



**SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER
ANNUAL REPORT
2006 – 2007**

Independent

Complaint

Conduct

MSP

Investigation

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Laid before the Scottish Parliament by the Scottish Parliamentary Standards Commissioner in
pursuance of Section 18 of the Scottish Parliamentary Standards Commissioner Act 2002

28 June 2007

SPSC/2007/1

“... the Committee agreed to recommend the appointment of a Standards Commissioner, with a view to maximising public confidence in the Parliament’s commitment to maintaining the highest levels of probity in conducting its affairs. The critical factor in the Committee’s decision was the degree of independence which a Commissioner could apply to the investigation of complaints about the conduct of MSPs.”

Scottish Parliament’s Standards Committee, 4th Report 2000 (Session 1):
“Models of Investigation of Complaints”.

“There is nothing more important in public life than integrity. Democracy cannot function without respect for politicians ... which is based on their good reputation.”

Allan Massie
The Sunday Times 22/2/04



Introduction

1. This is my fourth annual report to Parliament. It is written as Parliament's third session is getting under way, eight years on from devolution, and as its structures and processes continue to develop. There has recently been a partial revision of the Code of Conduct for Members and regulation of Members' interests will now be in accordance with the Parliament's own legislation – the Interests of Members of the Scottish Parliament Act 2006 – rather than the previous transitional legislation of the Westminster Parliament, the Members' Interests Order.¹ I refer in more detail to the revision of the Code of Conduct and its implications for me later in this report.

2. This past year has seen the largest yearly total of complaints received to date (34). This is twice as many as in the previous year but only a little above the average for the first four years of my role. With relatively small numbers each year, significant fluctuation from year to year is to be expected.

3. Amalgamation of data over four years gives a better feel of the number and nature of complaints than a single year's data. Complaints have arisen at an average rate of 27 a year. A few are withdrawn during the first stage and, of those left, around a fifth go on to full investigation (around five a year).

4. The data continue to give a reassuring view of standards of conduct of Parliamentary duties in Scotland. Of 33 complaints considered for admissibility in the past year, only three were of sufficient relevance and substance to go on to full investigation. Two of these were completed within the year and both involved premature publication of material relating to committee reports. Both complaints were found by me and by the Standards and Public Appointments Committee ("the Committee") to involve breaches of the Code of Conduct. The third complaint remained at Stage 2 of the investigation process at the end of March 2007.

5. Within the year I also completed a full investigation of a complaint received in the previous year which was primarily about alleged breach of privacy. Neither I nor the Committee found any breach of the Code. Only one complaint in the last year related to Members' interests and it was found inadmissible. Further details on complaints are given in the body of this report.

6. I continue to be aware that there is more work to do in making the public aware of my role and the complaints process. I indicate in this report how I intend to take this forward. I also repeat here that I am happy to accept invitations from groups and organisations to speak on these issues.

7. I also describe in this report how I intend in the next year to audit my performance of my role in the complaints process against principles of good complaint handling developed by the British and Irish Ombudsman Association, so that any improvements required might be identified and implemented.

8. I refer in this report to the Finance Committee's inquiry into governance and accountability relating to Parliamentary commissioners and ombudsmen in Scotland, which reported to Parliament at the end of the last session. During the process of that inquiry I had some concern that, in its desire to put in place appropriate mechanisms for oversight of financial and efficiency issues in relation to Parliament-related officers including myself, Parliament might to a degree lose sight of the need for it to protect the independence of operation and effectiveness of the posts which it had borne strongly in mind when it set them up only a few years earlier. I comment on that inquiry in this report and I have annexed to this report the supplementary written evidence which I submitted to the Finance Committee. This was intended to give reassurance that, in conducting complaint investigations, I operate, as intended by Parliament, independently of the Parliament.

9. I thank all those who have assisted me in carrying out my role in the past year. I look forward to the challenges of this third session and to working alongside the new Standards and Public Appointments Committee in the important task of contributing to the maintenance of public trust in our politicians.

Dr J A T Dyer
8 June 2007

¹ The Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 (SI 1999/1350).

10. The legislation setting up my post and remit, the Scottish Parliamentary Standards Commissioner Act 2002 (“the Act”), requires in Section 18 that I make an annual report to

Parliament “upon the performance of the functions of the Commissioner”. This is my report for April 2006 to March 2007.

Table 1

SUMMARY OF COMPLAINTS ADDRESSED			
1 April 2006 to 31 March 2007 (with previous two years for comparison)			
	2004/05	2005/06	2006/07
NO. OF COMPLAINTS RECEIVED	31	14	34
Withdrawn at Stage 1	4	-	1
ADMISSIBILITY CONSIDERED	27	14	33
Admissible	9 (33% of 27)	1 (7% of 14)	3 (9% of 33)
Still in Stage 1 at 31/3/07	-	-	-
Inadmissible	18 (67% of 27)	13 (93% of 14)	30 (91% of 33)
ADMISSIBLE COMPLAINTS	9	1	3
Withdrawn Stage 2	1	-	-
Still in Stage 2 at 31/3/07	-	-	1
Completed Stage 2	8	1	2
INADMISSIBLE COMPLAINTS (GROUNDS)	18	13	30
Relevance: Section 6(4)	6	5	12
Procedural: Section 6(5)	-	-	1
Substance: Section 6 (6)	4	5	12
Both 6(4) and 6(6)	8	3	5
SUBJECTS OF COMPLAINTS	24	13	30
Committee leak	1	-	1
MSPs complained about	23	13	29
MSPs with 1 complaint	20	12	26
MSPs with 2 complaints	1	1	2
MSPs with 3 complaints	1	-	1
MSPs with 6 complaints	1	-	-
NO. OF COMPLAINERS	24	14	29
Complained once	21	14	27
Complained 2 times (different MSPs)	1	-	-
Complained 3 times (different MSPs)	-	-	1
Complained 4 times (different MSPs)	1	-	1
Complained 5 times (different MSPs)	1	-	-
Complainers who are MSPs	-	-	1

Complaints

11. The summary in Table 1 shows data on complaints addressed between 1 April 2006 and 31 March 2007, with data for the previous two years included for comparison. Thirty-four complaints were received in the course of the year. This was the largest yearly total to date, and more than twice as many as in the previous year, although only slightly above the numbers received in 2003/04 and 2004/05 (29 and 31 respectively). The number received in 2005/06 (14) was unusually small.

