



**SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER
ANNUAL REPORT
2004 – 2005**

Independent

Complaint

Conduct

MSP

Investigation

SCOTTISH PARLIAMENTARY 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

28 June 2005

SPSC/2005/1



Introduction

1. I have now completed over 2 years in post and this is my second annual report. My role is not an easy one, involving as it does combining responsibilities to Parliament and its Members with responsibilities to the public as an independent investigator of complaints against their representatives at Holyrood. It is an enjoyable challenge, and it is a privilege to be able to help establish the role from the beginning.

2. I am pleased to report that the great bulk of the necessary infrastructure for the role now appears to be in place, with a media strategy, a website and a voluntary code of conduct for the Commissioner having been added in the past year, as well as additions to terms and conditions which bolster the independence of the post.

3. While the level of work reported here looks superficially similar to that of the previous year, there have been important differences. One of these was the unequal distribution of complaints over the last year, with a notable increase in the last quarter.

4. Another difference was in the content of complaints. The majority in the past year related to Members' Interests Order issues, such as failure to register or declare interests or paid advocacy. These are issues of central importance to a Parliamentary standards system. I also received a substantial proportion of complaints of the type which predominated in the previous year – what might be called level and quality of service complaints, where the complainer is concerned that he or she is in some way not being properly served by a Member.

5. Knowing that the Standards and Public Appointments Committee¹ is embarking on a review of the Code of Conduct, I raise for discussion in this report, on the basis of my experience of cases over 2 years, whether such complaints are the proper concern of the standards system or whether such constituent dissatisfaction should fall to be dealt with under the democratic electoral process.

6. I am grateful to all those who have helped in my investigations. I look forward to the issues and challenges that will arise in the year ahead.

Dr J A T Dyer
7th June 2005

¹ The Scottish Parliament's Standards Committee became the Standards and Public Appointments Committee on 18 March 2005 (Rule 6.5), following consideration of how the Parliament should deal with reports made by the Commissioner for Public Appointments. (See 3rd Report 2005 of the Procedures Committee of the Scottish Parliament, published on 4 March 2005.)

7. 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 2004 to March 2005.

Table 1

SUMMARY OF COMPLAINTS ADDRESSED – 1 April 2003-31 March 2005		
	2003/04	2004/05
NO. OF COMPLAINTS RECEIVED	29	31
Withdrawn at Stage 1	2	4
ADMISSIBILITY CONSIDERED	27	27
Admissible	6 (22% of 27)	7 (37% of 19 decided)
Still in Stage 1 at 31/3/05	–	8
Inadmissible	21 (78% of 27)	12 (63% of 19 decided)
ADMISSIBLE COMPLAINTS	6	7
Withdrawn Stage 2	1	1
Still in Stage 2 at 31/3/05	–	6
Completed Stage 2	5	–
INADMISSIBLE COMPLAINTS (GROUNDS)	21	12
Relevance: Section 6(4)	9 (43% of 21)	5
Procedural: Section 6(5)	1 (by direction of Standards Committee)	–
Substance: Section 6(6)	11 (52% of 21)	4
Both 6(4) and 6(6)	–	3
SUBJECTS OF COMPLAINTS	22	24
Committee leak	1	1
MSPs complained about	21	23
MSPs with 1 complaint	13	20
MSPs with 2 complaints	6	1
MSPs with 3 complaints	–	1
MSPs with 4 complaints	2	–
MSPs with 6 complaints	–	1
NO. OF COMPLAINERS	27	24
Complained once	26	21
Complained 2 times (different MSPs)	–	1
Complained 3 times (different MSPs)	1	–
Complained 4 times (different MSPs)	–	1
Complained 5 times (different MSPs)	–	1
Complainers who are MSPs	4 (15% of 27)	–

Workload

8. Workload has overall continued to exceed the expected commitment of 5 to 10 days a month. Over 2004/05 I required to work an average of 3 days per week (or 13 days a month or 60% of full time), the same figure as in my first year. As noted below, there was a dramatic rise in the number of complaints in the last 3 months of the period. I was engaged full time for February and March 2005 in order to cope with this. Although the number of complaints in the first part of the year was low, 2 complex complaints, a complaint from 4 members of the public against 2 Members, and a complaint against a Member and all the Members on a committee, took up considerable time.

