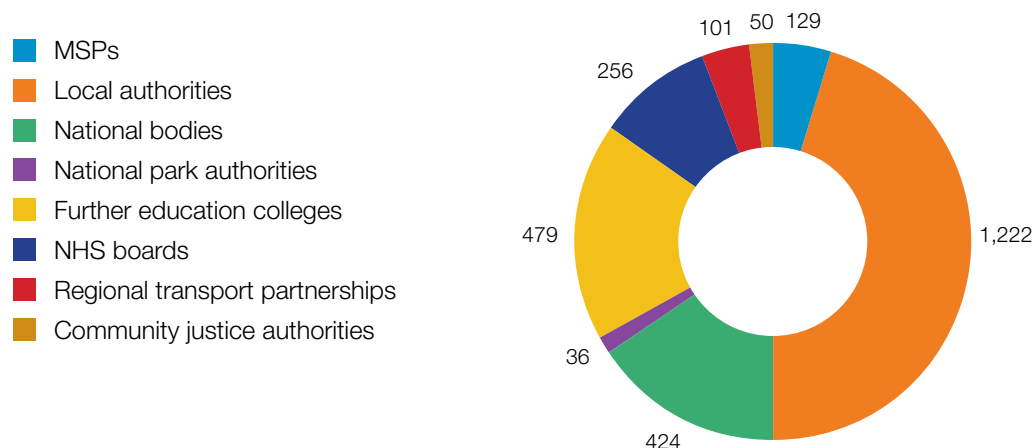
Table 1 provides general information about the number of MSPs, local authorities and public bodies whose members can be the subject of a complaint under the relevant Codes of Conduct. These are based on the scope of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) and the 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 merged, removed from the Commissioner's remit, or abolished.

Table 1

Organisations	Number of Bodies	Members of Bodies
MSPs	1	129
Local authorities	32	1,222
National bodies	34	424
National park authorities	2	36
Further education colleges	37	479
NHS boards	14	256
Regional transport partnerships	7	101
Community justice authorities	8	50
Totals	135	2,697

Source: Standards Commission 2013

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



COMPLAINTS ABOUT COUNCILLORS AND MEMBERS OF PUBLIC BODIES

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

Table 2

Complaints against	2013/14	2012/13	2011/12
Councillors	298	181	170
Members of devolved public bodies	3	2	9
Other (outwith jurisdiction)	10	9	6
Total number of complaints*	311	192	185
Total number dealt with as cases**	146	120	114

* 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.

Complaints by category

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

Table 3

Description	2013/14	2012/13	2011/12
Failure to register an interest	14	7	5
Failure to declare an interest	43	29	42
Disrespect of councillors/officials/employees	23	15	17
Financial misconduct	7	5	5
Breach of confidentiality	8	25	1
Misconduct relating to lobbying	3	9	2
Misconduct on individual applications	97	37	34
Other complaints*	67	23	45
Breach of the Key Principles	39	33	28
Outwith jurisdiction	10	9	6
Totals	311	192	185

* Related to: Planning (16), schools (29), offensive language (5), referendum (6), various (11).

Origin of complaints

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

Table 4

Complainant	2013/14	2012/13	2011/12
Member of the public	257	146	152
Councillor	44	38	22
Officer of a local authority	5	2	6
Anonymous	0	3	1
MSP	5	3	4
Totals	311	192	185

Complaints relating to Planning

Table 5 shows complaints relating to Planning.

Table 5

Planning complaints received from	2013/14	2012/13	2011/12
Member of the public - with known material interest	104	46	60
Member of the public - with no known material interest	26	12	8
Councillor	9	14	1
MSP	0	0	1
Anonymous	0	1	0
Totals	139*	73	70

* Complaints about Planning can 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 3).

Complaints progressed and dealt with in 2013/14

Table 6 shows complaints progressed and dealt with in 2013/14.

Table 6

Complaints progressed and dealt with	2013/14
Complaints outstanding as at 31 March 2013	56
Complaints received during 2013/14	311
Complaints completed during 2013/14	291
Complaints outstanding as at 31 March 2014	76

Outcome of complaints completed

Table 7 shows the findings in relation to complaints completed during the year compared with previous years. Two hundred and ninety-one complaints were completed this year.

- Nineteen complaints were either outwith the Commissioner's jurisdiction or withdrawn.
- There were 200 complaints (69%) 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 72 complaints. Following investigation, 67 of these complaints (23% of all complaints) were concluded with a finding of no breach of the Code. Five complaints (2%) resulted in a report being submitted by the Commissioner to the Standards Commission with a finding that there had been a breach of the Code.

Thirteen complaints (4%) were found to be outwith jurisdiction: six complaints (2%) were withdrawn.

Table 7

Outcome of complaints completed	2013/14	2012/13	2011/12
Breach	5	5	6
No breach	67	40	38
Not pursued further	200	111	146
Outwith jurisdiction	13	11	7
Withdrawn	6	5	4
Total number of complaints	291	172	201
Total number dealt with as cases	146	107	129

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.

Appendix A provides summaries of a number of cases found to be in breach of the Code of Conduct during the year.

Table 8

Complaint Number	Respondent	Nature of the Breach	Hearing date	Hearing Decision	Sanction imposed
LA/Fa/1264*	Falkirk Councillor	Misuse of council facilities	17-Apr-13	Breach	Censure
LA/Mi/1278/A*	Midlothian Councillor	Failure to register an interest	18-Jun-13	Breach	Censure
LA/Mi/1278/B*	Midlothian Councillor	Failure to register an interest	18-Jun-13	Breach	Censure
LA/SB/1291*	Scottish Borders Councillor	Failure to register an interest	11-Jul-13	Breach	3 month Suspension (Planning)
LA/Fa/1392	Falkirk Councillor	Disrespect of councillors	17-Feb-14	Breach	Censure
LA/R/1397	Renfrewshire Councillor	Failure to register an interest	06-Mar-14	Breach	4 week suspension (Economy and Jobs Board)

*The Commissioner's report was submitted in 2012/13 and the hearing was held in 2013/14.

