

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.

Laid before the Scottish Parliament by the Commissioner for Ethical Standards in Public Life in Scotland in pursuance of section 25(1) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 as amended on 20 September 2013.

Laying No. CES/2013/1

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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.

FOREWORD

Welcome to the annual report for the year 2012/13 which covers the business of the Commission for Ethical Standards in Public Life in Scotland, including the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.

As a result of further public services reform, the Commission and Commissioners' functions were merged into a new office of Commissioner for Ethical Standards in Public Life in Scotland, as from 1 July 2013. It is in the latter capacity that I am statutorily responsible for writing the report on the work of the former Commission and Commissioners.



In this report you will find details about:

- the work of the Commission and the Commissioners during the reporting year
- the regulation of complaints dealt with in relation to councillors, members of devolved public bodies and MSPs
- the scrutiny of Scotland's ministerial public appointments process and proposals to review the Code of Practice
- future plans for the office of the new Commissioner.

After eight years in post, Karen Carlton's term of office as Public Appointments Commissioner for Scotland ended on 31 May 2012. I thank Karen for her hard work and commitment towards making the public appointments process fair, transparent and open to all.

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 226 8138.

D Stuart Allan
Commissioner for Ethical Standards in Public Life
for Scotland

20 September 2013

Stuart Allan was the Public Standards Commissioner during the whole year.
Karen Carlton was the Public Appointments Commissioner during the year until 31 May 2012.
Stuart Allan was the acting Public Appointments Commissioner from 1 June 2012 to 31 March 2013.
See the Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013.



1. Executive Summary



1. EXECUTIVE SUMMARY

THE COMMISSION AND THE COMMISSIONERS

The annual report covers the business of the former Commission for Ethical Standards in Public Life in Scotland and the former offices of the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland for the financial year 2012/13.

During the year, the Scottish Government – at the behest of the Scottish Parliament – promoted an Order to merge the functions of the Commission and Commissioners into a new office of Commissioner for Ethical Standards in Public Life in Scotland. The order comes into effect on 1 July 2013.

PUBLIC STANDARDS

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

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



The year's cases – Councillors and Members of Public Bodies

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

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

- There have been 192 complaints this year compared with 185 last year, which is an increase of 4%.
- The complaints were investigated as 120 cases (which more accurately reflects workload) compared with 114 cases last year.
- Most complaints (181) continue to be against councillors rather than members of devolved public bodies (2). Nine were outwith jurisdiction.
- Complaints relating to breach of confidentiality increased due to several multiple complaints.
- 74% of complaints were found, after initial investigations, either not to amount to a breach of the Code or had limited substance or merit.
- In 23% of cases a full investigation was required but the conclusion was that there had been no breach of the Code.
- In respect of five complaints (3%) there was a finding that there had been a breach of the Code.
- Five complaints (four cases) (see Table 8) went forward to hearings before the Standards Commission.

Having regard to the complaints received and 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, I consider that councillors and public body members have generally applied high standards of conduct in undertaking their official responsibilities.

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

During the year, the Standards Commission held a series of roadshows for councillors to help promote their understanding of the Code of Conduct. I commend this approach which is aimed at reaching out to all local authorities in Scotland and I have been very pleased to assist and participate in these roadshows.

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 the Model Code is consistent with the Councillors' Code (which was revised in 2011) and remains fit-for-purpose. I have provided advice in relation to the Model Code and look forward to its finalisation and publication later in 2013.

The year's cases – Members of the Scottish Parliament

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

The following are the main features of the cases that have been dealt with during the year.

- There have been 20 complaints this year compared with 16 last year.
- All cases were dealt with during the year.
- 14 cases were found to be inadmissible on the grounds of being irrelevant or insufficient and not warranting further investigation.
- Five were excluded complaints, that is complaints which are excluded from the Commissioner's jurisdiction and fall to be dealt with by other authorities such as the Presiding Officer of the Scottish Parliament or the Scottish Parliamentary Corporate Body.
- One further case was outwith jurisdiction as the complaint related to the Code of Conduct for Scottish Ministers.

There were no breach reports submitted to the Scottish Parliament.

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

Code of Conduct for MSPs

The Scottish Parliament demonstrated their commitment to high ethical standards by carrying out a detailed review of section 7 of the Parliamentary Code dealing with General Conduct. I was invited to submit my views (which I did) and have been pleased to note that Parliament approved revisions to the Code in January 2013.

Other jurisdictions

I participated in a review by the Cabinet Office of the Committee on Standards in Public Life which reported in February 2013. The Minister for the Cabinet Office agreed that the Committee should continue but that, in future, it should not inquire into matters relating to the devolved legislatures and governments except with the agreement of these bodies.

During the year, I was privileged to be invited by the Northern Ireland Assembly to chair their selection panel for their new statutory post of Standards Commissioner.

In March 2013, the Standards Commissioners within the United Kingdom and the Clerks to the standards committees of the UK Parliament, the devolved administrations and Jersey met to discuss matters of current and mutual interest which proved to be a most beneficial exercise.

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 Code of Practice) to be followed by the Scottish Ministers and their officials when making appointments to the boards of public bodies.
- to examine the methods and practices employed by the Scottish Ministers when making appointments, to ensure they comply with the Code of Practice. The Commissioner may issue guidance on Code compliance to the Scottish Ministers.
- to report to the Scottish Parliament instances of material non-compliance with the Code of Practice. If an appointment has not been made, the Commissioner may also direct the Scottish ministers to delay making the appointment until Parliament has considered the case.

The year's appointments

Scrutiny of public appointments was provided for every appointment made to a regulated public body during the year although the extent of that scrutiny was risk-based and scaled back in comparison with previous years.

During the year, 45 new appointment rounds were allocated to assessors with 17 carried forward from the previous year. Forty-five were completed by the year end, leaving 17 to be carried forward to 2013/14. Details are provided in Table 17.

The Code of Practice

During the year I consulted with a range of stakeholders on the operation of the 2011 Code of Practice. This was with a view to ensuring that it was operating on the basis of effectiveness, efficiency and economy and that it was a genuine aid to Ministers in ensuring appointments are made openly, fairly and with due regard to equal opportunity requirements. I also wished to assess whether the revised regulatory regime was proportionate. The consultation, which closed on 31 October 2012, is available at www.ethicalstandards.org.uk.

I am grateful to Scottish Government Ministers and officials, the public body chairs, public body boards and other stakeholders who took the time and effort to speak with me about their experiences and to respond to the consultation paper. I am also grateful to the many applicants who elected to complete the new online survey and to tell us about their experience of applying for positions.

On the basis of these soundings and responses, I decided to bring forward more detailed proposals for Code revisions and guidance for statutory consultation with the Scottish Government, the Parliament and other stakeholders in the next reporting year.

In preparing these proposals, I have endeavoured to set out more clearly the principles that should underpin the Code, namely **merit, integrity** and **diversity and equality**. The proposals also provide that the whole application process must be made easier to operate and simpler and plainer to understand.