12. Twenty-one complaints were received in the first six months (April to September 2006) and 13 in the second six months (October 2006 to March 2007). The increase in the figures for the year therefore did not appear to be explained by an increased rate of receipt in the run-up to the May election. Given the small numbers, significant variation from year to year is to be expected. I note that four complaints in the past year involving two Members arose in connection with the Justice 1 Committee's inquiry into the efficient running of the Scottish Criminal Record Office ("SCRO") and the Scottish Fingerprint Service², which explored issues relating to the Shirley McKie case.

13. Two complaints were fully investigated at Stage 2 within the year. Both involved premature publication of information relating to committee reports. The first related to the Justice 1 inquiry mentioned above and began as a complaint about a committee leak from a person who had given written evidence to the inquiry. The complainant stated that his and other submissions were "leaked" to a newspaper. A Member identified himself as having made the submissions available and sought to justify his action in various ways. Although the Committee had decided that the submissions were to be published as a Committee Report, at the time of the Member's action the Committee regarded the papers as private and had clearly advised Members of their confidential status. I found that the Member's conduct breached two Sections of the Code of Conduct and the Standards and Public Appointments Committee agreed with this conclusion.³ The Member was subsequently excluded by Parliament from its meetings and committees for five sitting days.

14. The second complaint was made by the Convener of a Private Bill Committee against one of its Members, to the effect that he had

disregarded the Committee's agreed position on the publication of its Preliminary Stage Report by communicating information on the report and his views on it to the media while it was confidential. He had issued to a broadcaster a press statement dissenting from key conclusions of the report, with an embargo on reporting until after the publication time of the report (which was in the event broken by the broadcaster), despite having been present at a meeting where the Committee was advised that no material should be made available to the media, embargoed or not, prior to the publication time of the report (Private Bill reports being particularly sensitive in this regard). Although I was satisfied that the Member had not deliberately sought to defy the agreed position of the Committee, I concluded that he should have been aware of the requirements on publication and that he had breached two Sections of the Code of Conduct regarding not making information available about a report, including dissent from it, before it is published. He had not, however, made the actual report available or provided "off the record" briefings on it so those parts of the complaint were not upheld. The Standards and Public Appointments Committee agreed.⁴ The Member was subsequently excluded by Parliament from its meetings and committees for five sitting days.

15. In my report on this case, I drew the attention of the Standards and Public Appointments Committee, the Private Bills Unit, the Conveners' Group and the Parliament's Media Office to the possibility of confusion over the use of the word and concept "embargo", so that they might consider whether any clarification might be desirable.

16. When I reported last year, three complaints from 2005/06 were still having their admissibility assessed at Stage 1. Two of those were found inadmissible and one went on to Stage 2 investigation. The figures in Table 1 are updated to reflect this.

17. The case from 2005/06 which completed Stage 2 in 2006/07 involved a constituent who had a meeting with his MSP to discuss both individual and general concerns relating to his public service employer. Following the meeting, the Member sent a letter to the employer in which the constituent was named. The constituent complained that he had sought and gained assurances at the meeting that anonymity would

² Justice 1 Committee, 3rd Report 2007 (Session 2).

³ See Standards and Public Appointments Committee 2nd Report 2006 (Session 2).

⁴ See Standards and Public Appointments Committee 1st Report 2007 (Session 2).

be preserved and he also complained of a delay in receiving an explanation after he found out he had been named and raised his concern about this. Following investigation I was not satisfied that the Member had given an assurance of anonymity at the meeting and I concluded that he had not deliberately disregarded any request for it. His action in naming the constituent appeared to me consistent with the Data Protection Act 1998 and guidance on it.⁵ I found that the Member had not breached the Code of Conduct in relation to either part of the complaint, and the same view was taken by the Standards and Public Appointments Committee.⁶

Admissibility

18. I assess the admissibility of complaints with reference to three tests set out in the Scottish Parliamentary Standards Commissioner Act 2002 ("the Act"), in Sections 6(4) to 6(6). Of the 33 complaints considered in 2006/07, three (9%) were admissible and 30 (91%) were not admissible. Of the three admissible complaints, two were completed within the year as described above and the other remains at Stage 2. Of the 30 inadmissible complaints, 12 were inadmissible on grounds of relevance, 12 on grounds of substance and five on both grounds. One further case was inadmissible by direction of the Standards and Public Appointments Committee under Section 7(7) of the Act as it failed to meet the requirement under Section 6(5) of the Act that complaints should be made within one year of the date when the complainer could reasonably have become aware of the conduct complained about.

Timescale for Stage 1

19. I am required to report to the Standards and Public Appointments Committee, and to the Member and complainer, if Stage 1 takes longer than the indicative period of two months. Decisions on 31 of 33 complaints considered were reached within the two-month period, the length of time ranging from one to 58 days. The complaint referred to the Standards and Public Appointments Committee for a Direction took three months as the Committee was not available over the summer recess. One complaint took between two and three months for Stage 1, largely due to a delayed response from the complainer, also over the summer recess.