Further details on the outcome of the hearings can be found on 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	2013/14	2012/13	2011/12
MSPs	21	20	16*

*Two complaints were carried forward from 2010/11; these are included in tables 11 onwards.

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

Table 10

Description	2013/14	2012/13	2011/12
Misrepresentation of MSP's role	0	1	0
Registration/declaration of interests	0	0	2
Lobbying and access to MSPs	0	0	0
General conduct	10	5	5
Confidentiality requirements	0	1	0
MSP's staff	0	0	0
Engagement and liaison with constituents	10	13	6
Allowances and expenses/ use of Parliamentary facilities	1	0	3
Totals	21	20	16

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.

Table 11

Admissibility of complaints (Stage 1)	2013/14	2012/13	2011/12
Admissible	0	0	0
Inadmissible	18	19	17
Withdrawn	3	1	0
Still at Stage 1 at 31 March	0	0	1
Totals	21	20	18

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	2013/14	2012/13	2011/12
Completed Stage 2	0	0	0
Totals	0	0	0

Inadmissible complaints

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

Table 13

Inadmissible complaints	2013/14	2012/13	2011/12
Complaint not relevant	18	18	11
Complaint not meeting procedural requirements	3	1	2
Complaint is insufficient and does not warrant further investigation	0	1	4
Still at Stage 1 at 31 March	0	0	1
Totals	21	20	18

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 2013/14 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. There were no complaints that had to be taken to Stage 2 during the year.

PERFORMANCE AGAINST TARGETS

Key development objectives are set out in the Commissioner's Business Plan 2013/14 and relate 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: 100% of complaints were initially assessed within 40 working days of the receipt of the complaint.

Table 14

Target	Actual	Details
85%	100%	Initial assessment within 2 months

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 2013/14, 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
50%	75%	Completion within 3 months or less
75%	98%	Completion within 6 months or less
95%	99%	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



3. Public Appointments



3. PUBLIC APPOINTMENTS

REGULATING APPOINTMENTS

The following pages describe our regulation of appointments and the main activities of the public appointments staff and assessors 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.

During the year the Commissioner sought the views of stakeholders on which aspects of the 2011 version of the Code were fostering improvements in the appointments process and those which were not.

The Commissioner is grateful to the Scottish Ministers and their officials, the Scottish Parliament, public bodies and other stakeholders who took the time and trouble to participate in the formal consultation exercise.

It was clear that the flexibility introduced by the 2011 Code had been welcomed but that the opportunities that it afforded for more innovative and attractive approaches to be taken had not been fully grasped. Respondents also expressed concerns that the appointment process was still overly bureaucratic and took too long.

The Commissioner concluded that it was appropriate to bring out a 2013 Code of Practice to further develop the changes introduced by the 2011 version.

The 2013 Code requires every appointment process to be fair, open and transparent and to identify the applicants who are most able to fulfil the role. Within these parameters it offers significant flexibility and encourages reduced bureaucracy with new, more accessible and attractive methods to be used to stimulate applications and conduct assessments.

Other changes to the Code include:

- a revision to the key principles, including the introduction of the principle of Diversity and Equality
- a change to the role of the assessor – acting as a panel member on some appointment rounds and having no involvement at all in others depending on the risks related to the appointment being made – so that regulation is proportionate and appropriately targeted
- the abolition of compliance opinions
- target timescales for both appointments and reappointments so that actions taken to improve in this area are measured and can be monitored
- an option for the appointing Scottish Ministers to meet the most able candidates for appointment before reaching their final decision.

These changes have been broadly welcomed. We will monitor and report on progress in relation to the Code's new requirements to ensure the improvements that stakeholders called for are being achieved.

Who's who in the process?

Public Appointments Assessors

Public Appointments Assessors provide oversight of appointment activity on behalf of the Commissioner.

Under the 2011 Code they scrutinised, on the basis of a risk analysis, all or part of each appointment round and offered a compliance opinion to the selection panel chair at each of the stages they oversaw. Under the 2013 Code oversight by Assessors is limited to a selection of appointment rounds and varies as to the degree of involvement. Their role 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 assessor to participate as a panel member.

Under the 2013 Code assessors no longer provide formal compliance opinions but do continue to work to ensure that selection panels and officials are appropriately advised on application of the Code. On occasion this includes constructively challenging proposals and activities.

Table 16 illustrates the different roles that assessors fulfilled during the year depending on the applicable Code and the level at which the round was set.

Table 16 - Risk and oversight

	2011 CODE			2013 CODE		
	LOW	MEDIUM	HIGH	LOW	MEDIUM	HIGH
ANTICIPATED OVERSIGHT	Planning meeting and resulting papers	Planning meeting and resulting papers	Planning meeting and resulting papers	No oversight	Planning meeting and resulting papers	Full member of selection panel throughout process
		Shortlisting*	Shortlisting*			
			The final stage of assessment			
	Retrospective review of paperwork and key decisions	Retrospective review of paperwork and key decisions	Review of paperwork and key decisions			

*Shortlisting is shorthand for all initial stages of assessment leading to selection for the final stage of assessment.

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.

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. Under the 2013 Code the appointment of an independent panel member to the selection panel is encouraged, particularly in cases where the Commissioner has not assigned an assessor as a panel member.

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 assessors no longer provide oversight of all appointment rounds.

Joint training days involving the assessors and PACE managers have also been held to assist with consistency of advice and approach across both teams.