Experience of applicants (such as by the use of CVs) is specifically encouraged and selection panels are expected to give this greater consideration.

Scrutiny of the appointments process is to be significantly reduced and carried out in a targeted and much more proportionate way,

Ministers are also encouraged to play their part in the appointment process with targets for the completion of appointment rounds and reappointments.

These proposals have been set out in detail in the report Enhancing the Public Appointments Process in Scotland and the revised Code attached which was published for consultation in May 2013 with a closing date of 2 August 2013. It is also available at www.ethicalstandards.org.uk. Following consideration of the responses, it is anticipated the revised Code will be published and come into effect in October 2013.

In the meantime, my staff and assessors continue to provide proactive support to panels and to Scottish Government officials – ranging from advice to training – in order to assist them with this very important work.

Delivering diversity

I believe that equality has to be at the heart of a fair and transparent appointments process and this has been a key part of the review of the 2011 Code of Practice. I am committed to making sure that equality is a key principle of any future Code and that the promotion of equality is central to the work of my office.

The last annual report noted that the diversity of applicants continued to increase and that the quality of diversity data had also improved. However, the ambitions detailed in **Diversity Delivers** had not been realised within the original timescale. In the absence of revised targets I will continue to monitor against the targets set in **Diversity Delivers**. This past year shows that there have been slight percentage point increases for applicants in nearly all of the target groups. However, there has been no significant progress towards the levels jointly set by the Scottish Government and the Commission in **Diversity Delivers** and I am concerned that the quality of information obtained by the Scottish Government has decreased, with fewer applicants choosing to provide some or all of their personal data for monitoring purposes. Additionally, it is disappointing that the gains made in the first years of **Diversity Delivers** have not been sustained over the last two years.

I am, however, encouraged that the Scottish Ministers have renewed their commitment to increasing the diversity of board members by making this a pledge within the Scottish Government's Equality Outcomes for the period 2013-2016. I remain hopeful that this commitment, combined with increased capacity within the Scottish Government's Public Appointments team, will see an improved appointments process that is open to all suitably qualified and experienced applicants and will lead to an increase in appointments being made to talented individuals from a broad range of backgrounds.

CORPORATE AND FINANCIAL

Strategic and business planning

The work of the office continues to be organised in accordance with the Strategic Plan which sets out the main objectives and covers the four year period 2012-16.

This is complemented by the Business Plan for 2012/13 for the reporting year.

Financial overview

The budget for 2012/13 was set by the Parliament at £798,000.

Cash expenditure during the year was £770,000 resulting in an underspend, including savings, of £28,000.

During the year, the Parliament also approved a budget of £797,000 for 2013/14.

The accounts have been audited and found correct by Audit Scotland. In preparing the accounts, I have – as accounting officer – been indebted to my Audit Advisory Board, Mr Iain Robertson, Mr Kevin Sweeney and Mrs Jean Couper, whose advice and guidance have been much appreciated indeed.



2. Public Standards



2. PUBLIC STANDARDS

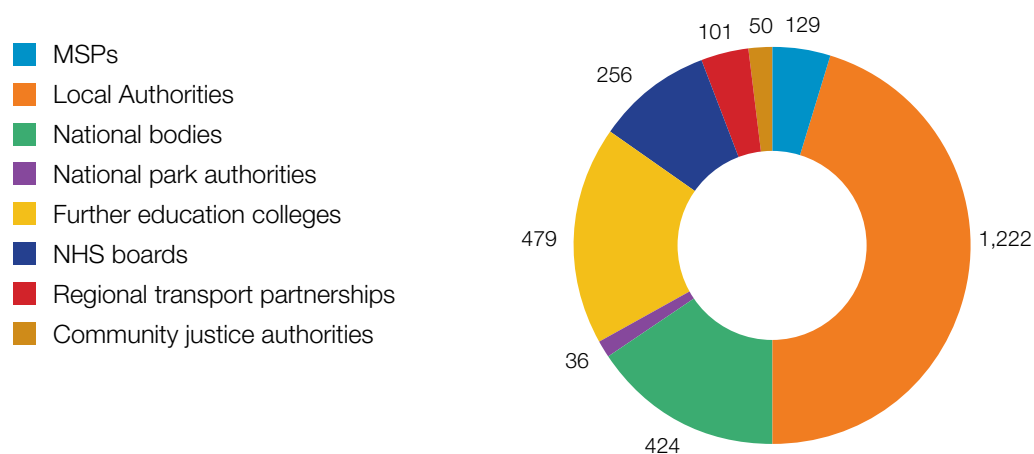
ORGANISATIONS WITH STATUTORY CODES OF CONDUCT

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 Code of Conduct. The members that can be complained about were originally set out in the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the 2000 Act) and the Scottish Parliamentary Standards Commissioner Act 2002 (the 2002 Act). The number of devolved public bodies varies from time to time as legislation is passed for new bodies to be brought within the scope of the 2000 Act and existing bodies are either removed from the Commissioner’s remit or abolished altogether.

Table 1

Organisations	Number of Bodies	Members of Bodies
MSPs	1	129
Local Authorities	32	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

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 previous years.

Table 2

Complaints against	2012/13	2011/12	2010/11
Councillors	181	170	178
Members of devolved public bodies	2	9	20
Other (outwith jurisdiction)	9	6	12
Total number of complaints*	192	185	210
Total number dealt with as cases**	120	114	135

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

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

Complaints by category

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

Table 3

Description	2012/13	2011/12	2010/11
Failure to register an interest	7	5	18
Failure to declare an interest	29	42	19
Disrespect of councillors/officials/employees	15	17	29
Financial misconduct	5	5	6
Breach of confidentiality	25	1	3
Misconduct relating to lobbying	9	2	2
Misconduct on individual applications	37	34	31
Other complaints*	23	45	35
Breach of the Key Principles	33	28	55
Outwith jurisdiction	9	6	12
Totals	192	185	210

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

Origin of complaints

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

Table 4

Complainant	2012/13	2011/12	2010/11
Member of the public	146	152	177
Councillor	38	22	24
Officer of a Local Authority	2	6	6
Anonymous	3	1	2
Member of a Devolved Public Body	0	0	1
MSP	3	4	0
Totals	192	185	210

Complaints relating to Planning

Table 5 shows complaints relating to Planning.

Table 5

Planning complaints received from	2012/13	2011/12	2010/11
Member of the public - with known material interest	46	60	55
Member of the public - with no known material interest	12	8	0
Councillor	14	1	3
Officer of a Local Authority	0	0	0
MSP	0	1	0
Anonymous	1	0	1
Totals	73*	70	59

* 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 2012/13

Table 6 shows complaints progressed and dealt with in 2012/13.