9. I am engaged from April to July 2005 at 60% of full time. Thereafter Parliament has indicated that I should revert to the previous arrangement which rewards me at 50% of the full time rate and deal with any excessive workload by prioritising complaint investigations. To date I employ no staff. This requires ongoing monitoring.

Complaints

10. The summary in Table 1 shows data on complaints addressed between 1 April 2004 and 31 March 2005, with data for 2003/04 for comparison. The total number of complaints for 2004/05 was 31. This is similar to the number for the previous year (29), but the distribution of receipt throughout the year was very different. In 2004/05, 25 out of the 31 complaints were received in the last quarter of the year, causing considerable workload pressures (see previous section).

11. In the early months of 2005 there were press articles about possible complaints against prominent Holyrood politicians and the publicity given to my role may have encouraged other complainers to act.

12. In my Annual Report last year I noted that 4 complaints were still at Stage 2 at the end of March 2004. These complaints, about the same events involving the same 2 Members, completed Stage 2 on 17 May 2004, when I reported to Standards Committee that I had found breaches of 3 sections of the Code of Conduct for MSPs, namely 2.2, 2.11 and 9.1.1. Standards Committee issued its conclusions on 29th June 2004. The Committee criticised the conduct of the Members but considered that it did

not reach a threshold such as to breach the Sections of the Code identified. The complaints were not upheld. The Committee's report with mine annexed is available on the Parliament Website (Standards Committee 5th Report 2004). It was a matter of interest and concern that the Committee and I should judge the matter differently. Should this happen more regularly, it would clearly be a matter of serious concern. In response to press enquiries I issued the following statement:

My report of my investigation, with my conclusions, is published in full as an annex to the report of the Standards Committee. I have no comment to add to what is said in the report, which is available for all to read.

The system set up by Parliament for complaints about MSP conduct contains two separate components. The Standards Commissioner's role is to carry out an independent and impartial investigation of the facts and then to report to Standards Committee on what occurred and whether in his judgment a breach of the Code of Conduct took place. The MSPs on the Standards Committee then make their own final decision as to whether a breach was committed by the Member(s) complained against, as Parliament is self-regulating in conduct matters (barring criminal offences).

Admissibility

13. I assess the admissibility of complaints with reference to 3 tests set out in the Act, in sections 6(4) to 6(6). The concentration of complaints at the end of the year in question meant that there were 8 complaints whose admissibility was yet to be decided at 31st March 2005. Of the 19 in which a decision had been reached, 7 (37%) were admissible and went on to Stage 2 investigation, and 12 (63%) were inadmissible. Of the seven admissible complaints, one was withdrawn at Stage 2 after the complainer and Member were interviewed and some mediation took place by correspondence. The remaining 6 were still in Stage 2 at the end of March 2005. Five of these were concurrent and related to the same Member.

14. The 12 inadmissible complaints, as in the previous year, were fairly evenly split between issues of relevance [section 6(4)] and issues of substance [section 6(6)]. Five failed the test of relevance (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"). Four failed the test of substance (they were considered not to carry sufficient evidence, after initial investigation, that the conduct complained of might have taken place). Three complaints failed both the relevance and substance tests.

15. That around half of inadmissible complaints continue to be dismissed on grounds of relevance suggests to me an on-going need for accurate information to be available to potential complainers about the complaints process (see the section below on "Information and media strategy").

Timescale for Stage 1

16. 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. Eighteen of the 19 cases whose admissibility was decided within the year were decided within two months. One case took between 3 and 4 months for Stage 1, but the complainer had requested a suspension of 6 weeks during that period while he considered matters.