Regulated public bodies

The Commissioner regulates 87 public bodies (inclusive of 10 regional college boards and 2 regional strategic bodies for which the Chair position only is regulated) and 584 posts 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	2014	2013	2012
No. of bodies regulated	87	75	73
No. of posts regulated	584	601	586
Avg. no. of positions per board	6.7	8.0	8.0

In 2013/14 the following legislation relevant to appointments regulation was enacted:

- The Post-16 Education (Scotland) Act 2013 brought the appointment of the chair positions of 10 regional college boards and 2 regional strategic body boards under the Commissioner's remit.
- The Victims and Witnesses (Scotland) Act 2014 brought appointments to the National Confidential Forum under the Commissioner's remit (this was counted as a regulated body in the last reporting year).

At the end of financial year 2013/14 the following legislation relevant to regulation of public appointments was being considered by the Scottish Parliament:

- The Historic Environment Scotland Bill which proposes to merge Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland.
- The Revenue Scotland and Tax Powers Bill which proposes to establish Revenue Scotland as a non-ministerial department.

It is intended that appointments to both of these boards will be regulated by the Commissioner.

The tables on the following pages provide a summary of assessor activity and of the range of enquiries and reports dealt with during the year.



APPOINTMENT ACTIVITY

Table 18 records contact with the Commissioner's office by PACE to indicate that an appointment round is being planned. A round is shown as completed when an assessor's involvement is over or, where no assessor is assigned, the PACE manager advises that an appointment decision has been made.

Table 18 – Appointment activity

New appointment rounds	2013/14	2012/13	2011/12
Started in year	51	45	36
Carried forward from previous year	17	17	9
Total active in year	68	62	45
Incomplete at year end	16	17	17
Total completed in year	52	45	28

Appointment rounds completed in 2013/14

Table 33 in Appendix B shows all rounds for which ministerial appointment decisions were made between 1 April 2013 and 31 March 2014. It also provides information on the applicable Code and the level set by the Commissioner. A number of rounds were set at high at the request of the Scottish Government reflecting the fact that the assurance provided by contemporaneous oversight and the advice and guidance of the assessor are both welcomed.

One hundred and twenty five appointments were made to 54 public bodies during the year.

Investigations and reports on open competitions

No investigations were carried out during the reporting year.

Issues arising during the year

Appendix C summarises the substantive enquiries and reports submitted to the Commissioner's office during the year. There was a rise in requests for advice on good practice and in requests to diverge from the Code's requirements and a fall in requests for advice on application of the Code. Concerns about appointments processes were at roughly the same level as in the previous year. The majority of concerns continue to relate to poor planning or to assessment or records of assessment and each of these issues continues to require the intervention of an assessor.

Key Performance Indicators

Key performance indicators (KPIs) for the appointments process appear in 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”. Some of these KPIs, such as those relating to **Diversity Delivers**, are a regular feature of the Annual Reports and others are still in their infancy for reporting purposes. The 2013 Code sought to underline the importance of some KPI’s through inclusion of a section in the statutory guidance about timescales for appointment and reappointment.

Time taken

During 2012/13, on average it took 21.3 weeks from the initial planning meeting to the Minister’s appointment decision. During 2013/14 the average time was 24 weeks. However, since the 2013 Code came into effect in October of that year, there are indications of an improvement in the time taken (see table 20).

The figures in the following tables are provided by the Scottish Government. The rounds concerned are listed in Appendix B.

Table 19 – Time taken for appointment rounds

Overall time taken for all appointment rounds run during the year (combined figures for those run under both the 2011 and 2013 Codes)				
	2013/14	2012/13	Variation	Target from October 2013 (Max. no. of weeks)
Average time taken from planning to appointment decision (weeks)	24.0	21.3	+12.7%	16 to 20
Number of appointment rounds	65 *	40	+62%	

*This figure counts the 11 chair appointments made during the year to the regional college boards and strategic body boards as separate appointment rounds even though they were run simultaneously with one selection panel and appointment process.

The 2013 Code introduced more stringent indicative targets both for appointment rounds and for reappointments. Four rounds were run and completed in the reporting year under the 2013 Code. The average time taken for some key, discrete stages and for the round overall is included in table 20.

Table 20 – Time taken for appointment round stages

Average time taken for appointment round stages (2013 Code only)	
Stage	No. of weeks
Closing date for applications to date when all applicants are informed about the final appointment decision	9
Interview date to date when all applicants are informed about the final appointment decision	5
Time taken between the selection panel report and the Ministerial decision	3
Time taken between the date on which the round is planned to the date on which applicants are informed of the appointment decision informed	15
Time taken between the date on which the round is planned to the date on which the minister makes his or her appointment decision (overall time for purposes of target)	15

It appears, therefore, that rounds run under the 2013 Code are being achieved in a shorter timescale and well within the target time.

Target timescales for reappointment were introduced to improve on succession planning and to ensure that incumbents were given appropriate notice about ministerial intentions. The first set of data on reappointments shows that the Scottish Government has already made significant progress 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)				
	2013/14	2012/13	Variation	Target from October 2013 (Min. no. of weeks)
Amount of notice given to re-appointees before term of appointment due to end (weeks).	21	Not collected	N/A	13
Number of people reappointed	36	Not collected	N/A	

Concerns have been raised about the relatively low number of new people being engaged by the appointments process and deciding to apply. The Scottish Government now tracks new versus repeat applicants annually to give an overview of whether changes in publicity and the appointments process are attractive to first time applicants.

The Scottish Government is also tracking the quality of applicants based on a very general assessment of the numbers who meet the criteria for selection. This provides a helpful picture of whether people are sufficiently well informed by the application pack to make a judgment about their suitability. These statistics, set out in tables 22 and 23 below, helpfully supplement the information that we gather from applicants themselves about how they view the appointment process and what they feel can be improved.

