



SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER  
ANNUAL REPORT  
2003 – 2004

Independent

Complaint

Conduct

MSP

Investigation

**SCOTTISH PARLIAMENT STANDARDS COMMISSIONER**

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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

29<sup>th</sup> June 2004



## Introduction

This is my first annual report in this post. When Parliament agreed my appointment early last year, I said in a press release: "I am delighted to be appointed by the Scottish Parliament as the first ever Parliamentary Standards Commissioner. The role carries a considerable weight of public responsibility and I look forward to this new challenge. I will do my best to provide an investigatory contribution to Parliamentary standards with an independence and fairness which can carry the confidence of the public and MSPs alike." How do things look after one year in post?

It has been a challenge, setting up the role for the future at the same time as carrying it out from the first day. I am grateful for all the advice and support I have received – I particularly benefited from the advice of the Standards Committee clerks early on – and for administrative help from staff of the Corporate Policy Unit. By its nature, the post is a rather isolated one, so it has been good to have a peer group in the informal gathering of Ombudsmen and Commissioners in Scotland and in organisations like the British and Irish Ombudsman Association, to share information and ideas and discuss common problems and solutions.

I have learned from my first year's work of the large range of issues which Members are asked to deal with on behalf of their constituents. The bulk of the 29 complaints I have addressed in my first year have arisen from this day to day interaction between Member and constituent - issues of "service" and of privacy - rather than issues of what the papers call "sleaze". These issues relating to constituency representation are clearly

important to complainers, though not all have a realistic expectation of what MSPs can reasonably do for them. I have received welcome cooperation from Members in my investigation of complaints against them.

The most challenging elements in my initial quote above are the references to public responsibility and public confidence. The post is important in relation to how our political system works. I liked Allan Massie's condensation of the issue in an article in the Sunday Times (22/2/04):

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

The post, through its independent investigation of complaints, and its deterrent function in association with the Standards mechanism of which it is part, should contribute to Parliament being held in respect and esteem by the public.

But the public cannot have confidence in my role unless it has information about it. That is why I have given priority to an Information and Media Strategy. There are difficult issues involved, addressed in this report, with inherent tensions such as balancing an understandable desire for privacy during the investigation phase against my public accountability and balancing the need for Parliament to be self-determining and self-regulating (barring criminal offences) with the need to demonstrate independence in dealing with complaints about Members.

I believe that a good foundation for the operation of the post has been laid down in the first year. I continue to look forward to the challenges ahead.

**Dr J A T Dyer**  
**10 June 2004**

The legislation setting up my post and remit, the Scottish Parliamentary Standards Commissioner Act 2002, 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 2003 to March 2004.

## WORKLOAD

While the expected commitment for the post was for 5 to 10 days per month, over the first year I worked on average 3 days per week (or 60% of full time). While there was inevitably extra to do in setting up the role, the time requirement showed a tendency to increase over the year. To date I employ no staff. This requires ongoing monitoring.

## COMPLAINTS

The summary in Table 1 shows data on complaints I addressed in my first year of office, 1 April 2003 to 31 March 2004. The total number was 29. Seven of these were actually received in the month of March 2003 and not referred to the Acting Standards Commissioner, who was due to finish at the end of that month. [The Acting Commissioner did however, as agreed by SPCB in the terms of his appointment, continue a Stage 2 investigation which was not complete by the end of March. Standards Committee considered his report on 18 June 2003 and completed its consideration of the matter on 7 October 2003 with the issue of its 1st Report 2003 (Session 2). The Acting Commissioner found that no breach

<b>Table 1 SUMMARY OF COMPLAINTS ADDRESSED 1 April 2003 - 31 March 2004</b>		
<b>NO. OF COMPLAINTS RECEIVED</b>		<b>29</b>
Withdrawn at Stage 1		2
<b>ADMISSIBILITY CONSIDERED</b>		<b>27</b>
Admissible		6 (22% of 27)
Inadmissible		21 (78% of 27)
<b>ADMISSIBLE COMPLAINTS</b>		<b>6</b>
Withdrawn late Stage 2		1
Still in Stage 2 at 31/3/04		4
Completed Stage 2		1
<b>INADMISSIBLE COMPLAINTS (GROUNDS)</b>		<b>21</b>
Relevance: Section 6 (4)		9 (43% of 21)
Procedural: Section 6 (5)		1 (by direction of Standards Committee)
Substance: Section 6 (6)		11 (52% of 21)
<b>SUBJECTS OF COMPLAINTS</b>		<b>22</b>
Committee leak		1
MSPs complained about		21
MSPs with 1 complaint		13
MSPs with 2 complaints		6
MSPs with 4 complaints		2
<b>NO. OF COMPLAINERS</b>		<b>27</b>
Complained once		26
Complained 3 times (different MSPs)		1
Complainers who are MSPs		4 (15% of 27)