Timescale for Stage 2

17. The only complaints which completed Stage 2 during the year were 4 related complaints against 2 Members received in 2003/04. Stage 2 was completed within the indicative period of 6 months.

The Subjects of the Complaints

18. Twenty three Members had complaints made against them, and there was one complaint about an alleged committee leak. Of the 23 Members, 1 received 2 complaints (on different issues), 1 received 3 complaints (on related issues) and 1 received 6 (all on the same issue).

Complainers

19. There were 24 complainers in all. One complainer complained twice, one 4 times (the

same complaint about 4 Members) and one 5 times (the same complaint about 5 Members). This year no complaints were made by Members against other Members.

Content of Complaints²

20. Last year I reported that there were no complaints about failure to register or declare an interest, paid advocacy or inappropriate action in relation to people or organisations who lobby (issues dealt with under the Members' Interests Order³). This year the pattern is very different; 16 complaints related to issues covered by the Members' Interests Order. There were 7 allegations of failure to register an interest (5 of these against the same Member relating to the same events); 6 allegations of failure to make an oral declaration of interest (5 of these from a single complainer against 5 Members); and 3 allegations of paid advocacy.

21. There was also one complaint about an alleged failure to make a written declaration of interest when lodging a motion, which is a Code of Conduct issue.

22. There were 14 complaints which might be categorised as being about the level or quality of service provided by Members to constituents. Twelve of these were on issues relevant to Section 2.4 of the Code of Conduct which places 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.*" Two others related to the conduct of the Member at a meeting with the constituent and an alleged failure to make amends for losing some of the constituent's documents; these might have invoked Sections 2.11 and 9.1.1 of the Code of Conduct.

23. Three complaints alleged a breach of confidentiality. Two related to the confidentiality of the constituent as covered by Section 2.5 of the Code of Conduct. One related to the confidentiality of committee papers and discussions as covered in Section 9 of the Code.

24. Two further complaints were about the expression of a Member's views in a magazine article and alleged misuse of expenses.

² The numbers of topics here do not necessarily match the number of complaints, as complaints might have more than one topic.

³ The Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 (SI 1999/1350)

Issues arising from cases addressed

Level and quality of service complaints

25. Last year I expressed concern about the preponderance of complaints about the level and quality of service provided by Members for constituents. I noted that the broad terms of Section 2.4 open Members to complaints of this sort, which present a range of difficulties. This year there have been more complaints to do with alleged lack of openness about financial interests and paid advocacy (improperly undertaking Parliamentary actions in return for remuneration); but complaints about lack of accessibility and lack of conscientious representation still make up a substantial proportion of my workload.

26. 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 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.

27. I recommend to the Standards and Public Appointments Committee that it should include in its review of the Code of Conduct for Members consideration of whether complaints under the current section 2.4 of the Code should continue to be dealt with under the Parliamentary standards system.

Definition of "Parliamentary duties"

28. One complaint was dismissed at Stage 1 in 2004/05 because it did not relate to the performance of "Parliamentary duties". I drew attention last year however to the lack of a purpose specific definition of "Parliamentary duties" in relation to the Code of Conduct. I wish to draw attention again to what I

said in my last report, as the Standards and Public Appointments Committee embarks on a review of the Code.

Unacceptable actions by complainers

29. I wrote on this topic in my previous annual report. I noted that, while it was important that the complaints process was thorough, fair and accessible, it was also important that it was available to be used for its proper purpose and that its resources were not unduly consumed and it was not brought into public disrepute through unacceptable actions of a small minority of complainers.

30. I have made relevant policy proposals to the Standards and Public Appointments Committee and in March 2005 I gave oral evidence to it⁴. The Committee has the matter under active consideration.

Information and media strategy

Media strategy

31. Last year I made reference to my information strategy in relation to the need to spread knowledge about my role, and I said that agreeing a media strategy with Standards Committee was a priority for 2004/05. A media strategy acceptable to the Committee is now in operation, as follows.