Table 6

Complaints progressed and dealt with	2012/13
Complaints outstanding as at 31 March 2012	36
Complaints received during 2012/13	192
Complaints completed during 2012/13	172
Complaints outstanding as at 31 March 2013	56

Outcome of complaints completed

Table 7 shows the findings in relation to complaints completed during the year compared with previous years. 172 complaints were completed this year and a significant number – 156 complaints – required some form of investigation, which follows a similar trend from previous years.

Following full investigation, 40 complaints (23%) were concluded in a finding of no breach of the Code. Five complaints (3%) resulted in a report being submitted by the Public Standards Commissioner to the Standards Commission with a finding that there had been a breach of the Code.

There were 111 complaints (65%) which, after an initial investigation, were subject to no further action. These covered complaints which did not amount to a possible breach of the Code or had limited substance or merit. The initial investigation – in all cases – involved the assessment and consideration of the complaint and/or clarifying the complaint, or gathering information from parties involved in the complaint before concluding that the matter should not be pursued further.

Eleven complaints (6%) were found to be outwith jurisdiction. Five complaints (3%) were withdrawn.

Table 7

Outcome of complaints	2012/13	2011/12	2010/11
Breach	5	6	1
No breach	40	38	64
Not pursued further	111	146	129
Outwith jurisdiction	11	7	14
Withdrawn	5	4	19
Total number of complaints	172	201	227
Total number dealt with as cases	107	129	150

Case summaries

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

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

Breaches of the Councillors' Code of Conduct

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

Table 8

Complaint Number	Respondent	Nature of the Breach	Hearing date	Hearing Decision	Sanction imposed
LA/H/1231	Highland Councillor	Failure to declare an interest	18-Mar-2013	Breach	Censure
LA/Fa/1264*	Falkirk Councillor	Disrespect of Councillors/ Officials	17-Apr-2013	Breach	Censure
LA/Mi/1278/A*	Midlothian Councillor	Failure to register an interest	18-Jun-2013	Breach	Censure
LA/Mi/1278/B*	Midlothian Councillor	Failure to register an interest	18-Jun-2013	Breach	Censure
LA/SB/1291*	Scottish Borders Councillor	Failure to declare an interest	10-Jul-2013	Breach	Suspension (Planning Committee) 3 months

*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	2012/13	2011/12	2010/11
MSPs	20	16	30

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

Table 10

Description	2012/13	2011/12	2010/11
Misrepresentation of MSP's role	1	0	3
Registration/declaration of interests	0	2	0
Lobbying and access to MSPs	0	0	0
General conduct	5	5	11
Confidentiality requirements	1	0	3
Awareness of MSP's staff	0	0	1
Engagement and liaison with constituents	13	6	8
Allowances and expenses/Use of Parliamentary facilities	0	3	4
Totals	20	16	30

Complaints dealt with

Upon the receipt of a complaint, 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)	2012/13	2011/12	2010/11
Admissible	0	0	0
Inadmissible	19	17	30
Withdrawn	1	0	2
Still at Stage 1 at 31 March	0	1	2
Totals	20	18	34

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	2012/13	2011/12	2010/11
Completed Stage 2	0	0	1
Totals	0	0	1

Inadmissible complaints

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

Table 13

Inadmissible complaints	2012/13	2011/12	2010/11
Complaint not relevant	18	11	28
Complaint not meeting procedural requirements	1	2	0
Complaint is insufficient and does not warrant further investigation	1	4	0
Still at Stage 1 at 31 March	0	1	2
Totals	20	18	30

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 the indicative period of two months. Decisions on all of the complaints received and dealt with in 2012/13 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 the complainer, if Stage 2 takes longer than the indicative period of six months. There were no complaints that had to be taken to Stage 2 during the year.

PERFORMANCE AGAINST TARGETS

The key development objectives are set out in the Commissioner's Business Plan 2012/13 and relate to the handling of complaints.

The related 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 2012/13, 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%	87%	Completion within 3 months or less
75%	97%	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%	NA	Completion of Stage 1 (Admissibility) within 3 months
100%	NA	Completion of Stage 1 (Admissibility) within 6 months
75%	NA	Completion of Stage 2 (Breach Report) within 6 months
95%	NA	Completion of Stage 2 (Breach Report) within 9 months

3. Public Appointments



3. PUBLIC APPOINTMENTS

REGULATING APPOINTMENTS

The following pages describe the regulation of appointments and key activities of the public appointments office during the year.

The Code of Practice

During the year the Commissioner consulted with a range of stakeholders on the operation of the 2011 Code of Practice. This was with a view to ensuring that it was operating on the basis of effectiveness, efficiency and economy and that it was a genuine aid to Ministers in ensuring appointments are made openly, fairly and with due regard to equal opportunity requirements. The Commissioner also wished to assess whether the revised regulatory regime was proportionate. The consultation, which closed on 31 October 2012, is available at www.ethicalstandards.org.uk.

The Commissioner is grateful to Scottish Government Ministers and officials, the public body chairs, public body boards and other stakeholders who took the time and effort to speak about their experiences and to respond to the consultation paper. The Commissioner is also grateful to the many applicants who elected to complete the new online survey and to tell us about their experience of applying for positions.

On the basis of these soundings and responses, The Commissioner decided to bring forward more detailed proposals for Code revisions and guidance for statutory consultation with the Scottish Government, the Parliament and other stakeholders in the next reporting year.

In preparing these proposals, the Commissioner has endeavoured to set out more clearly the principles that should underpin the Code, namely **merit, integrity** and **diversity and equality**. The proposals also provide that the whole application process must be made easier to operate and simpler and plainer to understand.

Experience of applicants (such as by the use of CVs) is specifically encouraged and selection panels are expected to give this greater consideration.

Scrutiny of the appointments process is to be significantly reduced and carried out in a targeted and much more proportionate way,

Ministers are also encouraged to play their part in the appointment process with target timescales for the completion of appointment rounds and reappointments.

These proposals have been set out in detail in the report Enhancing the Public Appointments Process in Scotland and the revised Code attached which was published for consultation in May 2013 with a closing date of 2 August 2013. It is also available at www.ethicalstandards.org.uk. Following consideration of the responses, it is anticipated the revised Code will be published and come into effect in October 2013.

In the meantime, the office and assessors continue to provide proactive support to panels and to Scottish Government officials – ranging from advice to training – in order to assist them with this very important work.

Who's who in the process?

Public Appointments Assessors

Public Appointments Assessors monitor regulated public appointments on behalf of the Commissioner. They scrutinise all or part of each appointment round and offer an opinion to the selection panel chair to ensure the appointment round complies with the Code. They also proactively offer advice on approaches that may be taken by panels that will enhance the experience of applicants and/or secure a better outcome at the conclusion of appointment rounds. The assessors also keep the office up to date with issues that arise during appointments rounds to identify trends and, should it be necessary, to facilitate intervention by the Commissioner when a round may be in danger of straying into material non-compliance.