Timescale for Stage 2

20. I am required to report to the Standards and Public Appointments Committee, and to the Member and complainer, if Stage 2 takes longer than the indicative period of six months. The two complaints which completed Stage 2 within the year took one month, and between four and five months, respectively. The case carried over at Stage 2 from 2005/06 took seven months to complete Stage 2, due to a delay associated with the complainer taking legal advice over an issue.

Subjects of the Complaints

21. The 34 complaints in 2006/07 related to 29 Members and one committee "leak". Twenty-six Members had complaints from one complainer, two had complaints from two complainers and one had complaints from three complainers.

Complainers

22. The 34 complaints came from 29 separate complainers, one of whom was an MSP. Twenty-seven complained once, while two complainers complained about three and four different Members respectively.

Content of Complaints⁷

23. Of the 34 complaints received in 2006/07, 17 contained an element which might be described as relating to level and quality of service. In 14 cases this was the only element of the complaint while in three complaints it was combined with another element. Such complaints were relevant to Section 2.4 of the Code of Conduct for Members⁸ which placed a duty on Members "*... to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.*" They are about alleged failures of Members to respond to correspondence or requests for meetings, or to respond timeously to these, or about alleged refusals of Members to provide representation in relation to particular issues, or to go on providing representation. All such complaints were found to be inadmissible in the past year. In 12 of them the reason for finding them inadmissible was lack of substance, i.e. the evidence after initial investigation was insufficient to suggest that the conduct complained of might have taken place. For further discussion of this issue see page 7.

⁵ I made reference to the Data Protection Act 1998 as it relates to Members, and relevant guidance, in my Annual Report for 2005/06, available on my website at www.spssc.co.uk.

⁶ See Standards and Public Appointments Committee 4th Report 2006 (Session 2).

⁷ The numbers of topics here do not necessarily match the number of complaints, as complaints might have more than one topic.

⁸ Edition 2, May 2003.

24. Four complaints alleged “leaks” of material by committee members. Three complaints expressed disapproval of the conduct of Members in being arrested at a demonstration against nuclear weapons. Two complaints related to newspaper articles either written by or quoting Members.

25. Only one complaint this year related to the Members’ Interests Order,⁹ alleging failure to register a financial interest. Further single elements of complaints included allegations of failure to act honestly, being influenced by a conflict of interest, failure to answer specific questions relating to a previous interaction, responding inappropriately to a letter commenting on an article by the Member, improper distribution of a document by a Member, misuse of allowances, bringing the Parliament into disrepute and conduct at a meeting of a committee.

Summary Data Over Four Years

26. With relatively small numbers, it is to be expected that there will be significant fluctuations in the number of complaints received from year to year. It is now possible to give four years’ amalgamated data, which should provide a more meaningful picture. This is provided in Table 2.

Table 2

SUMMARY DATA AMALGAMATED OVER 4 YEARS (1 April 2003 to 31 March 2007)	
NO. OF COMPLAINTS RECEIVED	108
Withdrawn at Stage 1	7
ADMISSIBILITY CONSIDERED	101
ADMISSIBLE	19 (19%)
INADMISSIBLE	82 (81%)
INADMISSIBLE COMPLAINTS (GROUNDS)	82
Relevance: Section 6(4)	32 (39%)
Procedural: Section 6(5)	2 (2%)
Substance: Section 6 (6)	32 (39%)
Both 6(4) and 6(6)	16 (20%)

27. The average rate of receipt of complaints is 27 a year or around two a month. A few are withdrawn during Stage 1. Around a fifth of complaints completing Stage 1 are considered admissible and go on to full investigation (around five a year). Of those considered inadmissible, in 39% the reason is lack of relevance, in another 39% lack of substance, and in 20% lack of both relevance and substance. **The finding that lack of relevance is a factor in the inadmissibility of over half of complaints which do not meet the requirements at Stage 1 suggests that there is an important continuing task for the Commissioner in making information available to potential complainers about his role and remit.**

28. Overall, 16 complaints have completed Stage 2 over four years. These can be reduced to 10 cases, as in two instances there were four complainers making essentially the same complaints about the same Member(s). The outcome of these, including the degree of concordance between the independently made judgements of the Commissioner and of the Standards and Public Appointments Committee in terms of breaches of the Code of Conduct are provided in Table 3.

29. In relation to nine cases out of the 10 cases, the same conclusions were reached by the Commissioner and the Committee. In one case, I concluded that breaches of the Code of Conduct had occurred and the Committee, in its final judgment, disagreed.¹⁰

Issues Arising from Cases Addressed

Level and quality of service complaints and revision of the Code of Conduct

30. Over four years now the most common type of complaint I have received has been about the level and quality of service provided by Members. I have queried in previous annual reports whether it is appropriate for the Standards Commissioner to be investigating this type of complaint. For example I said in my annual report for 2004/05: *“Arguably the system in which I play a part was set up primarily to prevent and detect corruption and to encourage openness in making known interests, currently mainly financial ones, which might influence political actions, rather than to police the quality and quantity of Members’ services to constituents. Furthermore, it is hard for*

⁹ The Scotland Act 1998 (Transitory and Transitional Provisions) (Members’ Interests) Order 1999 (SI 1999/1350).

¹⁰See Standards Committee 5th Report 2004 (Session 2) and Scottish Parliamentary Standards Commissioner Annual Report 2004-2005, p4.