of the Code had occurred, and Standards Committee, after its own further investigation, agreed.]

Four of the 29 complaints were about the same events and were concurrent: they have been treated collectively with the agreement of the complainers. Two complaints were withdrawn at Stage 1, which meant that all activity on them ceased. (For an explanation of the stages of the complaints process, see page 12).

### ***Admissibility***

I considered the admissibility of 27 complaints against the three tests set out in the Scottish Parliamentary Standards Commissioner Act 2002 (the Act). Six (22%) were admissible, including the 4 mentioned above which were admissible in part. Of the admissible complaints, 4 were still at Stage 2 at the end of the year. One was withdrawn late in Stage 2 when interviews had been completed and a report drafted. In such a case the Member to whom the complaint relates is invited to give his view as to whether the process should nevertheless continue, and the Commissioner may make such a recommendation to the Standards Committee, taking the Member's view into account. The Member did not wish to press for the process to continue in this case so I made no recommendation for continuation to the Committee, and the investigation ceased.

One investigation completed Stage 2. I found no breach of the Code of Conduct, and the Committee accepted my report and conclusion, issuing its First Report 2004 (Session 2). Unusually, my report was not published with the Committee's Report; it will be published at a later date. This was to protect the identity of the complainer during a legal process in which he is engaged. I made no investigation during the year under Section 10 (2) of the Act.

Twenty-one complaints did not pass the test of admissibility. Nine (43%) were not considered relevant in terms of the Act (either because they were not about the conduct of a Member or because there was no possibility that the conduct complained of would, if found to have occurred, potentially constitute a breach of the Code of Conduct, which deals with

conduct only in the course of "Parliamentary duties"). Eleven (52%) were considered not to carry sufficient evidence, after initial investigation, that the conduct complained of might have taken place.

That nearly half of inadmissible complaints were dismissed on grounds of relevance suggests to me a need for accurate information to be available to potential complainers about the complaints process (see the section on Information and media strategy).

One of the inadmissible complaints involved an alleged leak from a Parliamentary Committee. Such a complaint, where no specific Member is named, is an "undirected complaint" and, if it passes the relevance test, I am required to refer it to the Standards Committee with a recommendation as to whether it should be dismissed for failing to meet the procedural requirements (in this case failing to name an MSP), or should be treated as if it had passed them. I recommended to the Standards Committee that this case should not be further investigated and they directed me to dismiss it. On the basis of this case, I make some comments below on the investigation of leaks.

### ***Timescale for Stage 1***

I am required to report to Standards Committee, and to the Member and complainer, if Stage 1 takes longer than the indicative period of two months. Twenty-four out of 27 cases were decided in relation to admissibility within two months. In one case, Stage 1 lasted 2-3 months but the case was complex with multiple complaints from 4 complainers. In another it lasted 4 months but that included a period of time during which part of the complaint was referred to the Presiding Officer as it involved Annex 5 of the Code of Conduct. After that part was dealt with, there was some difficulty in agreeing what part of the complaint remained for me to deal with. In a third case Stage 1 finished 8 months after it started, but it was suspended for 6 months during that period until another complaint related to the same underlying events was dealt with.

## **Timescale for Stage 2**

The one complaint which completed Stage 2 did so within the indicative period of 6 months (from the start of Stage 2).

## **The Subjects of the complaints**

Twenty one Members had complaints made against them, and there was one complaint about an alleged committee leak. Of the 21 Members, 6 received 2 complaints (about different issues) and 2, 4 complaints (about the same issues).