Principles

32. The principles of my overall information strategy apply (see Scottish Parliamentary Standards Commissioner Information Strategy 2004, available on my website). As Commissioner, I should neither hide from the media and appear secretive and defensive, nor seek a high profile. It is the role which needs a profile, not the person occupying it. It is in the interests of public confidence in regulation of conduct of MSPs that I should be visible and that people should be aware of what I do. I should appear open and approachable as far as possible, but be ready to explain why it is not possible to comment on individual cases or on the relevant provisions. The content of a complaint must remain confidential during my investigative process – premature release of information could jeopardise effective enquiry into a complaint as well as the chances of a fair hearing for the Member concerned.

⁴ Standards and Public Appointments Committee, Official Report, 22 March 2005, columns 409 – 428 (<http://www.scottish.parliament.uk/business/committees/standards/or-05/st05-0302.htm#Col409>)

Strategy

33. Requests for interviews and appearances giving information relevant to the role

I will welcome these so long as they are within sections 3(5) and (6) of the Act. I will clear in advance with the Presiding Officer any material for publication, broadcasts or public discussion which draws on official information or experience, or may conflict with my duties.

34. Queries about receipt of a complaint

If asked whether a complaint has been received, I will explain that, under the rules laid down by Parliament, I can neither confirm nor deny the existence of a specific complaint (except where the complaint has been made public by the Standards Committee, in which case I may confirm it). I will be able if desired to offer a general description of my role in the complaints process. It should be noted that I will be unable to confirm the withdrawal or dismissal of a complaint or to indicate when I have sent my report to Standards Committee or to the Procurator Fiscal.

35. Issue of a press statement

I may infrequently wish to issue a press statement. It could occur, for example, if I felt it necessary to correct some inaccurate information in the media relating to me or my role. In this case it will issue from me directly rather than through the Parliament's Media Office in order to support public perception of my independence from the Parliament.

36. Annual report

It is possible that my annual report could give rise to media interest, in which case it would be appropriate for me to issue a press statement and make myself available to answer questions on it. I will disclose no information about individual cases over and above that already made public by Parliament.

Background – legislative and other issues

37. There is an inevitable tension between the need for me to publicise my role, in order to maximise effectiveness, and the need to maintain appropriate privacy and confidentiality in relation to individual complaints. This media strategy is intended to assist me by guiding action and anticipating, rather than reacting to, problems.

38. This must of course operate within the legislative requirements. The Act says that "Each stage of an investigation into a complaint shall be conducted in private". This refers to Stages 1 and 2 which are carried out by me. Later stages involving the Standards Committee and the Parliament are generally conducted in public, and the Standards Committee normally makes public my report on my investigation along with its own report to Parliament. The intention is to allow investigation to take place without the pressure and possible distortion of publicity, while allowing public scrutiny of the Parliamentary processes of recommending and deciding upon sanctions.

39. Section 16 of the Act protects confidentiality by prohibiting me from disclosing any information contained in the complaint or obtained in the context of my investigation except for the purpose of enabling or assisting me to discharge my functions under the Act or any other legislation or Standing Orders, including making a report to Parliament, or the investigation or prosecution of an offence or suspected offence.

40. Section 3(5) permits me to give advice to a Member of the Scottish Parliament or a member of the public about the procedures for making a complaint to me and the procedures that follow making a complaint. However, section 3(6)(a) goes on to say that I shall not "give advice to a member of the Parliament or to a member of the public as to whether any conduct which has been, or is proposed to be, committed by a member of the Parliament (whether or not the member seeking such advice) would constitute a breach of a relevant provision; and section 3(6)(b) says I must not "...express any view upon any of the relevant provisions except in the context of an investigation in any particular case or in a report upon the outcome of that investigation or in such other circumstances as may be specified in any direction given to the Commissioner by Parliament."

41. While generally explaining the process in which I play a part, therefore, I have to be careful not to express a view on the Code of Conduct and the Members' Interests Order. I cannot respond to general queries about the Code or give advice as to whether particular conduct might breach the Code: the Standards Committee clerks advise Members on the

application of the Code, and they may be approached by others who wish information about the Code.