Table 3

Findings of Breaches of Code or MIO by Standards Commissioner and by Standards and Public Appointments Committee				
		Standards and Public Appointments Committee		
		Breach(es)	No breach	Total
Standards Commissioner	Breach(es)	4	1	5
	No breach	0	5	5
	Total	4	6	10

me to judge what is reasonable accessibility and what is conscientious representation of interests. It may be contended that the quality of Members' service is a matter for the democratic electoral process. That is the position taken at Westminster, where the remit of the Parliamentary Commissioner for Standards specifically excludes complaints about a Member's decisions on how to handle a constituent's case."

31. I noted in my annual report for 2005/06 that the Standards and Public Appointments Committee had embarked on a review of the Code of Conduct, and I expressed the belief that the Committee would give attention to this issue, amongst many others, in the course of its review. This has now happened.

32. The Committee reported to Parliament on its review in March 2007.¹¹ The Committee undertook its review of the Code of Conduct primarily to reflect the new statutory framework of the Interests of Members of the Scottish Parliament Act 2006, which came into effect on 3 April 2007 and replaced the Members' Interests Order.¹² However, it also wished to make some structural and other changes to the Code of Conduct in the light of 7 years' practical experience of its operation.

33. The Committee wished to separate out enforceable rules from overarching principles and guidance and explanatory material by dividing the document incorporating the Code of Conduct into three volumes, viz.

1. Introduction: preamble, background and key principles.
2. Code of Conduct.

3. Annexes: guidance, and copies of relevant statutes and Directions.

Volumes 1 and 3 would not be part of the Code. Only Volume 2, the Code itself, would contain mandatory rules, breach of which could lead to sanctions against Members. The Committee intended this restructuring to make the requirements of the Code clearer to Members and others.

34. In its report, the Committee noted comments contained in my previous annual reports on the existing Section 2.4 of the Code, relating to accessibility to constituents and conscientious representation. During the third round of consultation on its proposals the committee stated that [the Section 2 key principles] "... are arguably more aspirational than directly enforceable, and are framed in such general terms as to be open to a wide range of interpretations, making it difficult for Members to know with certainty what conduct is expected of them in any particular instance".¹³

35. The Committee consequently proposed that the key principles, including the principle relating to accessibility to constituents and conscientious representation contained in Section 2.4, be moved into Volume 1 and thus out of the Code itself (with the exception of the old Section 2.5 regarding the protection of privacy, which was preserved in the Code by relocation to the new Section 7 of Volume 2).

36. Although the removal from the Code of most of the key principles had some critics,¹⁴ the new Code was approved by Parliament on 14 March 2007, and took effect on 4 May 2007, the day after the 2007 Scottish General Election.

¹¹ Standards and Public Appointments Committee 2nd Report 2007 (Session 2).

¹² The Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 (SI 1999/1350).

¹³ See Annexe 2 to the letter dated 27 February 2006 from the Convener to the Standards and Public Appointments Committee contained in Annexe B to Standards and Public Appointments Committee 2nd Report, 2007 (Session 2) – Part I.

¹⁴ See Official Report 14 March 2007 (Session 2).

37. The changes had the effect of removing from my remit complaints about level and quality of service by Members, but such complaints were not in the event removed altogether from the ambit of the Code. The explanation of this is as follows.

38. Annexe 5 of the previous Code of Conduct contained guidance from the Presiding Officer dealing primarily with relationships between MSPs, including those between list and constituency MSPs. It was not entirely clear previously whether this annexe was part of the Code or not. The Committee in its review decided to bring it unequivocally within the body of the Code (as the new Section 8 of Volume 2) but not to revise it at this stage (apart from a minor change in relation to a paragraph on school and educational visits). Significantly, however, the old Annexe 5/new Volume 2, Section 8, has key principles within it. The first of these, in 8.2.1 (l), says *“All eight MSPs [in each region of Scotland] have a duty to be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.”* The old key principle 2.4 thus continues in the new Code in Section 8, notwithstanding the Committee’s stated intention of removing key principles from the body of the Code into an introductory volume. Section 8.12.1 says that *“Any complaint against a Member (including one about their staff or others working for them) in respect of this guidance [i.e. Section 8] should in the first instance be made to the Presiding Officer”*. Furthermore, the new Code at Section 9.1.6 of Volume 2 lists “excluded complaints” (complaints which are not to be made to the Standards Commissioner) and Section 9.1.6 (b) includes: *“Complaints made under Section 8: Relationships between MSPs: these are to be referred to the Presiding Officer. The Presiding Officer will consider the complaint.”* If the matter cannot be readily resolved it is open to the Presiding Officer to pass it on to the Standards and Public Appointments Committee.

39. My interpretation of all this is that, unless or until Section 8 of the new Code is further revised,¹⁵ any complaint in relation to conduct arising from 4 May 2007 onwards that is made to me solely in relation to the accessibility of, or level and quality of service provided by, a

Member will be inadmissible in relation to the test of relevance in that it will be an “excluded complaint”.¹⁶ I will redirect the complainer to the Presiding Officer. This also seems to be the interpretation adopted by the Standards and Public Appointments Committee in their final discussion prior to their report to Parliament.¹⁷

40. Potential complainers should therefore note that complaints about the accessibility of a Member or about the level and quality of representation provided, referring to the period from 4 May 2007 onwards, should be sent to the Presiding Officer and not to the Standards Commissioner.

Definition of “Parliamentary Duties”

41. Several complaints in the past year, e.g. of Members being arrested at a demonstration against nuclear weapons, involved a judgment as to whether the conduct complained of occurred in the carrying out of “Parliamentary duties”. I have called in previous annual reports for a purpose-specific definition of “Parliamentary duties” since this concept defines the boundary of the applicability of the rules in the Code of Conduct.¹⁸ While such a definition was not fully provided in the 2007 partial revision of the Code of Conduct referred to above, Section 1.3 of Volume 1 makes the scope of the Code clearer. It says:

“It is important to note that these volumes relate to the conduct of all Members in relation to duties connected to being a Member of the Scottish Parliament. It does not cover the activities of Members in other circumstances, for example:

- *Members’ private and family life;*
- *Members expressing their political views (in their capacity as a Member of a political party or organisation);*
- *Members who are Ministers, when they are acting in their capacity as Ministers of the Scottish Executive and carrying out functions of the Scottish Executive covered by the Ministerial Code.”*

42. I take it from this that a complaint which simply takes exception to the expression of political views by a Member, as in a speech or in an article or broadcast, will not constitute a relevant complaint to me.