## **Complainers**

There were 27 complainers in all, plus the Committee Convenor who complained about an alleged leak. One complainer complained about 3 different MSPs. Four of the complainers were themselves MSPs (15% of 27).

## **Content of complaints**

None of the complaints was about failure to register or declare an interest, paid advocacy or inappropriate action in relation to people or organisations who lobby. The commonest type of complaint fell under Section 2.4 of the Code of Conduct: *Members 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.* Fourteen of the 29 complaints consisted wholly or partly of claims that Members had not made themselves sufficiently accessible to a constituent or had not done enough to represent the constituent. Such complaints tended to fail the admissibility test, usually because initial investigation found them to lack sufficient substance as to warrant further investigation. In other words, the evidence was that the Member had made a reasonable (or indeed a praiseworthy) attempt to act for the constituent, although the constituent was not satisfied; or that the Member had a good reason for declining to act on a matter (e.g. it was a reserved matter).

Eight complaints consisted wholly or partly of allegations of breach of the privacy of the complainer, which falls under Section 2.5 of the Code of Conduct: *In representing people's interests, Members have a duty to respect individual privacy,*

*unless there are overwhelming reasons in the wider public interest for disclosure to be made to a relevant authority, for example where a Member is made aware of criminal activity.* Six of these progressed to Stage 2. One of these was withdrawn, and in another no breach was found. Four are under consideration.

## **Issues arising from cases addressed**

### *Complaints of insufficient availability or action*

I referred above to the finding that the commonest type of complaint is that a Member has not made him or her self sufficiently available to the constituent or has not taken up the complainer's case, or not to the degree expected by the complainer. The broad terms of Section 2.4 open Members to complaints of this sort, which have presented a number of difficulties.

People vary in their expectations of what an MSP can reasonably do for them. Complaints relating to this Section can also be difficult for the Commissioner to judge. There is no detailed MSP job description to aid the Commissioner's assessment of the Member's actions in relation to accessibility and conscientious representation.

Parliament may wish to note the predominance of such complaints and to keep this aspect under review. I note that the remit of the Parliamentary Commissioner for Standards at Westminster excludes complaints about a Member's decisions on how to handle a constituent's case.

### *Definition of "Parliamentary duties"*

A number of complaints were dismissed at Stage 1 because they did not relate to the performance of "Parliamentary duties". A complaint against an MSP is only admissible if the conduct complained of is conduct in the course of "Parliamentary duties". This is because a complaint, to be relevant, must involve a potential breach of the Code of Conduct, and the Code of Conduct relates to the performance of "Parliamentary duties" (see Sections 1.5 and 2.1). There is no definition of "Parliamentary duties" for this purpose. Annexe 6, Appendix A of the Code

contains a definition for the purposes of the Members' Allowances Scheme, which is not entirely satisfactory for use for the Code of Conduct as a whole.

There is consequently a lack of clarity about what conduct of an MSP may legitimately be complained about. This causes difficulty for the Commissioner in deciding the admissibility of a complaint and in explaining the decision to the complainer without seeming arbitrary. Members of the public may be concerned about MSP conduct which appears to them to bring Parliament into disrepute but which may not involve the performance of Parliamentary duties, e.g. the public expression of the Member's views or opinions. A clear and purpose-specific definition of Parliamentary duties would help.

I brought this issue to the attention of Standards Committee during the year and the Committee agreed to give it further consideration at a future meeting.

#### *The investigation of leaks*

During the year, an undirected complaint (i.e. not naming any particular Member) of an alleged committee leak was referred to me by a committee Convenor, and this caused me to reflect on leak inquiries. They are problematic in number of ways. On the one hand they are important in order to detect and deter the source of leaks of confidential committee material, events which are highly undesirable. On the other, they are resource intensive and often unproductive. Journalists are inclined to protect their sources, and alternative evidence is hard to come by. The Commissioner is also put in an unusual situation, being asked to detect who carried out alleged conduct, in comparison with his normal role of determining whether a particular Member carried out conduct complained of.

Furthermore, it seems to me potentially lacking in equity and comprehensiveness to assume that a leak must have been carried out by Members in situations where Parliament staff and possibly others also have access to the material. While Members might be thought to have political motivation to leak material, the most celebrated leaks of recent times tend to have been associated with non-

politicians, e.g. civil servants. It is a matter of fact that my remit, however, and that of Standards Committee, relates only to Members.