Table 22 – Number of first time versus repeat applicants

Type of applicant	2013/14		2012/13		Variation
	No.	%	No.	%	% age point
First-time applicant	1288	66%	918	64%	+2
Repeat applicant	675	34%	511	36%	-2
Totals	1,963		1,429		

Table 23 – Quality of applications

Type of applicant	2013/14		2012/13		Variation
	No.	%	No.	%	% age point
Did not meet criteria	392	20%	244	17%	+3
Met some criteria	908	46%	758	53%	-7
Met all criteria (good quality)	663	34%	427	30%	+4
Totals	1,963		1,429		

Ministerial interviews with applicants

Although not one of our key performance indicators, 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 Code indicates that such meetings are anticipated particularly in the case of significant chair appointments.

Of the four appointment rounds completed under the 2013 Code, two were for chair positions. The minister met the candidates considered suitable in the case of one of these appointment rounds.

Applicant views on the process

A second survey of applicant experiences was conducted in late 2013. This built on the results of the 2012 research, aiming to understand what improvements applicants had noticed during the year, and what further changes should be made to the process. The results showed that there had been improvements in many aspects of the process from the point of view of applicants such as:

- an increase of approximately 8% in applicants who found the application pack helpful and easy to understand
- a decrease of 6.3% in applicants stating that they were not made to feel welcome in their interview
- no applicants were unclear about the role of everyone present at the interview stage
- significantly more applicants found the feedback useful and constructive, following the application stage and following interview.

Suggestions for change arising from the latest survey related mainly to areas of concern to applicants from currently underrepresented groups and included:

- the application process should be revised to make it more accessible to people from groups such as women, first time applicants, younger applicants, BME and disabled applicants, for example by changing from a standard form to a CV-based application process, expressions of interest, a face-to-face discussion or video application
- positive action initiatives to support under-represented groups including
 - training in skills, knowledge and experience required and how to demonstrate these at interview
 - shadowing board opportunities and/or advertising upcoming board meetings and so on to improve the confidence of these groups in applying
- using different ways of advertising vacancies, such as social media
- capitalising on the opportunities for personal development of younger applicants to improve in advertising the positions and in planning constructive and attractive outreach activities such as contact with private sector organisations and networks.

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

Valuable feedback from panel chairs and body chairs on the input of assessors has helped to quantify levels of satisfaction as well as to inform our training programme. Key stakeholders 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. The results are as set out in table 24.

Panel and body chairs are also invited to provide constructive narrative feedback on both the process and on the input of the assessors.

The scores and comments are shared with PACE and should be used to engender improvements in the appointments process.

Table 24 – Average satisfaction scores – two year comparison

	2013/14	2012/13
Average satisfaction level - PAA's contribution*	4.60	4.69
Average satisfaction level - appointments process*	3.70	3.47

*5 is very satisfied, 1 is very dissatisfied



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". The Scottish Government Public Appointments Centre of Expertise has the lead to drive this forward.

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 25 shows the extent to which Scotland's board members reflect the population as a whole as at April 2014.

Table 25 - Demographic profile of board membership

Target Group	Scottish Population (2011 Census)	Profile of board members† at April 2014
Female	51.5%	35.0%
Disabled	19.6%	13.1%
Black and minority ethnic	4.0%	2.2%
Aged 49 and under	54.3%*	17.4%
Lesbian, gay and bisexual	6.0%**	4.4%

† 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 26 – How the demographic profile of boards has changed

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

Table 26 provides historic data on board demographics from 2004/05. Historic information for age or LGBT status is not available. It is clear, however, that there has been limited progress other than in the case of applicants and appointees who declare they are disabled, and that significant progress will have to be made if the equality outcome for public appointments is going to be achieved. This will depend on generating higher numbers of good quality applications from currently underrepresented groups and ensuring that the appointments process itself is free from bias and other barriers.

There were 1,963 applications during the year with 125 appointments made. In 2012/13 1,429 applications were received and 105 appointments made. This equates respectively to 15.7 and 13.6 applications per position filled.

It is heartening to see overall application numbers rising, and to see that the quality of applications is high. Table 27 provides a breakdown of the stage that applicants reached during the appointment process for both chair and member positions over the past two years. We 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 with a higher number of interviews held per number shortlisted and position to be filled.

Table 27 – Number and progress of applications

Number of applications	2013/14		2012/13	
	Chair	Members	Chair	Members
Applied	181	1782	98	1331
Reached shortlist	179	1757	97	1160
Invited to interview	80	419	47	297
Recommended for appointment	37	169	21	127
Appointed	23	102	12	93

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.

Table 28 shows the percentage of applications in 2013/14 by each target group. These continue to form part of the Key Performance Indicators (KPIs) for the Commissioner.

Table 28 – Performance against Diversity Delivers Targets

Target Group	Target	2013/14		2012/13		2011/12		Scottish Pop.*
	●	●	●	●	●	●	●	
	%	%	%	%	%	%	%	%
Female	40.0	34.8	37.6	33.3	37.5	32.8	34.4	51.5
Disabled	15.0	11.8	11.5	31.5	16.3	15.3	11.5	19.6
Black and minority ethnic	8.0	4.0	2.5	4.5	2.9	3.6	6.7	4.0
Aged 49 and under	40.0	28.7	19.0	25.3	27.6	22.8	30.5	54.3**
Lesbian, gay and bisexual	6.0	3.3	2.5	2.9	6.9	2.7	5.1	6.0***

Key: Applications ● Appointed ●

*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. The numbers of applicants who chose not to provide the data in 2013/14 decreased and there was no repeat of the technical problem with the Scottish Government's system reported on last year. This means that the figures for this year are more statistically valid, particularly for applicants declaring a disability and for BME applicants.

The experience of women who apply continues to differ depending on the remit of the board. As reported last year, women made up 44.8% of those appointed to bodies sponsored by directorates under the Health & Social Care Director General compared to 25% of those appointed to positions in Governance & Communities. This year, 48.8% of the applicants for Strategy & External Affairs positions were women. Applications from women for positions within Learning and Justice were at 40.8% and those for Health & Social Care at 38.1%. Applications from women for Enterprise, Environment & Digital and Governance and Communities were both below 30%. This is not however the full picture as the success rate for women going through the process also varies considerably.