¹⁵The legacy paper from Standards and Public Appointments Committee to its successor committee in Session 3 recommends further consideration of Section 8. See Official Report (Session 2) Standards and Public Appointments Committee, Tuesday 27 February 2007.

¹⁶See Scottish Parliamentary Standards Commissioner Act 2002, Section 6(4)(b).

¹⁷See Official Report (Session 2) Standards and Public Appointments Committee, Tuesday 27 February 2007.

¹⁸For example, Section 2.5 of Volume 1 of the 2007 Code says: “These volumes underpin the approach that Members are required to take in carrying out their Parliamentary duties”.

Workload

43. During 2006/07 I worked on average 59% of full time, or three days per week or 13 days per month – more than what had originally been envisaged in setting up the post (5 to 10 days per month). This was more than in the previous year (10 days per month); in 2005/06 the number of complaints received was unusually low.

44. From my experience of four years to date, I would say that the work requires generally three days per week or 13 days per month. I am engaged by Parliament at 50% of the full-time rate. I have agreed with the Scottish Parliament Corporate Body (“SPCB”) that, at times of higher demand, it will be necessary to prioritise complaint investigations.

Finance Committee Inquiry into Governance and Accountability relating to Parliamentary Commissioners and Ombudsmen in Scotland

45. In my last annual report, for 2005/06, I referred to the announcement by the Finance Committee of the Parliament of its inquiry into the governance and accountability of a number of special posts related to Parliament, including mine, which had been set up following devolution.¹⁹ The post holders all have terms and conditions set by the SPCB (where they are not laid out in statute) and are funded through the Parliament budget. Appointment and removal from office also involves Parliament. In the latter part of 2005/06 I prepared written evidence for the Finance Committee’s inquiry which I submitted on 7 April 2006 and I included this as an annexe in my last annual report.

46. I noted then that the full appropriate governance framework was not all in place when these posts were set up one by one. There was consequently an opportunity available to create a common approach to the posts where possible, and to do so in a new and exemplary way, while recognising that the posts perform very different functions. The inquiry was therefore welcome.

47. At the same time however, I reported that I had some potential concerns about the inquiry. The Finance Committee appeared to have prioritised this work because of a view that the independence of operation of the post holders

(built in to the legislation setting up the posts), together with the current arrangements for scrutiny of budgets, might carry a potential danger of uncontrolled spending. The main focus appeared to be one of budgetary control, and there seemed to be a danger that, as Parliament paid the piper in relation to these posts, it might seek also to call the tune in a way that could interfere with day-to-day operational independence.

48. In my evidence, I was concerned that the whole concept of governance should be explored, and not only the narrower, but legitimate and important, issue of accountability for spending public money. Governance includes the idea of how the link with Parliament can add value to the work of the post holders and also how Parliament can benefit from their work, how Parliament interacts with the post holders, e.g. through discussing annual and other reports, and how Parliament can protect the operational independence of the posts, which is necessary if they are to be credible and valuable. I hoped that the Committee and Parliament would find a way to put a comprehensive governance framework in place which would not compromise operational independence and which would optimise the interaction between Parliament and the office holders to the benefit of all.

49. I gave oral evidence to the Finance Committee on 6 June 2006.²⁰ Following that experience I remained concerned that there might not yet be sufficient clarity on the difference between a reasonable and proportionate degree of parliamentary oversight of financial and efficiency issues in relation to post holders, the need for which to my knowledge no-one had contested, and arrangements including direction by Parliament which would interfere with the functional independence of the post holders, without which their posts would lose credibility with the public.

50. I noted, for example, the Convener’s comment²¹ that “... the defining characteristic of a Parliamentary commissioner ... is that they serve Parliament ...”. I was not sure that such a statement would assist the public to trust in the independence of my complaints investigations into the conduct of MSPs. If I were a servant of Parliament, how could I take an independent view? There was clearly a difference between a Parliamentary appointee, or in

¹⁹As well as the Scottish Parliamentary Standards Commissioner, the posts include four Crown appointees: the Scottish Public Services Ombudsman, the Scottish Information Commissioner, the Commissioner for Public Appointments in Scotland and Scotland’s Commissioner for Children and Young People.

²⁰See Official Report (Session 2) Tuesday June 6 2006.

²¹Official Report (Session 2) Tuesday June 6 2006, col. 3692.

the case of the other posts, Parliamentary nominees and Crown appointees, and a Parliamentary employee, whose duty was to serve Parliament.

51. Since I wished to emphasise to the Committee, and the public, that it had been the wish of Parliament in establishing my post that I should be able to investigate complaints *independently*, I submitted supplementary written evidence to the Committee on 16 June 2006. This supplementary evidence is included in this report at Annexe 1.

52. The Finance Committee completed its inquiry and published its Report²² on 15 September 2006. The report was debated and accepted by Parliament on 20 December 2006. The Committee recommended that its successor committee in Session 3 should bring forward a Committee Bill to implement those recommendations which required legislative change.