I suggested to Standards Committee that Parliament needs a comprehensive initial method of investigating leaks such as committee leaks where the perpetrators could involve others as well as Members. The Commissioner and Standards Committee could then become involved if there is some evidence that indicates that a Member or Members might have been involved.

The Committee had reservations about the development of such a procedure, pointing out that the Commissioner could refer the matter to the Chief Executive if his investigation indicated the possible involvement of Parliamentary staff. I continue to believe that there is a case for Parliament considering the setting up of a more comprehensive initial investigatory process for leaks.

#### *Unacceptable actions by complainers*

It is important that the complaints process is thorough, fair and accessible. It is also important that it is available to be used for its proper purpose and that its resources are not unduly consumed through various undesirable actions of complainers, such as making repeat complaints which are the same as complaints made previously or so similar as to be effectively the same, "tit for tat" complaints or complaints made in offensive terms. I have encountered some examples of what might be considered abuse of the process.

The legislation setting out the process for Stages 1 and 2 makes no specific provision for identifying and excluding such complaints. My experience of a small number of complainers in my first year has led me to suggest to Standards Committee that there is a need for a mechanism to be introduced to protect the process as indicated.

#### **INFORMATION AND MEDIA STRATEGY**

One of my statutory functions is to give advice to Members of the Parliament and to members of the public about the complaints process.

The point of having statutory provision for an independent investigator is to give the public confidence that complaints about Members will be investigated in a thorough and impartial fashion. For the system to work, the public needs to know about the Commissioner and how to make a complaint should they so wish. I have already referred to the fact that in the past year nearly one half of inadmissible complaints were dismissed on grounds of relevance, indicating the need for better information about the provisions for complaints.

Specifically, members of the public need to know

- of the existence of the Commissioner
- what he or she is there to do
- what he or she can't do and who else may be relevant to approach
- how to make a complaint and what the process is once a complaint is made

One of my first priorities therefore was to draw up an Information and Media Strategy with a view to agreeing this with Standards Committee. I identified the following principles

- *It is desirable to provide information in order to make people aware of the Commissioner and able to use his service efficiently and effectively, and to increase public confidence in the system to regulate the conduct of MSPs*
- *Information should be provided as far as possible in a way that takes into account how things look from the stance of the potential complainer*
- *Given the multiplicity of bodies potentially involved, information needs to be provided with different levels of focus. This will involve cooperation amongst agencies*
- *The Commissioner will wish to inspire public confidence by being perceived as being helpful and as open as possible, consistent with the need to maintain appropriate confidentiality*
- *A range of appropriate communication methods should be used, to reach as many appropriate people as possible*

- *Where individual requests are made for information held by the Commissioner, these requests should be responded to timeously.*

The ensuing strategy considered that there was a need for 3 levels of information:

1. A large scale "map" of various Ombudsmen, Commissioners etc. who may deal with complaints about public bodies and public and related functions. This would show where the Standards Commissioner fits into the overall provision. Such a "route map" for complaints is being produced, with Audit Scotland taking the lead, and I have contributed to the process.
2. Information about complaints about MSPs in particular, showing where the Commissioner fits in alongside other possible destinations for complaints about MSPs. The Scottish Public Services Ombudsman has produced a helpful document in this respect.
3. More detailed information about the Scottish Parliamentary Standards Commissioner and the process in which he or she plays a part. I have produced a leaflet describing my role and the complaints process and am now seeking to distribute it. I have also prepared plans for a website separate from, though linked to, the Parliament website. The strategy identifies other ways in which I can spread appropriate knowledge about my role.
  - Through contributing to MSP and Parliament staff induction. Induction on standards issues is currently done by the Standards Committee clerks. This is appropriate, but the Commissioner could participate, demonstrating his presence to new MSPs and briefly outlining his role. There would also be a useful role in relation to staff in the Parliament Information Office etc.
  - Through my annual report to Parliament

- Through accepting invitations to talk to interested groups and organisations.
- Last, but not least, through the media, broadcast and print. This is clearly a potential way of informing larger audiences about the role, through newspaper interviews, taking part in radio and TV programmes etc. However this is a difficult and rather sensitive subject in relation to the Commissioner and requires particular care.