Sponsor teams

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

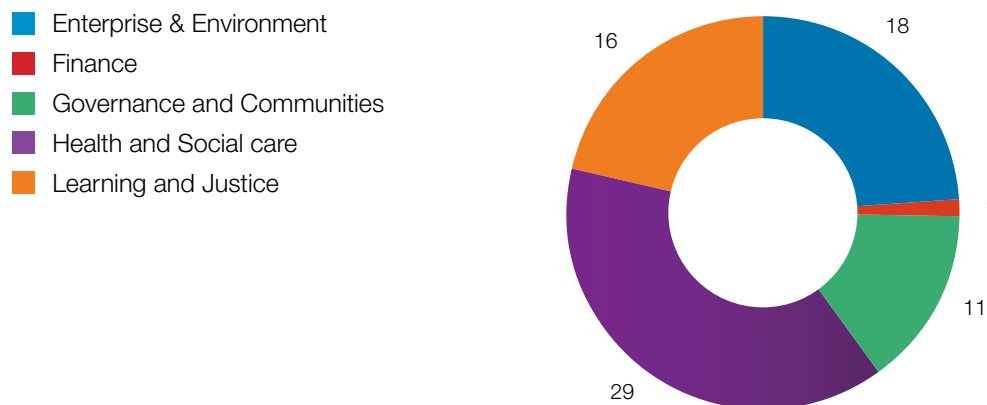
Regulated public bodies

The Commissioner currently regulates 75 public bodies and over 600 posts. A list of these bodies can be found at www.ethicalstandards.org.uk.

Table 16

	At 31 March 2013	At 31 March 2012	At 31 March 2011
No. of bodies regulated	75	73	75
No. of posts regulated	601	586	621
Avg. no. of positions per board	8.0	8.0	8.3

Number of public bodies by Scottish Government Directorate



The Scottish Police Authority and the Scottish Fire and Rescue Service were added to the Commissioner’s remit in 2012/13.

In 2013/14, following the full implementation of the Police and Fire Reform (Scotland) Act 2012, the Scottish Police Services Authority will be removed from his remit.

The Scottish Local Authority Remuneration Committee is in the process of being dissolved and is also likely to be removed from his remit in 2013/14.

The Post-16 Education (Scotland) Act 2013 will bring 12 regional college boards and the Victims and Witnesses (Scotland) Bill will likely bring the National Confidential Forum into his remit in 2013/14.

The Scottish University for Industry and Learning and Teaching, Scotland have been subsumed into Skills Development Scotland and Education Scotland, respectively. Legislation to formally remove them from the Commissioner’s remit is awaited.

Selection panels

The 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 and knowledge 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, representing the Minister, who serves as the panel chair.

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**. The PACE team was strengthened during the year to enhance the diversity aspect of its activities. PACE team members support selection panels during appointment rounds by providing expertise on, and management information required by, the appointments process.

The Commissioner's office runs joint training days involving the assessors and PACE managers to assist with consistency of advice and approach across both teams.

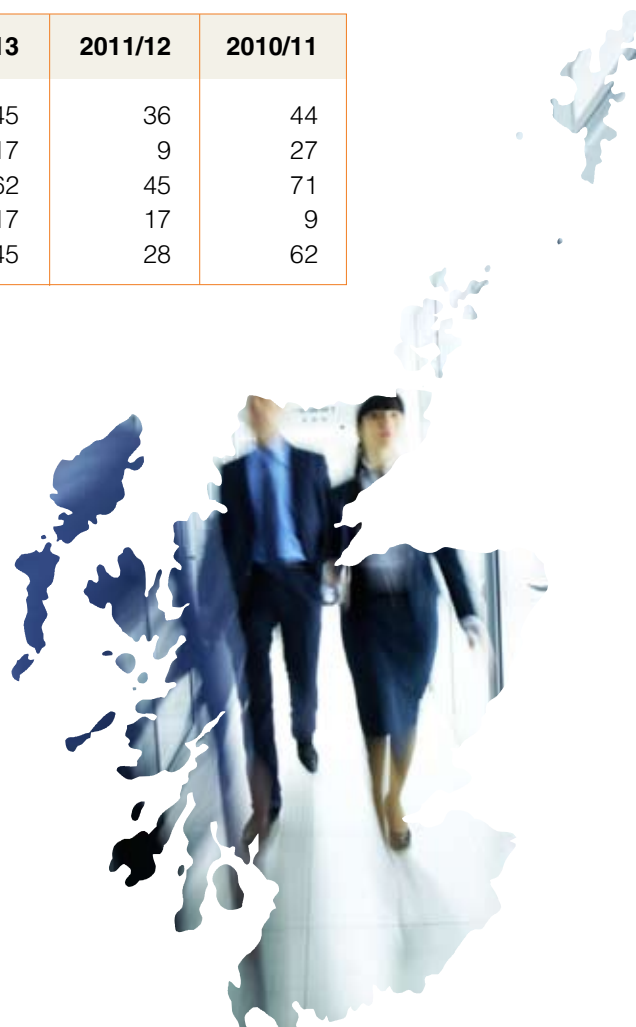
The tables on the following pages and Appendix C provide a summary of assessor activity as well as the range of enquiries and reports that were dealt with during the year.

APPOINTMENT ACTIVITY

Table 17 outlines the number of appointment rounds active during the year, compared with previous years.

Table 17

New appointment rounds	2012/13	2011/12	2010/11
Allocated in year	45	36	44
Carried forward from previous year	17	9	27
Total active in year	62	45	71
Incomplete at year end	17	17	9
Total completed in year	45	28	62



Appointment rounds completed in 2012/13

(Ministerial appointment decisions made between 1 April 2012 and 31 March 2013)

The Commissioner regulated the following appointments during the year. One hundred and five appointments were made to 31 public bodies.

Table 18

Body	Position	Applicants	Appointed
Ayrshire and Arran NHS Board	Member	45	3
Bòrd na Gàidhlig	Chair	3	1
Care Inspectorate	Chair	6	1
Care Inspectorate	Member	1	1
Children's Hearings Scotland	Member	32	2
Creative Scotland	Member	23	4
Crofting Commission	Convenor	4	1
David MacBrayne Ltd	Chair	13	1
David MacBrayne Ltd	Member	80	3
Greater Glasgow & Clyde NHS Board	Member	47	2
Judicial Appointments Board for Scotland	Advocate Member	1	0
National Galleries of Scotland	Member	13	2
National Library of Scotland	Chair	5	1
National Museums of Scotland	Chair	5	1
National Museums of Scotland	Trustee	23	4
NHS Highland	Member	50	3
NHS Lanarkshire	Chair	3	1
NHS Lothian	Member	69	6
NHS National Services Scotland	General Member	52	1
NHS National Services Scotland	NHS Member	1	1
NHS Orkney	Member	39	3
Parole Board for Scotland	Chair	14	1
Quality Meat Scotland	Member	30	6
Scottish Children's Reporter Administration	Member	11	2
Scottish Enterprise	Member	91	2
Scottish Fire and Rescue Service	Chair	16	1
Scottish Fire and Rescue Service	Member	117	11
Scottish Housing Regulator	Member	80	4
Scottish Law Commission	Chair	2	1
Scottish Legal Aid Board	Advocate Member	4	1
Scottish Legal Aid Board	Lay Member	79	2
Scottish Legal Aid Board	Legal Member	5	1
Scottish Legal Complaints Commission	Chair	7	1
Scottish Legal Complaints Commission	Non Lawyer Member	76	1
Scottish Police Authority	Chair	20	1
Scottish Police Authority	Member	144	12
Scottish Social Services Council	Member	37	5
Skills Development Scotland	Member	66	4
SportsScotland	Member	53	3
State Hospital Board for Scotland	Member	62	4
Totals		1,429	105