By way of example, although Governance and Communities attracted relatively small numbers of women applicants, those women who did apply were more likely to be successful; 50% of all those appointed to the bodies that it sponsors were women. Only 30% of those appointed to bodies sponsored by Learning and Justice were women. PACE are encouraged to consider why some areas appear to be better at attracting women to apply than others and why some areas are seeing apparently disproportionate attrition rates, with women not being appointed in proportion to the percentage of applications made. It may be that further analysis of the rounds concerned and the sharing of good practice will pay dividends by increasing the demographic profile of boards. Further pilots of alternative application and assessment methods are also encouraged as a way of improving practice and making the appointments process increasingly barrier free. The appointments process used for a pilot round for NHS Lanarkshire during the year was particularly encouraging. This round used an intermediate stage of assessment that gave applicants an opportunity to participate in a simulated board meeting. In the last year examples of good practice such as this have been posted to the publications pages of www.ethicalstandards.org.uk with a view to encouraging more selection panels to try them.

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

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

Director General	Female applicants	Female appointees
	%	%
Enterprise, Environment & Digital	26.7	29.4
Governance & Communities	29.0	50.0
Health & Social Care	38.1	45.0
Learning & Justice	40.8	30.0
Strategy & External Affairs	48.8	46.1

Table 30 shows that 28.7% of applicants and 19% of appointees who declared their date of birth were aged 49 or under. In the last annual report, the Scottish Government's review of diversity progress for the period 2011/12 was referred to, which noted that greater focus on reaching an applicant pool from a wider age range would be beneficial and would therefore be an area for targeted activity. The Commissioner agreed with this objective and considered that the steps required to increase the age range of applicants would result in an increase for several of the other diversity strands. There was a 3.5% increase in applicants from the under 49 group compared to the previous year and an 8.5% decrease in appointments to the group. It is unclear whether any targeted activity took place to attract more applicants from a wider age range but it is hoped that the Scottish Government's programme board, referred to below, will do more in this area 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

	2013/14		2012/13		2011/12	
	●	●	●	●	●	●
	%	%	%	%	%	%
49 and under	28.7	19.0	25.3	27.5	22.8	30.5
50-54	15.0	21.5	13.4	12.2	16.4	13.6
55-59	20.6	24.8	24.8	30.5	28.2	20.3
60-64	21.6	22.3	22.4	18.4	19.4	28.8
65 and over	14.1	12.4	14.1	11.2	13.3	6.8

Key: Applied ● Appointed ●

Making improvement

The Commissioner welcomes the Equality Outcome and the Scottish Government's establishment of a Public Appointments and Corporate Diversity Programme. A Programme Board was convened in December 2013 to oversee the development and delivery of the programme, including: consideration of whether a pool of pre-qualified applicants would be helpful; relevant training for people involved in the public appointments process such as selection panel members; developing a programme of awareness raising and outreach and developing alternative and more accessible application and assessment methods. The Commissioner has extended the offer to work with the Scottish Government in considering and developing these activities. The 2013 Code supports a number of the potential developments.

The Code which came into effect in October 2013 encourages selection panels on behalf of the Scottish Ministers to identify the most appropriate methods for publicising opportunities and creates flexibility for application and assessment to be tailored for particular appointments. It also makes it clear that it should be comparatively easy for people to apply and it discourages complex and bureaucratic processes. The intent is to encourage as large and diverse a field of applicants as appropriate to apply for roles.

It is evident that Scottish Ministers continue to be ambitious in pursuit of achieving a wide range of talent to apply for and be appointed to the boards of public bodies. The Commissioner observes that many of the actions identified in the **Diversity Delivers** strategy are still relevant and would both complement the work of the Diversity Programme and support efforts to achieve the Equality Outcome.

The applicant research referred to earlier in this report confirmed that a number of these actions would be welcomed by those who have already been through the public appointments process.

Other jurisdictions

The Commissioner has continued to have contact with other Commissioners within the UK, including a meeting with Sir David Normington GCB, Commissioner for Public Appointments and John Keanie, Commissioner for Public Appointments for Northern Ireland on 27th February 2014. These meetings are helpful in sharing best practice and in discussing common challenges facing each of the jurisdictions such as the need to make boards more diverse. The Commissioner for Northern Ireland published a report entitled 'Under-representation and Lack of Diversity in Public Appointments in Northern Ireland' in January 2014. It contains 26 recommendations for improving diversity and has been shared with the Scottish Government's Programme Board to inform its planned activities.



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 annually.	✓
vii	Agree the business plan for 2014/15.	✓
viii	Conclude the business plan for 2013/14.	✓
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.	✓

Key Achieved ✓ Partially achieved ● Not achieved ✗



Annual Business Plan Action		Achieved
In addition:		
	Established a new complaints handling system compatible with guidance provided by the Scottish Public Services Ombudsman.	✓
	Managed the dissolution of the Commission for Ethical Standards in Public Life in Scotland, the abolition of the posts of Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland and the transfer of their functions to the newly-created post of Commissioner for Ethical Standards in Public Life in Scotland.	✓
	Prepared for the end of the Commissioner's term of office on 31 March 2014 and the start of the term of office of a replacement Commissioner.	✓

Key Achieved ✓ Partially achieved ● Not achieved ✗

The Business Plan is also available at www.ethicalstandards.org.uk.



FINANCIAL OVERVIEW

The budget for 2013/14 was £797,000 as agreed with the Scottish Parliament.