I have agreed the broad information strategy with Standards Committee and I am putting it into operation as described above. A specific media strategy is still under discussion.

## **LEGAL ADVICE**

When I took up office, it was recognised by all concerned that, because of the independent nature of his role, the Commissioner requires legal advice separate from that available to the Standards Committee and the Parliament.

Legal advice is necessary

- to assist the Commissioner to interpret statute and codes (particularly the Code of Conduct for MSPs, and the Scottish Parliamentary Standards Commissioner Act 2002 which sets out his role and duties, but also other relevant statutes such as the Data Protection Act 1998 and the Human Rights Act 1998).
- to assist the Commissioner with the legal aspects of producing information and guidance about his role
- to ensure that the Commissioner's actions can withstand legal challenge (there is no appeal against a decision of admissibility by the Commissioner, other than seeking judicial review through the Courts), and to assist the Commissioner should there be such a challenge.
- to assist the Commissioner with use of statutory powers and the investigation of alleged breaches which could involve criminal offences

- to assist the Commissioner with other legal issues as they arise

An exercise was conducted in the summer of 2003 to see whether a suitable service could best be obtained from the Government Legal Service in Scotland, with suitable arrangements for independence of the advice to the Commissioner from that to Parliament, or by competitive tender to commercial firms. The Head of the Scottish Executive Legal and Parliamentary Services considered that, given the likely workload, it was not currently viable to allocate a Member of staff for use by the Commissioner. A competitive tendering exercise was undertaken and in September 2003 SPCB approved the award of a contract to Anderson Strathern, a large Edinburgh-based firm of solicitors who were able to cover the relevant areas of expertise. The firm is recommended in the Legal 500 2003 for Parliamentary work, amongst a large range of other areas. The arrangement appears to be working well, providing me with responsive, expert and independent advice, when necessary.

The contract is for one year with the option of a further year's extension. Anderson Strathern and the Commissioner agreed that any conflict of interest would be dealt under the Law Society of Scotland's Practice Rules on conflict and potential conflict of interest; the Solicitors Scotland (Conflict of Interest) Practice Rules 1986 and the Code of Conduct for Scottish Solicitors as amended. One case arose during the year where this was necessary.

## ***Involvement with other Organisations***

### *British and Irish Ombudsman Association*

BIOA is an organisation of Ombudsmen, similar post holders and those interested in their work, which seeks to develop and safeguard the role of Ombudsman and publishes criteria which define the role. I have joined the organisation as a Corporate Associate Member. Full Membership was not possible as the post did not meet the full criteria, which stress independence from those whose actions are scrutinised (see the section below on

Independence of Operation and Terms and Conditions). I have found it very useful as a source of information and contacts. For example, BIOA is working with the Information Commissioner on guidance for its Members on the application of the Data Protection Act. I attended its biennial meeting in the University of Warwick in May 2003. I am a Member of the BIOA legal interest sub-group.

### ***Group of Ombudsmen and Commissioners in Scotland.***

I joined an informal grouping of Ombudsmen, Commissioners and others in Scotland who broadly have an investigative role in dealing with complaints or appeals concerning public services and who meet in order to discuss issues of common interest.

Discussion has ranged for example over the nature of annual reports, the implications of the Freedom of Information (Scotland) Act, different approaches to handling complaints and terms and conditions of appointment.

### ***Standards Seminar at Westminster***

In March, I participated with colleagues from the Scottish Parliament in a seminar at Westminster attended by those involved in standards issues in the House of Commons, House of Lords, National Assembly for Wales, Northern Ireland Assembly and the Oireachtas, as well as the Committee on Standards in Public Life. It is instructive to compare and contrast arrangements in the different legislatures in the British Isles. I had a separate meeting with Sir Philip Mawer, Parliamentary Commissioner for Standards, and very usefully exchanged information on a range of issues.

### **INDEPENDENCE OF OPERATION AND TERMS AND CONDITIONS OF SERVICE**

The developing position of Scottish public life has led to the creation of six public officers in Scotland, including the Scottish Parliamentary Standards Commissioner, whose appointment and removal from office involves Parliament and whose terms and conditions beyond those specified in statute (if any) are set by the

Scottish Parliamentary Corporate Body (SPCB).