Investigations and reports on open competitions

Five investigations about individual appointment rounds were completed during the year, none of which found material non-compliance with the Code and none of which therefore resulted in reports being laid with the Scottish Parliament.

No investigation was still ongoing as at the end of the reporting year.

Succession planning and reappointment report

The Commissioner laid a second report with the Scottish Parliament on the topic of succession planning and reappointment (CPA 2012/02). This area has been addressed in the revised Code of Practice (see above).

Key trends and areas of interest

More detailed information is set out in Appendix C.

Key Performance Indicators

This is the first year in which the office has published information related to a full range of key performance indicators (KPIs) for the appointments process. These indicators have been agreed with the Scottish Parliament and appear in the strategic and business plans. Some of these KPIs are new and others, such as those relating to **Diversity Delivers**, are a regular feature of the Annual Reports. For the new KPIs, the current levels of attainment will be published this year as a baseline. In future years targets will be set against that baseline so that it is clear whether the appointments process is continuing to improve.

Time taken for appointments rounds overall and time taken for Ministers to make appointment decisions

During 2012/13, it took, on average, 21.3 weeks from the initial planning meeting to the Minister's appointment decision. However, this is not a true reflection of the time involved; a great deal of work takes place prior to the planning meeting. For example, the Public Appointments Assessor is assigned to an appointment round almost 7 weeks in advance of the planning meeting, increasing the overall length to just over 28 weeks. In addition, the Scottish Government's own decision to proceed takes place prior to the Assessor being assigned.

In future years, the Commissioner intends to more closely monitor the time taken for each stage of the process to help identify appropriate measures to reduce the overall length of an appointment round. The key dates to monitor will be the decision to proceed, the planning meeting, the closing date for applications, the interviews, the selection panel decision, the Ministerial interviews (if applicable) and the Ministerial decision.

Quality of applications and number of first time applicants

The following table gives an indication of the quality of applications received during the year.

Table 19

Quality of applications Assessment	Number	As a percentage
Did not meet criteria	244	17%
Met some criteria	758	53%
Met all criteria (good quality)	427	30%
Total number of applicants	1,429	100%

The following table shows the number of people who applied for the first time during 2012/13. This gives an indication of whether the pool of applicants is widening.

Table 20

Breakdown of 1st time & repeat applicants Type of applicant	Number	As a percentage
First-time applicant	918	64%
Repeat applicant	511	36%
Totals	1,429	100%

Applicant views on the process

During the reporting year recent applicants were asked to share their experiences to identify what was working well and what could be improved. This exercise will be repeated at regular intervals.

Common criticisms of the process included:

- poor administration at all stages of the process that indicate a lack of respect and/or applicant focus
- a feeling that the offer of feedback was not genuine and that, when received, the feedback was of little value
- a sense that the appointments were for people who were known entities
- a reliance on traditional application methods and competency based interviews.

Suggestions for improvement included:

- initial sift by CV and covering letter
- an opportunity to meet the panel and/or board members in advance of making an application to ascertain if there was a 'fit'
- feedback provided as standard, and for such feedback to be honest and focus on suitability for the position rather than a critique of an application form
- more time for interviews to enable panels to put applicants at ease
- if application methods are not going to change, suggestions for workshops to demonstrate how to complete the forms.

This research was fully supported by the Scottish Government. They have already taken action to make changes to their procedures for the benefit of applicants. You can download the full report and the Scottish Government's response to the report findings from the www.ethicalstandards.org.uk.

DELIVERING DIVERSITY

Diversity Delivers, the first equal opportunities strategy for ministerial public appointments in Scotland, set targets for the Scottish Ministers in relation to the appointment of groups currently under-represented on the boards of Scotland's public bodies. As indicated in the last annual report, the targets were not achieved within the anticipated time frame, that is by March 2012.

The aspirational targets set for and agreed by the Scottish Ministers, as well as progress against them to date, are shown below. There were 1,429 applications received in 2012/13.

Table 21

Target group	Scottish Population	Current target	Level at end March		
			2013	2012	2011
Female	52%	40%	33.3%	32.8%	36.6%
Disabled	19%	15%	31.5%	15.3%	13.9%
Black and minority ethnic	3.7%	8%	4.5%	3.6%	4.1%
Aged 49 and under	43.8%*	40%	25.3%	22.8%	24.3%
Lesbian, gay and bisexual	1.5%	6%	2.9%	2.7%	2.9%

* Percentage of the Scottish Population aged 18 to 49.

A number of applicants choose not to provide demographic data. The percentages shown in Tables 21 and 22 are based on responses where data was supplied. The number of applicants choosing to withhold some or all of their personal data has increased over the past year. The level of non-disclosure averages 8.8% which still allows for valid conclusions to be drawn. However, due to a technical error within the Scottish Government's systems, the non-disclosure figure for disability in 2012/13 was 58%. Therefore, the disability figures for 2012/13 are statistically invalid.

The Scottish Government have advised that they wish to revisit the targets set in **Diversity Delivers** and intend to consult on these once the full 2011 Census data is available. In the absence of revised targets for applications, the office will continue to report against the current **Diversity Delivers** targets.

The targets focussed on increasing the diversity of applicants, in the expectation that a wider pool of applicants would lead to a more diverse pool of board members.

The table below shows applications and appointments in 2012/13 by each target group.

Table 22

Target group	Applications		Appointments	
	No.	%	No.	%
Female	451	33.3%	39	37.5%
Disabled	189	31.5%	13	16.3%
Black and minority ethnic	59	4.5%	<6	2.9%
Aged 49 and under	320	25.3%	27	27.6%
Lesbian, gay and bisexual	37	2.9%	7	6.9%

The experience of women who apply differs greatly depending on the remit of board. During 2012/13, women made up 44.8% of those appointed to bodies sponsored by the Health & Social Care Directorate, compared to 25% of those appointed to positions in Governance & Communities.