53. The report's main recommendation, that the SPCB should have stronger powers of budget setting in relation to the relevant posts, was no surprise, given the inquiry's central focus on financial control and its indication of this conclusion in advance in its Stage 2 Report in 2005 on the 2006/07 Budget Process.²³ However, in allocating this role to the SPCB, the Report arguably did not adequately address whether that body will have the time and resources to carry out a full governance role in relation to these posts as well as all its other functions, or the potential conflict of interest in controlling the budgets of, for example, the Scottish Information Commissioner and the Scottish Public Services Ombudsman who might have in the course of their duties to scrutinise and criticise actions of the SPCB. The Committee discussed, but dismissed, other options such as giving the role to a new committee for Parliament-related office holders or to the Scottish Commission for Public Audit which carries out an analogous role in relation to Audit Scotland.

54. I welcome the recommendation that Parliamentary Committees should take evidence more regularly from Commissioners and the Ombudsman, including evidence sessions on annual reports. The Report also made helpful comments about the boundary of the concept of Parliament-related office holders and criteria for the establishment of new posts.

Memorandum of Agreement with the Crown Office and Procurator Fiscal Service

55. I reported in my "Future Priorities" section last year that I was discussing the terms of a Memorandum of Agreement with the Crown Office and Procurator Fiscal Service regarding the steps I should take in the event that a potential issue of criminality arises during one of my investigations and the steps the Crown Office and Procurator Fiscal Service will take in the event that they commence an investigation where the accused is a Member.

56. The main background to this is that Section 39(6) and (7) of the Scotland Act 1998 together with Section 17 of the Interests of Members of the Scottish Parliament Act 2006 provide that any Member who takes part in any proceedings of the Parliament without having complied with, or in contravention of, any provision in relation to registration and declaration of interests and paid advocacy is guilty of a criminal offence.

57. In January 2003, the Standards Committee issued a Direction to the Commissioner in the following terms:

"If the Commissioner is satisfied in relation to any complaint that the Member has committed the conduct complained about and that the conduct would, if proved, constitute a criminal offence, the Commissioner shall -

- (a) *suspend the investigation and consideration of the complaint;*
- (b) *submit a report to the Procurator Fiscal;*
and
- (c) *notify the Committee.*

The Commissioner shall resume investigation and consideration of a complaint in respect of which investigation and consideration has been suspended [under the preceding paragraph] -

- (a) *at the conclusion of any criminal proceedings instituted in consequence of the report by the Commissioner; or*
- (b) *on receipt of confirmation from the Procurator Fiscal that no such proceedings will be raised; or*
- (c) *on receipt of confirmation from the Procurator Fiscal that the Commissioner may do so."*

²²Finance Committee 7th Report 2006 (Session 2).

²³Finance Committee 5th Report 2005 (Session 2).

58. It is important that the Commissioner does not in any way, in the course of his investigation, prejudice any criminal investigation by the Crown. At the same time, however, he should retain a meaningful role in the investigation of complaints: hence the desirability of a Memorandum of Agreement setting out a protocol.

59. I said in my last report that I would consult the Standards and Public Appointments Committee about the Memorandum and I hoped to have it in place during 2006/07. This had not quite been achieved by the end of March 2007.

60. Drafts were prepared and discussed with the Area Procurator Fiscal for Lothian and Borders and the Crown Office, and the approval of the Law Officers was obtained. I am grateful to all involved for their helpful engagement in this exercise. The final stage is to seek the approval of the Standards and Public Appointments Committee for the Memorandum before it is formally put into effect.

Involvement with other organisations

British and Irish Ombudsman Association (BIOA)

61. I continue as an Associate Member of BIOA, an organisation of Ombudsmen, similar post holders and those interested in their work, which seeks to develop and safeguard the role of the Ombudsman and publishes criteria which define the role. I have found it very useful as a source of information and contacts. Within the last year I attended a two-day biennial conference, in Dublin, and two one-day seminars in London. I continue to be a Member of the BIOA legal interest sub-group, which meets several times per year. I accepted an invitation to serve on a BIOA working group drawing up guidance on good practice in governance in ombudsman and related schemes.

Other Parliamentary Standards Personnel

62. I continue the helpful practice of comparing notes from time to time with other Commissioners/ investigators in the UK and Ireland.

Talks, etc.

63. I have addressed a number of meetings on the subject of my role, e.g. Rotary Groups, and I have given three talks in different Scottish cities to the Council of Ethnic Minority Civic Congress (CEMVO) Scotland as part of its Ethnic Minority Civic Congress Information and Training Sessions. More of these are planned in 2007/08.

64. Informing the public about my role is an area of work that could be expanded to meet the aims of my Information Strategy. I will be pleased to talk to community groups and organisations about my remit as Standards Commissioner and how the complaints process works.

Other activities

65. In the last year I met with the House of Commons Public Administration Select Committee in Edinburgh as part of its Inquiry into Ethics and Standards: the Regulation of Conduct in Public Life.²⁴ I also provided information for the Independent Review of Audit, Regulation, Inspection and Complaints Handling of Public Services in Scotland. I attended an annual Freedom of Information conference in Edinburgh and I contributed to SPCB discussions on appraisal for Commissioners and Ombudsman.

Finances

66. The post was set up with an annual budget of £100,000, reduced to £90,000 from 2006/07 reflecting a different way of dealing with contingencies; significant one-off costs such as meeting the cost of a legal challenge will now be met from a central contingency fund in the SPCB budget rather than from the Commissioner's budget. The Accountable Officer is the Clerk of the Scottish Parliament. Expenditure from 1 April 2006 to 31 March 2007 is shown below, with data from the previous two years for comparison.

67. The main cost is the Commissioner's salary (£39,786 p.a. plus employment overheads). For two months of 2004/05 I was paid at the full-time rate rather than the usual half-time rate, and for the first four months of 2005/06 at 60% of the full-time rate because of an unusual peak in workload from complaints received late in 2004/05. The post is home-based, so there are no accommodation costs and to date I employ no staff.