Table 32

	2013/14		2012/13	
	Expenditure £000s	Budget £000s	Expenditure £000s	Budget £000s
Revenue Expenditure				
Staffing costs	569	545	534	527
Operating costs	239	249	194	268
Capital expenditure	3	3	9	3
Total expenditure	811	797	737	798

Cash expenditure during the year was £811,000 - £14,000 over the allocated budget.

The additional resources were required to investigate a significantly increased number of complaints about the conduct of local authority councillors. The following factors are relevant:

- a) The Commissioner employs a team of Investigating Officers (IOs) 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.
- b) In 2013/14, the budget for IO remuneration was £126,000 (405 days). The actual spend was £165,000 (514 days) - £39,000 (31%) over budget.
- c) Investigations into 311 complaints about MSPs, councillors and board members were completed in 2013/14 compared to 192 in 2012-13, an increase in activity of 62.5%
- d) The Commissioner put in train a number of measures to make savings in other work areas to offset these costs.
- e) Although savings were achieved, the Commissioner had to request contingency funding of £18,500 from the Scottish Parliamentary Corporate Body. The request was approved and funding was drawn down prior to the end of March 2014.
- f) In the event, only £14,000 of this funding was required. The balance will be offset against the 2014-15 budget.

During the year, the Parliament approved a budget of £785,000 for 2014/15.

Audit Scotland have reviewed the 2013/14 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

CASES OF INTEREST: BREACHES OF THE COUNCILLORS' CODE OF CONDUCT

Full details of all breach cases involving councillors can be read on the Standards Commission's website www.standardscommission.org.uk.

LA/S/1336 – COUNCIL ALASDAIR MACPHERSON, STIRLING COUNCIL

Nature of allegations: Stirling Council referred complaints which they had received from various sources alleging a number of discrete breaches of the Code of Conduct by Councillor Alasdair MacPherson. Some of the complaints were not upheld (seven) - while others (three) were found to be a breach of the Code.

Report by the Commissioner for Ethical Standards

The complaint firstly alleged that at a meeting of the Licensing Board on 10 September 2012, Councillor MacPherson prejudged the decision on a licensing application by stating his intention to approve the application before hearing the submissions from all objectors. Notwithstanding some variety of description among witnesses, there was a considerable weight of evidence that Councillor MacPherson reached a premature decision, that he declared his intention to approve the application and failed to hear all the objections before stating his position on the licensing application. In addition, he took into account a matter which was irrelevant under licensing law. In these respects, his actions breached the Code of Conduct.

The second part of the complaint was that at the same Licensing Board meeting Councillor MacPherson questioned objectors in a confrontational and adversarial manner. There was credible and consistent evidence from witnesses to confirm grounds for criticism of Councillor MacPherson's conduct towards the objectors.

In his report, the Commissioner stated that councillors engaging in quasi-judicial decision making must listen to, evaluate and judge information and evidence placed before them. That was not an adversarial process and it was misconceived for a councillor to assume that he or she had a right to "cross-examine" (as envisaged by Councillor MacPherson). The Commissioner concluded that he had failed to respect members of the public who appeared as objectors at the Licensing Board meeting on 10 September 2012 and was in contravention of the Code.

Another complaint concerned conduct at a Steering Group meeting held on 21 November 2012. It was alleged that Councillor MacPherson behaved towards a Committee Officer in an aggressive manner. He challenged the officer about the contents of minutes to the point where the officer became distressed and had to leave the meeting. Evidence obtained from members of the Legacy Steering Group and others attending the meeting overwhelmingly described Councillor MacPherson's conduct towards the officer as being unacceptable. Impugning the competence and integrity of the officer was considered to be contrary to his clear obligation in terms of the Code to respect Council staff and amounted to a breach of the Code of Conduct.

Decision by the Standards Commission for Scotland (hearing held on 12 May 2014)

The Standards Commission for Scotland held a Hearing. The outcome was that after considering all evidence and representations, the Hearing Panel decided there had been serious breaches of the Code in regard to the three complaints set out above. The Panel decided to suspend the respondent from all Council, Committee and Sub-Committee meetings of Stirling Council for five months.

LA/FA/1392 - COUNCILLOR ROBERT SPEARS, FALKIRK COUNCIL

Nature of allegation: The complaint alleged that, at a meeting of Falkirk Council held on 6 March 2013, Councillor Spears directed a straight arm Nazi salute to the Provost and said, 'Sieg Heil'.

It was alleged that, by thus failing to respect the Provost, the respondent breached paragraph 3.2 of the Councillors' Code of Conduct, which deals with Conduct at Meetings.

Report by the Commissioner for Ethical Standards

Four witnesses, including the Provost who was chairing the meeting and who was sitting opposite the respondent, stated that they saw the respondent make the straight arm salute and say the words, "Sieg Heil". The witnesses also stated that the gesture was made and the words were spoken after a vote had been taken on a controversial motion. The respondent stated that he only raised his arm to vote on the motion, but accepted that he said something which included the phrase, "Sieg Heil."

After the meeting ended the respondent visited the Provost in his room and made a form of apology.

The Commissioner concluded that the respondent's conduct was disrespectful and was a breach of the Code.

Decision by the Standards Commission for Scotland

After a Hearing the Panel decided that the respondent had breached paragraph 3.2 of the Code, and he was censured to allow him to reflect on his future conduct in the Chamber.

LA/R/1397 – COUNCILLOR MARK MACMILLAN, RENFREWSHIRE COUNCIL

Nature of allegation: The complaint alleged that, at a meeting of the Renfrewshire Council Economy and Jobs Policy Board held on 6 March 2014, Councillor Macmillan failed to declare a financial interest as an employee of a charitable company which the Council proposed to engage and partially fund for the provision of a youth employment initiative.

It was alleged that this omission by the respondent breached paragraphs 5.3, 5.5 and 5.10 of the Councillors' Code of Conduct which deals with Declaration of Interests.