The Scottish Government's review of diversity progress for the period 2011/12 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 agrees with this objective and considers that the steps required to increase the age range of applicants would result in an increase for several of the other diversity strands. He would urge the Scottish Government not to lose sight of the gains to be made by focussing on age as a priority. Clearly, more has to be done than simple outreach and the office again extends the offer to work with the Scottish Government as they formulate their plans for increasing the diversity of the applicant pool for board member positions.

The following table shows the age range of the applications received during the reporting year.

Table 23

Age	Scottish Population	Applied 2012/13		Appointed 2012/13		Current board members
49 and under	43.8%*	320	25.3%	27	27.6%	17.4%
50-54	7.1%	169	13.4%	12	12.2%	15.2%
55-59	6.2%	314	24.8%	30	30.6%	15.6%
60-64	6.4%	283	22.4%	18	18.4%	26.7%
65 and over	16.8%	179	14.1%	11	11.2%	25.1%
Sub-totals		1,265		98		
Prefer not to say		164		7		
Totals		1,429		105		

* Percentage of the Scottish Population aged 18 to 49.

The table shows that 25.3% of applicants and 27.6% of appointees, who declared their date of birth were aged 49 or under. This is encouraging. Further outreach to employers, encouraging them to allow time off for employees to pursue and participate in public sector board positions, is likely to result in an increase in successful applications.

Table 24

Number of applications	Chair	Members
Applied	98	1331
Reached shortlist	97	1160
Invited to interview	47	297
Recommended for appointment	21	127
Appointed	12	93
Application withdrawn during the process	3	15

It is important to note that the numbers do not represent individuals, as many individuals apply for more than one position in the course of a year. Multiple applications can be expected when the same skill set is sought. For example, multiple applications were made in significant numbers for the positions advertised with the newly created Police and Fire boards. Research conducted by the office in the winter of 2011 highlighted that it is not uncommon for applicants to apply more than once in the course of a year. It also found that those who do apply more than once tend to progress further in the process. The full report detailing applicant experience can be found at www.ethicalstandards.org.uk.

The statistics provided by the Scottish Government show that there is a continued interest in public appointments from across Scottish society. However, more must be done to capture this interest and ensure that talented people from all walks of life are not only encouraged to apply but are able to access an appointment process that allows them to demonstrate their suitability for appointment, rather than their ability to navigate a bureaucratic appointment process. The Commissioner would also urge the Scottish Government to continue to improve its census of current board members. The Scottish Government have expended resources to establish a baseline of diversity at the board table and it is hoped that as systems progress the reliability and completeness of this data will improve.

This report covers the second year where the Scottish Government have primary responsibility for the actions required to meet the targets and further improve the diversity of applicants coming forward and being appointed. Internal re-organisations and unanticipated high profile appointment rounds placed unexpected pressures upon the Scottish Government and as a result they did not take forward their planned research or outreach programme in the past year. However, good progress should now be made as the Scottish Government have invested in building expertise within its public appointments team over the last few years, and the Scottish Ministers have been vocal in their own ambition to ensure that the widest range of talent is supported to apply for public appointments. Indeed, this commitment is reflected within the Equality Outcomes published by the Scottish Government in April 2013.





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.

THE BUSINESS PLAN FOR 2012/13

The Strategic Plan is supported by annual business plans, specifying how each objective will be taken forward. The Business Plan for 2012/13 covers the reporting year.

A key priority for the Commissioner is to 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. Specific actions to achieve this priority are outlined in the Business Plan for 2012/13. The Commissioner has agreed with the Scottish Parliament to report on work in this area. The Commissioner can confirm that all actions outlined in the Business Plan 2012/13 in relation to this objective have been achieved.

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



FINANCIAL OVERVIEW

The budget for 2012/13 was set by the Parliament at £798,000. Cash expenditure during the year was £770,000, resulting in an underspend, including savings of £28,000.

Table 25

	Expenditure £000s	2012/13 Budget £000s	Expenditure £000s	2011/12 Budget £000s
Revenue Expenditure				
Staffing costs	534	527	567	568
Operating costs (less depreciation)	227	268	233	281
Capital expenditure	9	3	7	3
Total expenditure	770	798	807	852

During the year, the Parliament approved a budget of £797,000 for 2013/14.

The accounts have been audited and found correct by Audit Scotland. In preparing the accounts, the Commissioner has – as accountable officer – been indebted to the Audit Advisory Board, Mr Iain Robertson, Mr Kevin Sweeney and Mrs Jean Cooper, whose advice and guidance have been much appreciated. 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: NON-BREACHES OF THE COUNCILLORS' CODE OF CONDUCT

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

Full summaries of these cases can be found at www.ethicalstandards.org.uk.

1. LA/PK/1209 – Perth and Kinross Councillors

Nature of Allegation: It was alleged that four councillors had acted unfairly at Licensing Board meetings when matters relating to specific licensed premises were being considered by the Board.

Information was obtained which showed that one or more of the respondents were present at Licensing Board meetings on 12 February 2008, 12 February 2010 and 24 September 2010 when licensing applications, variations or other issues relating to the complainant's licensed premises were discussed. This meant there had been a lapse of 15 months before a complaint was made.

Public information issued by the Commissioner's office, which is accessible on the Commissioner's website, explains that complaints are not normally investigated if the matters complained of took place more than 12 months before the complaint was submitted. The Commissioner reviewed the issues raised but saw no exceptional reason to set aside the delay in making the complaint and investigate the complaint.

2. LA/Fi/1239 – Fife Councillor

Nature of Allegation: The complaint was that by initiating a conversation which was overheard by a third councillor, the respondent councillor had breached his duty to maintain confidentiality. It was also alleged that the conversation (about a recent staff appeal) evidenced a failure by the respondent to meet his obligations to conduct business in a fair and unbiased manner.

It was admitted that the respondent entered into a discussion on a recent staff appeal hearing with a senior councillor colleague in an office allocated to the latter. As the door was open the conversation was overheard by a third councillor in an adjacent office who intervened in a timely fashion before specific details were mentioned.

It was held that the Code did not regulate such informal discussions by councillors on confidential matters. Indeed, any such prohibition would wrongly interfere with the responsibility of councillors to seek to ensure the appropriate management of the Council. The confidentiality obligations in the Code related to matters being put into the public domain which the respondent did not do.

3. LA/DG/1249 – Dumfries & Galloway Councillor

Nature of Allegation: The complaint concerned a planning application for a quarry extension on land owned by an estate. The respondent leased land on a separate part of the estate and it was alleged that he failed to declare an interest in the planning application despite having a business relationship with someone who had an interest in the land that featured in the planning application. The respondent said he was unaware that the owner of the estate had been notified of the planning application as no such information was contained in the planning report.

Secondly, it was alleged that the respondent had publicly expressed a view on the application on road safety grounds. At the committee meeting the respondent explained that in a press interview he had commented on road safety but had in no way predetermined the application.

The Commissioner did not find any breach of the Code in regard to the respondent's involvement in the planning application.