42. The issue of regulation of Standards of Conduct in the House of Commons was the subject of a report⁵ in 2002 by the Committee on Standards in Public Life (“the Wicks Committee”). This devoted a helpful section to the topic of a media strategy (and the importance of having one).

43. Wicks noted that public perceptions of the Commissioner, as of standards in Parliament generally, depend considerably on what is said in the media. The Committee believed it was appropriate for the Commissioner to speak publicly about his or her office and role, to provide necessary information for potential complainers but also to increase public confidence by giving information about how the system works.

44. The Wicks report dealt with the difficult question of media interest in the Commissioner’s investigations. The media may be informed about a complaint by the complainer, the Member, or people close to them. Some cases may excite a lot of interest. The Scottish Parliament Standards Committee has recently considered the same issue and has adopted a policy different from that which the Wicks Committee recommended for Westminster. The Standards Committee issued a Direction⁶ that I should neither confirm nor deny the existence of a complaint in response to queries. Confirmation can only be given (a) for the purpose of, or in connection with, the investigation of the complaint; (b) where the complaint has been made public by the Standards Committee; (c) in statistical data that does not disclose confidential information; or (d) in a report to the Parliament under the Act. This means that I cannot deny the existence of a complaint, e.g. where no complaint exists, where a complaint has been dismissed or where a complaint has been withdrawn.

Website

45. My website, separate from the Parliament website, went live in October 2004. It can be found at <http://www.spssc.co.uk>. I would like to acknowledge the expert help I had from Parliament

IT staff in setting this up. It now contains information about my role and the complaints process, relevant publications including my annual reports and policy statements and links to other relevant sites. Included on the site is “What you can expect from the Commissioner: a voluntary code.” This is the voluntary code of conduct for myself which I referred to in my last report.

Route Map: Your guide to Complaining about Public Services in Scotland

46. It was part of my information strategy that I should contribute to the production of a large scale “map” of various Ombudsmen, Commissioners etc. who may deal with complaints about public bodies and public and related functions. This was necessary to give people a clearer idea of to where they should direct their complaints. This has now been achieved under the able leadership of Audit Scotland and there is a link to this excellent document on my website.

Changes to Complaints Procedures

47. In April 2004, Standards Committee issued Directions to me under section 4 of the Act. Copies of these are available on application to me or to the Standards and Public Appointments Committee. The Directions dealt with 2 aspects of my reporting to the Committee on investigations.

48. A requirement was introduced that I should send a draft report, minus conclusions as to breaches of the Code, to the complainer and, except where I am statutorily required to send a full draft to the Member, with conclusions, when I have found that a breach occurred, to the Member. This allows the complainer and the Member to make representations on the draft report. I am then required to annex to my report any written representations made by the complainer or the Member disputing facts in the draft report, unless I have accepted these representations and amended the report accordingly.

49. A further requirement is that I should annex to my report any complaint that I consider relevant concerning the handling of an investigation at Stage 1 or 2 and my response to such complaints.

⁵ Committee on Standards in Public Life (2002). *Standards of Conduct in the House of Commons*. Eighth Report, Cm 5663

⁶ Direction from Standards Committee, 22 December 2004

50. I have expressed concerns to the Committee about these two policies. While there are arguments in favour of sending a draft to the complainer, the complaints process is an investigation of a complaint against a member and not a resolution of a dispute between two parties. Sending a draft report to the complainer at Stage 2 carries a significant risk in some cases that there will be premature publicity that would be inconsistent with the Committee's policy, and the statutory provision, for confidentiality at that stage of the process. I believe the effects of the new policy need to be kept under review.

51. There is also a potential danger that the Direction regarding annexing complaints could be seen by complainers as a sort of "appeal" against the Commissioner's decisions in a way that would undermine the independence of the Commissioner's role. The Committee is of course prevented by section 4(3) of the Act from directing the Commissioner as to whether or how any particular investigation is to be carried out.