Report by the Commissioner for Ethical Standards

Immediately following the meeting the respondent realised that he should have declared an interest. He informed the Chief Executive and Monitoring Officer and was advised to make reference to the omission at the next meeting of the committee. He did so and also tendered an apology.

The Commissioner concluded that the respondent's conduct breached the Code.

Decision by the Standards Commission for Scotland

After a Hearing the Panel decided that the respondent had breached paragraphs 5.3, 5.5 and 5.10 of the Code. He was suspended from attending meetings of the Economy and Jobs Policy Board for four weeks.



LA/WD/1418 - COUNCILLOR GEORGE BLACK, WEST DUNBARTONSHIRE COUNCIL

Nature of Allegation: The complaint alleged breaches of the provisions in the Councillors' Code of Conduct including the key principle of Respect in paragraph 2.1 in connection with postings made on the Councillor's Facebook site, questioning the impartiality and capability of officers contrary to paragraphs 3.2 to 3.5 of the Code and paragraphs 2 and 20 of Annex C to the Protocol for Relations between Councillors and Employees and disclosing confidential information contrary to paragraphs 3.14 and 3.15 of the Code.

Report by the Commissioner for Ethical Standards

The Commissioner concluded that the respondent's conduct had contravened the Councillors' Code of Conduct.

Decision by the Standards Commission for Scotland (hearing held on 4 June 2014)

After a hearing the panel decided that the respondent had breached paragraphs 3.2 to 3.5 and paragraphs 2 and 20 of Annex C to the Protocol for Relations between Councillors and Employees. He was suspended from attending meetings of the Council for two months.

LA/WD/1419 – COUNCILLOR JIM BOLLAN, WEST DUNBARTONSHIRE COUNCIL

Nature of Allegation: The complaint alleged breaches of the provisions in the Councillors' Code of Conduct including the key principle of Respect in paragraph 2.1 in connection with postings made on the Councillor's Facebook site, questioning the capability of officers contrary to paragraphs 3.2 to 3.5 of the Code and paragraphs 2 and 20 of Annex C to the Protocol for Relations between Councillors and Employees and also failing to register and declare a non-financial interest contrary to paragraphs 4.22, 5.3 and 5.7 of the Code.

Report by the Commissioner for Ethical Standards

The Commissioner concluded that the respondent's conduct had contravened the Councillors' Code of Conduct.

Decision by the Standards Commission (hearing held on 4 June 2014)

After a hearing the panel decided that the respondent had breached paragraphs 3.2 to 3.5, and paragraphs 2 and 20 of Annex C to the Protocol for Relations between Councillors and Employees as well as paragraphs 4.22 and 5.3 and 5.7 of the Code.

Councillor Bollan had been sanctioned by the Standards Commission in two previous cases: Complaint number LA/WD/425 in 2007 when he was suspended for six months and complaint number LA/WD/732,736,749 in 2009 when he was suspended for nine months.



The Panel decided that he should be suspended from attending meetings of the Council for nine months.

APPENDIX B

APPOINTMENTS MADE DURING THE YEAR

Table 33 – Appointments made during the year

Body	DG	Position	●	●	Code	Level
Accounts Commission for Scotland	G&C	Chair	13	1	2011	H
Accounts Commission for Scotland	G&C	Member	46	1	2011	H
Architecture and Design Scotland	G&C	Member	39	2	2011	L
Ayrshire and Arran NHS Board	HSC	Member	29	2	2011	M
Bòrd na Gàidhlig	L&J	Member	25	3	2011	M
Borders NHS Board	HSC	Member	30	2	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	HSC	Member	67	3	2013	M
Children's Hearings Scotland	L&J	Chair	19	1	2013	HSG
David MacBrayne Ltd	EE&D	Member	64	1	2011	M
Fife NHS Board	HSC	Chair	11	1	2011	M
Grampian NHS Board	HSC	Member	39	2	2011	M
Highlands and Islands Airports Ltd	EE&D	Member	60	2	2011	L
Highlands and Islands Enterprise	EE&D	Member	71	4	2011	H
Judicial Appointments Board for Scotland	L&J	Member	32	1	2011	L
Local Government Boundary Commission for Scotland	G&C	Chair	7	1	2011	M
Local Government Boundary Commission for Scotland	G&C	Member	51	3	2011	M
Mobility and Access Committee for Scotland	EE&D	Member	27	5	2011	L
National Galleries of Scotland	S&EE	Member	44	6	2011	L
National Library of Scotland	S&EE	Member	40	7	2011	L
NHS 24	HSC	Member	86	5	2011	M
NHS Education for Scotland	HSC	Member	49	2	2011	L
NHS Forth Valley	HSC	Member	33	2	2011	M
NHS Highland	HSC	Member	49	3	2011	M
NHS Lanarkshire	HSC	Member	38	2	2011	M
NHS Lanarkshire	HSC	Member	60	2	2011	HSG