Thirdly, it was alleged that in view of the frequency of declarations of interest made by the respondent, he should not sit on the Planning Applications Committee. It was noted that in the preceding 12 months he had attended 16 meetings, considered 93 planning applications and declared an interest in eight of these. The Commissioner did not consider that the number of declarations made by the respondent was such as to preclude him from sitting on the committee.

4. LA/E/1292 – City of Edinburgh Councillor

Nature of Allegation: This complaint related to the role of a councillor in communicating with constituents. The complainant submitted a planning application for a convenience store. Residents had objected to the planning application and the complainant alleged that the respondent ignored a pre-planning enquiry and failed to advise residents of the outcome of a meeting she had with him and Council officials. He complained that she had repeatedly taken sides against him and shown bias in favour of the residents.

The respondent said that residents had raised concerns about the acquisition of the amenity land and the planning application. She advised them of the process for making representations but, being a member of the Planning Committee, did not state a view on the application which was, in fact, withdrawn. The Commissioner found that there is nothing in the Code which prevents a councillor from making inquiries to Council officers regarding the progress of an application.

Residents had also raised concerns with the respondent about the maintenance of the amenity land associated with the planning application. The respondent advised the complainant that the matter relating to land maintenance was a legal dispute between him and the residents. She had offered to talk to the residents with a view to mediating with them however the residents' association rejected this.

The Commissioner concluded that the matters raised did not amount to a contravention of the Councillors' Code of Conduct.

5. LA/H/1314 – Highland Councillor

Nature of Allegation: In this case the respondent failed to declare a non-financial interest arising from the co-habitation of the respondent's daughter with the son of a planning applicant.

The objective test is 'whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.'

This case turned on the nature of the relationship between the respondent and an applicant. It was apparent that there was no business or social relationship between the parties, and the relationship between their respective daughter and son did not imply friendship, close or otherwise, between the parents. The Commissioner found that the required proximity was not evident in this case. Accordingly the respondent had not breached the Code.

6. LA/G/1331 – Glasgow City Councillor

Nature of Allegation: It was alleged that the respondent, in contravention of the requirements on the use of Council facilities, had promoted himself at public expense by issuing a circular letter, bearing his signature and prominently referring to himself, advising citizens of the availability of an Affordable Warmth Dividend from the Council to those who were eligible. The letter had been signed in his capacity as Leader of the Council.

Enquiries established that the letter was for the purpose of promoting a new policy initiative and encouraging a higher level of uptake. The content of the letter was confined to advising of the availability of the dividend and how to apply for it and, as the policy had been approved unanimously by the relevant Committee, it could not be said to affect support for a political party or to be politically controversial. It was concluded that the respondent had not breached the Code but the use of a less contentious form of wording would have been preferable.

7. LA/EA/1333 – East Ayrshire Councillor

Nature of Allegation: It was claimed that the respondent had posted offensive comments on a website using facilities provided by the Council.

Enquiries established that the respondent used her personal Blackberry to post the comments and had not used Council equipment. The Council's IT Department confirmed that there had been no access to Facebook via the Council's systems at the time the comments were posted.

While it was imprudent for the respondent to have described herself as a councillor when posting the Facebook comments in so doing the respondent was not undertaking any duties in relation to the Council.

8. LA/G/1360 – Glasgow City Councillor

Nature of Allegation: It was alleged that during a Council debate on central government welfare reforms, the respondent had referred to another councillor saying "your family and extended family will be affected." The complainant also alleged that the respondent became offensive, threatening and aggressive when he, the complainant, refused to accept an apology offered at a later date.

The comments in this case were made in relation to an issue on which many people hold strong views. It has to be expected and accepted by councillors that, in a system of democratic government, a topic of this nature will give rise to robust political debate. In view of this, the comments did not constitute a breach of the Code.

When the respondent approached the complainant a few days later in a local hotel to offer an apology, it is clear he was not undertaking any Council duties. The complaint highlighted the fact that the rules of the Code do not apply merely because a person is a councillor or is referred to as a councillor or uses the title of councillor but only when they are undertaking their duties in the Council or where they act as a councillor.

APPENDIX B

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

Note: Complaints summaries for MSP breach cases are published; however there were no such cases in 2012/13.

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

1. LA/H/1231 – Councillor Kenneth MacLeod, Highland Council

Nature of Allegation

It was alleged that in addressing Highland Council North Planning Applications Committee in respect of a planning application the respondent failed to declare a financial or non-financial interest in contravention of section 5 of the Code.

Report by the Public Standards Commissioner

The respondent, a practising solicitor, agreed to act on behalf of objectors to a planning application for the creation of allotments on ground owned by the Council. He advised that in the event of the application being granted an interdict might be sought to prevent the Council leasing the site until further local consultation had taken place. The respondent agreed to act on a pro bono basis subject to reimbursement of expenses. Prior to the meeting of the committee he drafted the initial writ. Although the respondent was neither a member of the committee nor a local member, he was granted permission to address the meeting. He proceeded to do so without declaring an interest arising from his solicitor/client relationship with the objectors. The content of his address purported to be personal but coincided with his clients' grounds for objection set out in the initial writ. The application was granted by the committee, and the respondent lodged the application for interim interdict. On a complaint being lodged with the Commissioner alleging failure to apply the objective test set out in paragraph 5.3 of the Code, and failure to declare a financial interest, the respondent argued that his professional role as legal advisor to the objectors was conditional on the application being granted, and that a declarable interest would only be created at that stage.

Decision by the Standards Commission

The Standards Commission for Scotland decided to hold a hearing. The outcome of the hearing was that the Commission held there had been a breach of the Code and decided to censure the respondent.

2. LA/Fa/1264 – Councillor William Buchanan, Falkirk Council

Nature of Allegation

(1) Publication of Prejudicial Election Material

Publication by the respondent of election material which the complainant considered to be derogatory, unjustifiable and contemptuous and disrespectful of him and others.

(2) Use of Council Facilities for Campaigning Purposes

The respondent used Council staff and facilities in the distribution of campaigning material.

Report by the Public Standards Commissioner

(1) Publication of Prejudicial Election Material

It was alleged that the respondent circulated election publicity which the complainant considered to be negative, derogatory, unjustifiable, disrespectful and contemptuous of him and others.

The Commissioner expressed his hesitation in interfering with the cut and thrust of the election process, that being generally a matter for the electorate. There were also separate legal remedies available to the complainant who also had the opportunity - which he took - of issuing and circulating a direct rebuttal of the material. The Commissioner found that in this respect the respondent had not breached the Code.

(2) Use of Council Facilities for Campaigning Purposes

Councillor Buchanan asked a clerical assistant in the members' support services team at Falkirk Council, to e-mail a press release and a newspaper article to the Falkirk Herald and to Real Radio. Both the press release and the article focussed on the conviction of an individual for a public benefits offence. In the press release the respondent made the following comments "I do not understand a system that allows criminals to stand in Elections to represent a council and a community. It is a sad reflection to see who would vote for the kind of person." The material was part of the respondent's election campaign.