²⁴The Committee's report was published on 29 April 2007 (Public Administration Select Committee Fourth Report of Session 2006-07). It describes the Scottish experience of Parliament-related Commissioners and Ombudsman and seeks to draw lessons from it. I note that one of these conclusions is that Officers of Parliament (the term used in Westminster) should be funded through the Parliament, but not directly from Parliamentary funds. I made a similar suggestion previously to the Scottish Parliament Finance Committee Inquiry into Accountability and Governance.

68. The heavier legal costs for 2004/05 reflect an increase in workload in late 2004/05 and the need to address a number of important issues of interpretation of provisions. In 2005/06 the lower costs reflect that the number of complaints over that year was about half the average normally received.

69. At present the budget is clearly sufficient to meet the needs of the post. This could change if the workload developed to the point where there was a need for staff and office accommodation.

Future Priorities 2007 – 2008

70. I will continue in my information strategy to give accurate information to the public about my role. In 2005/06 I carried out a risk management exercise; the item with the highest risk score, i.e. the biggest potential impact on my being able to perform my role effectively, was lack of public knowledge of my role. My risk management plan detailed measures that could be taken to increase public knowledge, such as:

1. Further distributing information to partner libraries, Citizens’ Advice Bureau and other outlets. This could be discussed with the Parliament’s Public Information staff.
2. Responding to opportunities on radio and TV and in newspapers to give factual information about the Commissioner’s role.

I was only able to make limited progress on this in 2006/07 so I will carry these actions forward into 2007/08. At the start of 2007/08 I will revise my published information (leaflet and website), taking account of the new Code of Conduct and the Interests of Members of the Scottish Parliament Act 2006. As a further step I will distribute copies of my revised leaflet to all MSPs, both to inform them (particularly new Members) and so that they can make it available to constituents as appropriate.

Table 4

Expenditure (£) (Unaudited figures for 2006/07)	2004/05	2005/06	2006/07
Salary costs (including National Insurance and pension contribution)	55,457	55,363	53,359
Legal costs	26,667	6,794	11,468
Other running costs	6,668	3,485	6,992
TOTAL EXPENDITURE	84,792	65,642	71,819
BUDGET	100,000	100,000	90,000

71. The British and Irish Ombudsman Association (BIOA) has recently produced a Guide to Principles of Good Complaint Handling,²⁵ based on the seven principles of clarity of purpose, accessibility, flexibility, openness and transparency, proportionality, efficiency and quality outcomes. Accompanying this, BIOA has developed a self-audit toolkit called Spotlight, with which complaint handlers can audit their performance against the principles. In 2007/08, I will attend a planned seminar in Edinburgh for training in using the self-audit tool and then use it to audit my part of the complaints process.

72. As explained above, I will consult the Standards and Public Appointments Committee about my Memorandum of Agreement with the Crown Office and Procurator Fiscal Service and, subject to the Committee’s approval, bring it into effect in 2007/08.

73. I will continue to contribute to the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland, chaired by Professor Lorne Crerar. Exchange of information with other standards bodies and personnel in the UK, Ireland and elsewhere will be maintained.

²⁵See www.bioa.org.uk

Annex 1

Scottish Parliamentary Standards Commissioner

Supplementary Submission to Finance Committee re its Inquiry into Accountability and Governance

Introduction

1. I wish to give supplementary written evidence to the Finance Committee subsequent to my provision of oral evidence on 6 June 2006. My reason for this is that I do not think that there is as yet sufficient clarity on the difference between a reasonable and proportionate degree of Parliamentary oversight of financial and efficiency issues in relation to post-holders, the need for which to my knowledge no-one has contested, and arrangements including direction by Parliament which would interfere with the functional or operational independence of the post holders, without which their posts would lose credibility with the public. There appeared in the session on 6th June to be a suggestion coming through some questions that since Parliament pays the piper, it should call the tune, down to suggesting some of the words and music. I will argue particularly in relation to my own post.

2. I refer specifically to the convener's comment (Official Report, 6 June, Col 3692) that "... the defining characteristic of a Parliamentary commissioner ... is that they serve Parliament ...". I am not sure that this will assist the public to trust in the independence of my complaints investigations into the conduct of MSPs. If I am a servant of Parliament, how can I take an independent view? There is clearly a difference between a Parliamentary appointee, or in the case of the other posts, Parliamentary nominees and Crown appointees, and a Parliamentary employee, whose duty is to serve Parliament.

3. I wish to remind the Committee, and the public, that it was the wish of Parliament that I should be able to investigate complaints *independently*.

The Standards Committee's proposals for the post

4. After a nine-month inquiry, the Standards Committee produced its proposals for a mechanism of complaints investigation in its 4th Report 2000. The Committee summarised its view on the appointment of an independent Commissioner thus:

"At its meeting on 14th June, therefore, the Committee agreed to recommend the appointment of a Standards Commissioner, with a view to maximising public confidence in the Parliament's commitment to maintaining the highest levels of probity in conducting its affairs. The critical factor in the Committee's decision was the degree of independence which a Commissioner could apply to the investigation of complaints about the conduct of MSPs."

5. Standards Committee brought forward its Proposal for a Standards Commissioner Committee Bill in its 2nd Report 2001. In the conclusion, it noted that:

"The Commissioner will be an important independent element in ensuring that complaints against Members are dealt with in a transparent and rigorous manner."