Body	DG	Position			Code	Level
NHS Lothian	HSC	Chair	11	1	2011	M
NHS National Services Scotland	HSC	Chair	20	1	2011	M
NHS National Services Scotland	HSC	Member	34	1	2011	H
NHS National Services Scotland	HSC	Member	3	1	2011	M
NHS Tayside	HSC	Member	72	3	2011	HSG
Office of the Scottish Charity Regulator	L&J	Member	107	3	2011	M
Orkney NHS Board	HSC	Member	20	1	2011	M
Regional Colleges and Regional Boards	L&J	Chairs	37	11	2011	H
Risk Management Authority	L&J	Member	61	3	2011	L
Royal Botanic Garden, Edinburgh	EE&D	Member	8	3	2011	L
Scottish Advisory Committee on Distinction Awards	HSC	Member	23	1	2011	L
Scottish Advisory Committee on Distinction Awards	HSC	Member	1	1	2011	L
Scottish Agricultural Wages Board	EE&D	Chair	6	1	2011	L
Scottish Agricultural Wages Board	EE&D	Member	16	1	2011	L
Scottish Ambulance Service Board	HSC	Member	71	2	2011	L
Scottish Environment Protection Agency	EE&D	Member	65	4	2011	H
Scottish Funding Council	L&J	Chair	15	1	2011	H
Scottish Law Commission	L&J	Chair	2	1	2013	HSG
Scottish Natural Heritage	EE&D	Chair	15	1	2011	H
Scottish Natural Heritage	EE&D	Member	56	4	2011	H
Scottish Qualifications Authority	L&J	Member	4	0	2011	M
Scottish Qualifications Authority	L&J	Member	17	1	2011	M
Scottish Social Services Council	HSC	Chair	9	1	2011	M
Scottish Social Services Council	HSC	Member	28	4	2011	M
Scottish Water	EE&D	Member	39	2	2011	H
VisitScotland	EE&D	Member	84	3	2011	H
Western Isles NHS Board	HSC	Member	20	2	2011	HSG
Totals			1963	125		

Key for table

Applied: ● Appointed: ●

Column: DG

DG - Director General with sponsorship responsibility

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

S&EE - 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 C

PUBLIC APPOINTMENTS: KEY TRENDS AND AREAS OF INTEREST

The following tables summarise the substantive enquiries and reports submitted to the office during the year.

Table 34 – Enquiries and reports

Key trend*	Issues raised	2013/14**	2012/13	2011/12**
1*	Advice on the Code of Practice	179	295	159
	Advice on good practice	24	15	3
2*	Request for exceptions, extensions or to discuss options	58	44	47
	General enquiry on the work of the office	43	55	30
	Other enquiries or reports	87	48	58
	Freedom of information requests	2	1	4
3*	Complaints about appointment rounds	1	3	2
4*	Concern about an appointment round or failure in administration	76	85	43
	Report about good practice	3	4	0
5*	Report about non-compliance with the Code of Practice	12	34	14
Totals		485	584	360

* 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

Requests for advice on the Code fell, with a 39% decrease on the previous year. The year spanned the operation of the 2011 Code as well as the introduction of the 2013 Code in October. Most of the enquiries (234) were related to the application of the 2011 Code. The decrease may be attributable to the fact that the requirements of the 2013 Code did not depart as significantly from the 2011 version as those of the 2011 version did from the 2006 version. The most common requests for advice related to public confidence (15%), planning (12%) and the content of applicant summaries (11%). Close behind these (9%) were enquiries related to compliance opinions and to continuing appointment. “Public confidence” enquiries most often relate to how to handle potential, actual or perceived conflicts of interest both for panel members and for applicants.

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

There are occasions when meeting a specific requirement of the Code may not be appropriate. This is commonly when unusual or exceptional circumstances arise. In such circumstances the Scottish Ministers can approach the Commissioner to discuss the available options before taking any action. Diversions from the Code’s requirements, in order to be compliant, require the Commissioner’s agreement.

The highest number of such cases (22%) during the year related to the 2011 Code’s requirement that appointment round timetables should include an additional information stage. The stage allowed panels to seek more details from applicants after shortlisting in order to rule more into the final stage of assessment. The 2013 Code has dispensed with this requirement on the understanding that panels should look for reasons to rule people into rather than out of further stages of assessment.

The next highest category of case (19%) was when directorates wished to appoint new board members from what are commonly termed reserve lists. If an unexpected vacancy arises on a board and an open competition has been run recently to fill anticipated vacancies, the Commissioner can consider cases to fill the unanticipated vacancy from the list of candidates who were considered suitable for appointment but who were not appointed by the minister.

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

Only one complaint was drawn to the Commissioners’ attention during the year and the complainant was referred to the Scottish Government in the first instance as it had not yet had an opportunity to address the complainant’s concerns. Following the Scottish Government’s investigation into and report on the complaint the complainant indicated to the Commissioner that he was not happy with the Scottish Government’s response. The complainant could not refer the Commissioner to an instance of non-compliance with the Code and, following a review of the Scottish Government’s report, the Commissioner concluded that no further investigation was required.

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

Table 35 provides details on the common areas of concern that assessors reported to the office. Figures from the previous reporting year are shown for reference.

Table 35 – Reports by type

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

Concerns have been raised in relation to assessment and records of assessment and to planning. Assessors continue to take a proactive approach to giving advice in these areas in particular and this does lead to revisions to proposals for appointment rounds and to redrafts of applicant summaries in most but not all cases.

PACE has been working on revised templates and guidance for applicant summaries and for planning and we have been providing advice on these materials as they are being developed. Templates for applicant summaries may be helpful in introducing a standardised approach but the quality of the content is critical in determining whether the Scottish Ministers are enabled to make an informed choice about the suitability of applicants and whether unsuccessful applicants are provided with constructive feedback. As with other aspects of the appointment process, training could lead to improvements in these areas.

Concerns about delays in the process and administration have fallen but these have been replaced by a new trend reflected in the rise in miscellaneous concerns. A number of these relate to panels and PACE trying to turn around stages of the process in too short a timescale. This may in turn be related to the new targets for timescales based on stakeholder concerns about how long the process takes overall. It is recognised that there is a balance to be struck between running appointment rounds in shorter timescales and ensuring that the quality of the process is not being compromised or rushed.

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

Table 36 subdivides reports of non-compliance with the Code. Assessors 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, most of the concerns relate to assessment or records of assessment and, in the majority of these cases, assessment was inconsistent or appeared to introduce new requirements. The drop in non-compliance in the areas of planning and assessment and records of assessment may reflect greater willingness on the part of selection panels to acknowledge the need to redraft material to ensure that, for example, new requirements do not appear to be introduced in applicant summaries.

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

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





Commissioner for Ethical Standards in Public Life in Scotland

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