The Commissioner was satisfied that Falkirk Council staff and IT resources were deployed at the respondent's behest to assist in the circulation of material designed to secure the respondent's re-election. Accordingly he found that the respondent had contravened the Code of Conduct.

Decision by the Standards Commission

The Commission Hearing Panel found that the respondent had breached the provisions of the Code which require that the public purse is not used for personal purposes. The panel censured the respondent.

3 & 4. LA/Mi/1278/A&B – Former Councillor Colin Beattie and Councillor Lisa Beattie, Midlothian Council

Nature of Allegation

The complaint alleged that former Councillor Colin Beattie and Councillor Lisa Beattie did not register property interests and income derived from those interests contrary to the requirements of part 4 of the Councillors' Code of Conduct.

Report by the Public Standards Commissioner

It was alleged that Councillor Lisa Beattie and former Councillor Colin Beattie (now an MSP) contravened the Councillors' Code of Conduct, in respect of the registration of interests. The respondents owned properties in Edinburgh and in Fife and Angus from which they received rental payments. Interests in property and income fell to be registered within one month of taking office or a change occurring. From 2007 until 2012 the respondents omitted to register the properties or any income generated from them.

The Commissioner noted that the registration of interests was a central component of the Code and was a key consideration by the Scottish Parliament in setting up the ethical standards framework.

Decision by the Standards Commission

After a hearing the Panel decided that both respondents had failed to register their interest in the properties and censured each of them.



5. LA/SB/1291 – Councillor Ron Smith, Scottish Borders Council

Nature of Allegation

The respondent had registered, as a non-financial interest, his position as treasurer and a trustee of Hawick Teviot and Robertson Parish Church. Objections to a planning application for a neighbouring property were made by the Minister of the Church and the Kirk Session. It was alleged that the respondent should have declared the registered interest and withdrawn from the meetings of the Council's Planning Committee when they considered the application. The complainant stated that, even though the respondent had taken no part in the Kirk Session's deliberations, he had been present and able to hear the views expressed.

Report by the Public Standards Commissioner

The respondent made three points in support of his position. Firstly, Teviot Church would neither benefit nor lose from this application going ahead. The Church was neither an immediate nor residential neighbour. Secondly, he felt it was important not to 'interfere' in the Minister and Session's actions on this matter. He recognised he could at no stage give any indication of what his own thoughts might be. Thirdly by 'declaring (his) interest' and taking no part at the Kirk Session meeting he was acknowledging his priorities. In this context, his role on the Planning Committee far outweighed any interests of Teviot Church.

The respondent acknowledged that he had registered his interest as treasurer and a trustee of the Church, and he had to declare that interest. He believed, however that he took sufficient steps to "dilute" his interest and render it sufficiently insignificant so as to enable him to participate in the decision making process.

The Commissioner did not consider that his actions were sufficient to render his significant interest in the Church an insignificant interest. The respondent's registered interest as treasurer and a trustee of the Church remained unaltered by the action which he took. The Commissioner observed that if the respondent had been simply a member of the Church but not of the Kirk Session, he would not have found that interest by itself to be significant. The Commissioner also found that whereas a member of the public would have known of the respondent's registered interest, that member of the public would hardly have known of his declaration of interest at the meeting of the Kirk Session.

Decision by the Standards Commission

The Hearing Panel accepted that there may be discretion to allow a councillor to consider whether the interest is so remote or insignificant that it could not reasonably be taken to fall within the objective test. In this instance, the Panel determined that the interest did fall, however, within the objective test and should have been declared. Therefore, the panel found that there had been a breach of the Code.

The Panel decided to suspend for three months the respondent's entitlement to attend the Committee/Committees in Scottish Borders Council that are responsible for making planning decisions.

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 26

Key trend or area of interest	Issues raised	2012/13	2011/12*	2010/11
1	Advice on the Code of Practice	295	159	136
	Advice on good practice	15	3	29
2	Request for exceptions, extensions or to discuss options	44	47	88
	General enquiry on the work of the office	55	30	37
	Other enquiries or reports	48	58	130
3	Freedom of information requests	1	4	13
	Complaints about appointment rounds	3	2	12
	Concern about an appointment round or failures in administration	85	43	57
	Report about good practice	4	0	1
4	Report about non-compliance with the Code of Practice	34	14	13
	Totals	584	360	516

* 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 of Practice rose significantly with an 86% increase on the previous year. This reflects the changes that were made to the Code, as it was the first full year of the 2011 Code's operation, as well as to the role of the assessor. The most common requests for advice related to compliance opinions (23%), application and assessment methods (14%) and the content of applicant summaries (13%).

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

There are occasions when meeting the exact requirements of the Code of Practice may not be appropriate. These were previously known as 'exceptions'. The 2011 version of the Code makes no reference to exceptions. If a requirement of the Code is considered inappropriate, the Code advises that the Scottish Ministers will discuss options with the Commissioner before taking any action.

The most common reason for such discussions during the year (36%) was to allow selection panels to dispense with the 'additional information' stage in the appointment timetable. This stage afforded panels an opportunity to approach applicants for more information on their written applications before deciding whether to interview them. It was introduced by the 2011 Code to make the early stages of assessment more flexible so that applicants were not automatically ruled out because they did not meet all of the criteria for selection on paper. It is dispensed with when panels commit to assessing applicants flexibly – the Commissioner's preferred option – rather than requiring applicants to fully meet the role's requirements in a written application form.

There was a significant fall during the year, down from 10 to 4, of cases in which the Scottish Government made changes to the selection panel during appointment rounds. Whilst it is sometimes unavoidable, the Code of Practice requires the panel to remain the same throughout appointment rounds as this maintains continuity of understanding about the round as well as continuity of assessment of applicants.

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

The revised role of the assessor that characterised the start of the year – basically overseeing practices and reporting on them rather than participating as panel members – led to a rise in reported concerns compared with previous years. The following table provides details on the common areas of concern that assessors reported to the office.

Table 27

Reported concerns and administrative failures by type	Number
Administrative problems and delays in the process	19
Poor planning	29
Assessment and records of assessment	26
Miscellaneous	11
Total	85

The highest levels of concern related to planning and to assessment and the recording of assessments by selection panels and/or the PACE representative. The Commissioner asked the assessors to take a more proactive approach to advice-giving in these areas in particular and it is anticipated that the levels of concern in respect of both will diminish in the next reporting year as a consequence of this. Concerns about administration and delays in the process were also relatively high reflecting the perspective of applicants and other stakeholders that this is an area in which the Scottish Government can improve.

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

The following table 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 the table 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.

Table 28

Reports of non-compliance by type	Number
Administrative failure	5
Planning non-compliant	8
Assessment and records of assessment	18
Miscellaneous	3
Total	34





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