52. Another Direction was issued to me in December 2004, on dealing with enquiries about complaints. This has been described in the section of this report dealing with my media strategy.

Involvement with other organisations **British and Irish Ombudsman Association (BIOA)**

53. 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. I am a Member of the BIOA legal interest sub-group, which met twice in the last year. I attended a BIOA seminar in November 2004 with sessions on customer satisfaction and quality, data protection and freedom of information.

Hansard Society

54. I participated in a Hansard Society meeting at the Parliament in June 2004 on the subject of "Scottish Parliament Commissioners and Ombudsmen: operating an innovative relationship." I am a member of the Society.

Institute of Public Finance Seminar

55. I addressed an IPF Ethical Standards Workshop in Edinburgh in March 2005 on my role and the Code of Conduct for MSPs.

Other Parliamentary Standards Personnel

56. I continue the helpful practice of comparing notes with other Commissioners/investigators in the UK and Ireland. I contributed written evidence to the review of the Code of Conduct for MPs at Westminster. I have also been pleased to meet a number of visitors to Holyrood from other Parliaments abroad who wish to know about our standards system.

Independence of Operation and Terms and Conditions of Service

57. In my previous annual report, I noted that there were terms and conditions issues relating to 6 Parliament-related public office holders in Scotland 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.

58. I noted that my own post was 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. In common with most of the other related posts, no grounds on which dismissal could be based were stated in the legislation setting up the post. However, in relation to the Scottish Parliamentary Standards Commissioner post, the explanatory notes to the Bill had explained that these would be provided in the terms and conditions of appointment. In the event this had not happened.

59. I am pleased now to report that, following discussions with the Chief Executive and the Scottish Parliament Corporate Body (SPCB), SPCB has now amended the terms and conditions of my post to include 3 grounds on which dismissal may take place. These relate to the Commissioner's willingness, ability or suitability to carry out the functions of the office. This move helps to prevent any potential perception of arbitrariness and bolsters the independence of the post.

60. The related issue of deciding on a mechanism for deciding on renewal of appointment is under current consideration.

Finances

61. The post was set up with an annual budget of £100,000. The Accountable Officer is the Clerk of the Scottish Parliament. Expenditure from 1 April 2004 to 31 March 2005 is shown below, with data from the previous year for comparison.

62. The main cost is the Commissioner's salary (£37,230 p.a. plus employment overheads). For two months of 2004/05 the Commissioner was paid at the full-time rate rather than the usual half-time rate (see section on workload). The post is home based, so there are no accommodation costs and the Commissioner to date employs no staff. The employment costs for 2003/04 include sums paid to the Acting Standards Commissioner, Bill Spence, who carried on to completion a Stage 2 investigation after I took up office in April 2003.

63. The legal costs figure for 2003-04 relate to the seven-month period between September 2003 and March 2004. The costs for 2004-05 relate to a full twelve-month period. During late 2004-05 there

was an increase in workload and a number of important issues of interpretation of provisions were addressed. This is reflected in the increased legal costs. The 2004-05 figures additionally include costs of approximately £4,000 for services performed in 2003-04, but the relevant invoices were only received late in 2004-05.

64. 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 2005-2006

65. I will continue in my information strategy to give accurate information to the public about my role. I hope to agree with the Standards and Public Appointments Committee a policy on unacceptable actions by complainants to further protect the complaints system against inappropriate use. I will contribute observations arising from cases, as appropriate, to the development of a new statutory provision to replace the current Members' Interests Order and to the review of the Code of Conduct for Members. Exchange of information with other standards bodies and personnel in the UK, Ireland and elsewhere will be maintained.

Table 2

Expenditure (£) (Unaudited figures)	2003/04	2004/05
Salary costs (including National Insurance and pension contribution)	51,589	55,457
Legal costs	10,595	26,667
Other running costs	3,712	6,668
TOTAL	65,896	88,792

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 (see overleaf)

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)
Fax: 0131 348 6834

standards.commissioner@scottish.parliament.uk
www.spsc.co.uk