It became clear to Members of the Group of Ombudsmen and Commissioners in Scotland mentioned above that, as these posts developed, there were significant differences between posts in relation to issues which are important in terms of how independent the officers are, and might be seen to be, of those who are the subject of scrutiny by them. Such issues include method of recruitment, method of removal from office, grounds for removal, term of appointment, possibility of reappointment, grounds for a decision about reappointment and the setting and reviewing of pay and budgets.

The relevant office holders referred to above suggested that there is now an opportunity for Parliament, given the number of posts created, to consider a more common approach to these and future posts and to introduce measures to reinforce their independence in the performance of their statutory duties. Discussion has been taking place with the Parliament Chief Executive with a view to proposals being put to SPCB.

The Scottish Parliamentary Standards Commissioner post is in a special position in relation to perceived independence, as the Commissioner can be removed on a vote by MSPs (a vote in favour of not less than two thirds of those voting), while MSPs are of course the very people whose conduct the Commissioner is required to investigate. There is an inherent difficulty here in the tension between the need for Parliament to be autonomous and the need to demonstrate that investigation of complaints is independent. In common with most of the other related posts, no grounds on which dismissal could be based are stated in the legislation. In relation to the Scottish Parliamentary Standards Commissioner post, the explanatory notes to the Bill explained that these would be provided in the terms and conditions of appointment. In the event they were not.

I believe that it is important in terms of perceived independence that grounds on which dismissal could be based should be stated and that other mechanisms could

be introduced prior to a Parliamentary vote regarding dismissal to ensure objective scrutiny and fair process. These proposed mechanisms are not detailed here as they are still to be discussed with SPCB. Again, with a relatively short first term, in order to guard against any perception of the Commissioner acting under pressure to remain in favour with Members, an appropriate mechanism for deciding on re-appointment should also be clearly laid out.

I believe that I should adopt and publish my own Code of Conduct to give transparent guidance as to how I go about carrying out my duties.

### **FINANCES**

The post was set up with an annual budget of £100,000. The Accountable Officer is the Parliament Chief Executive. Expenditure from 1 April 2003 to 31 March 2004 is shown below (the data has not yet been fully audited).

The main cost is the Commissioner's salary (£36,500 p.a. plus employment overheads). The post is home based, so there are no accommodation costs and the Commissioner to date employs no staff. The employment costs for 2003 – 2004 include sums paid to the Acting Standards Commissioner, Bill Spence, who, as

explained earlier, carried on to completion a Stage 2 investigation after I took up office in April 2003 (see Parliamentary Question S2W 3630). 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, 2004 – 2005**

An early priority is to create a website for the Commissioner which will make available explanatory and guidance material, publications and reports and contact information. I will draw up a Code of Conduct to guide how I carry out my duties and publish this. I intend to provide detailed guidance on policy and procedures for investigations. I hope to agree a media policy with Standards Committee as soon as possible, so that the public can be better informed about my role as far as appropriate confidentiality allows. I will continue to work with Standards Committee to find ways to protect the complaints system against inappropriate use. Exchange of information with other standards bodies and personnel in the UK will be maintained.

<b>Expenditure 2003 – 2004</b>	<b>£</b>
Salary costs (for Commissioner and Acting Commissioner, including National Insurance, and Commissioner pension contribution)	51,589
Legal costs	10,595
Other running costs	3,712
<b>TOTAL</b>	<b>65,896</b>

## 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 with a possibility of renewal for up to five years. 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, Members' Interests Order or other provisions. The Code of Conduct gives guidance to MSPs on the conduct of their parliamentary duties. It covers such things as

- Accessibility to constituents
- 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 Committee clerks do)
- Deal with complaints re 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 Convenor of the committee), or about Cross Party Groups (these go to Standards Committee)
- Deal with complaints about use of allowances (these go to the Scottish Parliament Corporate Body)

The Commissioner takes part in Stages 1 and 2 of a 4 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 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 Committee. The Member and the complainer are first given sight of the draft report without conclusions and can suggest corrections. If a breach is found, the Member may comment on the whole report, with conclusions.

### **Stage 3 – consideration by Standards Committee**

- Standards Committee consider 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 above 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).

## **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:***

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