Stage 1 debate on the Bill

6. There is an interesting reminder here that the powers of the posts in question were created, or voted into effect, by Members of the Parliament, even though the full governance framework might not have been considered as each post was set up. In the Stage 1 debate on 28 February 2002, Des McNulty MSP, a Member of Standards Committee until January 2001 (as he indicated at Finance Committee on 6th June) said:

"After a long process of deliberation, we decided that we wanted to have an independent Standards Commissioner. I warmly endorse that decision and the fact that it has been carried forward into the bill. There is a broad measure of cross party support for that role and for its being filled by an independent person. ...We have established clearer principles and a better procedure for dealing with complaints [compared to Westminster], whereby the person investigating the complaints will be clearly independent and the Parliament itself will transfer its statutory powers to allow that person to carry out their function. Those are good principles."

The Scottish Parliamentary Standards Commissioner Act 2002

7. Section 4 of the Act generally makes the Standards Commissioner subject to directions given by Parliament about the conduct of investigations or provision of reports. However, operational independence is established by subsection 3 which provides:

“However, any direction to the Commissioner by the Parliament under this Section shall not direct the Commissioner as to whether or how any particular investigation is to be carried out.”

Other posts

8. I note in passing that the legislation setting up the other posts under consideration protects operational independence by explicitly stating that:

“... in the exercise of that officer’s functions, [the officer] ... is not subject to the direction or control of:

- (a) any Member of Parliament*
- (b) any Member of the Scottish Executive*
- (c) the Scottish Parliament Corporate Body”*

(with some exceptions such as needing approval of SPCB to appoint staff).

Conclusion

9. I hope I have furthered my aim of stressing the need to protect Parliament’s original intention for operational independence for my and other related posts while putting in place appropriate mechanisms for oversight of financial and efficiency issues. I hope I have also reinforced to any member of the public who may have been in doubt that in conducting complaint investigations I operate, as intended by Parliament, independently of the Parliament, rather than being there to serve it.

10. I am confident that the Committee will find a way to put a comprehensive governance framework in place which will not compromise operational independence and which will optimise the interaction between Parliament and the office holders to the benefit of all.

Dr J A T Dyer
Scottish Parliamentary Standards Commissioner
16 June 2006

The Commissioner and the Role

The Commissioner is Dr Jim Dyer OBE, who became the Scottish Parliament's first Standards Commissioner in April 2003. He was appointed following open recruitment by the Parliament's Corporate Body, with the agreement of Parliament, for a three-year term. Parliament subsequently agreed a second three-year term from April 2006. The post and its remit were created by the Scottish Parliamentary Standards Commissioner Act 2002.

The Commissioner is an independent investigator of complaints that an MSP has breached the Code of Conduct, the Interests of Members of the Scottish Parliament Act 2006 or other provisions. The Code of Conduct gives guidance to MSPs on the conduct of their parliamentary duties. It covers such things as:

- respecting privacy
- registering and declaring interests
- paid advocacy
- lobbying and preferential access

The Commissioner does not:

- decide on sanctions (Parliament does)
- give advice on standards issues (the Standards and Public Appointments Committee clerks deal with this)
- deal with complaints about Parliament staff or MSP staff
- deal with complaints about Ministerial action (these go to the Office of the First Minister)
- deal with complaints about conduct in the chamber or committee (these go to the Presiding Officer or the Convener of the committee), or about Cross Party Groups (these go to Standards and Public Appointments Committee)
- deal with complaints about use of allowances or parliamentary facilities or services (these go to the Scottish Parliament Corporate Body)
- deal with complaints under Section 8 of Volume 2 of the 2007 Code (these go to the Presiding Officer)

The Commissioner takes part in Stages 1 and 2 of a four part complaints process. The process can be summarized as follows.

Stage 1 – is the complaint admissible? It must be:

- Relevant
 - About the conduct of an MSP
 - Not an “excluded complaint” (ones dealt with elsewhere)
 - It must involve a potential breach of Code (so it must relate to the conduct of “Parliamentary duties”)
- Procedurally correct
 - E.g. it must name the MSP, identify and be signed by the complainer, be not more than one year from identifying the problem, etc.
- Of enough substance as to warrant further investigation

Stage 2 – did the MSP carry out the conduct complained of, and did this mean that the Code was breached?

- Investigation takes place in private
- The Commissioner has formal powers to compel witnesses and require production of documents
- Interviews are tape recorded
- The Commissioner reports to Standards and Public Appointments Committee. The Member is first given sight of the draft report and can suggest corrections.

Stage 3 – consideration by Standards and Public Appointments Committee

- The Committee considers the report
- It is not bound by the Commissioner's findings
- It may direct him to investigate further, or carry out its own investigation
- It may recommend sanctions to Parliament (from this stage on, the process is public)

Stage 4 – Parliament decides on sanctions

- The Member can be prevented or restricted from taking part in proceedings for a time
- In some circumstances, he or she may be excluded
- Rights and privileges may be withdrawn from the Member
- Some breaches are criminal offences – with the possibility of fines up to £5000 (by the Courts)

The adjacent information, together with guidance on how to make a complaint, is available in fuller form on a leaflet available from the Commissioner (also available in Gaelic) and on his website (see below).

Contacting the Commissioner

- **Write to**
The Standards Commissioner
The Scottish Parliament
Edinburgh
EH99 1SP
- **Telephone**
Direct Tel: 0131 348 6666
Mobile: 07909 872726
(RNID Typetalk calls welcome)
- **Fax**
0131 348 6834
- **email**
standards.commissioner@scottish.parliament.uk
- **website**
<http://www.spsc.co.uk>

Commissioner: Dr J A T Dyer OBE
The Scottish Parliament
Edinburgh
EH99 1SP

Direct Tel: 0131 348 6666
Mobile: 07909 872726
(RNID Typetalk calls welcome)
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