



**ANNUAL REPORT**

**2008 - 2009**

**SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER**

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**2008/09**

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

22 July 2009

SPSC/2009/1



## Introduction

1. This is the 6<sup>th</sup> Annual Report by the Scottish Parliamentary Standards Commissioner to the Parliament. It is submitted in terms of section 18 of the Scottish Parliamentary Standards Commissioner Act 2002 (“the Act”) and deals with the period from 1 April 2008 to 31 March 2009.
2. Throughout that period Dr Jim Dyer held the office of Commissioner. Dr Dyer has, in fact, been the Commissioner for the last 6 years and he concluded his second and final term of office on 31 March 2009. I should like to acknowledge the contribution that Dr Dyer has made to the office of Commissioner over these years.
3. The imperative of high ethical standards has always been embraced by the Scottish Parliament. Today these standards remain of key importance especially as it is essential that the public continue to have trust and confidence in their elected representatives.
4. For my part I look forward to making a positive and purposeful contribution during my own period of office to ensure the highest of public standards are applied by the Members of the Scottish Parliament.

D Stuart Allan  
Scottish Parliamentary Standards Commissioner  
22 July 2009

## The Commissioner's statutory responsibilities

5. The Commissioner's responsibilities are to investigate and – in appropriate cases where the statutory tests are met – report to the Parliament on complaints that an MSP has breached the Code of Conduct for Members of the Scottish Parliament, the Interests of Members of the Scottish Parliament Act 2006 ("the 2006 Act") or certain other statutory provisions.

6. Fuller details of these responsibilities and the procedures involved are set out in the [Annex](#).

## Complaints in 2008-09

7. Table 1 gives a summary of the complaints that were received during the year 2008-09.

Table 1

<b>SUMMARY OF COMPLAINTS ADDRESSED</b>			
<b>1 April 2008 to 31 March 2009 (with previous two years for comparison)</b>			
	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>
<b>NO. OF COMPLAINTS RECEIVED</b>	<b>34</b>	<b>23</b>	<b>11</b>
Withdrawn at Stage 1	1	-	-
<b>ADMISSIBILITY CONSIDERED</b>	<b>33</b>	<b>23</b>	<b>9</b>
Admissible	3 (9% of 33)	4 (17% of 23)	0
Still in Stage 1 at 31/3/09	-	-	2
Inadmissible	30 (91% of 33)	19 (83% of 23)	9
<b>ADMISSIBLE COMPLAINTS</b>	<b>3</b>	<b>4</b>	<b>0</b>
Withdrawn Stage 2	1	-	-
Still in Stage 2 at 31/3/09	-	-	-
Completed Stage 2	2	4	-
<b>INADMISSIBLE COMPLAINTS (GROUNDS)</b>	<b>30</b>	<b>19</b>	<b>9</b>
Relevance: Section 6(4)	12	12	9
Procedural: Section 6(5)	1	2	-
Substance: Section 6 (6)	12	3	-
Both 6(4) and 6(6)	5	2	-
<b>SUBJECTS OF COMPLAINTS</b>	<b>30</b>	<b>20</b>	<b>10</b>
Committee leak or other complaint	1	1	1
MSPs complained about	29	19	9

MSPs with 1 complaint	26	18	8
MSPs with 2 complaints	2	-	1
MSPs with 3 complaints	1	-	-
MSPs with 4 complaints	-	1	-
<b>NO. OF COMPLAINERS</b>	<b>29</b>	<b>15</b>	<b>8</b>
Complained once	27	12	7
Complained 2 times (different MSPs)	-	1	-
Complained 3 times (different MSPs)	1	-	-
Complained 4 times (different MSPs)	1	1	1
Complained 5 times (different MSPs)	-	1	-
Complainers who are MSPs	1	2	-

8. The year has seen a significant drop in the number of complaints received. 11 complaints were received compared with the annual average of 24 complaints.

9. 9 of these complaints were completed during the year and all of these complaints were found to be inadmissible. 2 cases were outstanding at the end of the year.

10. Of the 4 cases still in stage 1 at 31 March 2008, 3 were found to be inadmissible. 1 case went on to full investigation in respect of which the Commissioner submitted a report to the Scottish Parliament. 2 other cases were under full investigation at 31 March 2008 and were also subject to reports to the Parliament during the year. Details are provided in paragraph 16 and table 2 below.

### **Timescale for Stage 1**

11. The Commissioner is required to report to the Standards, Procedures and Public Appointments Committee, and also to the Member and complainer, if Stage 1 takes longer than the indicative period of two months. Decisions on 9 of the 11 complaints received were reached within the two month period. As indicated in paragraph 9 above, 2 cases were outstanding as at 31 March 2009 and in one of these cases the Parliament was advised the investigation would take longer than two months to complete Stage 1.

### **Timescale for Stage 2**

12. The Commissioner is also required to report to the Standards, Procedures and Public Appointments Committee, and also to the Member and complainer, if Stage 2 takes longer than the indicative period of six months. The 3 complaints which completed Stage 2 within the year took between 6 and 8 months for Stage 1 and Stage 2 (and in 2 cases this included time when the cases were referred to the Procurator Fiscal for consideration).

## Subjects of the Complaints

13. The 11 complaints in 2008/09 related to 9 Members. 8 Members had complaints from one complainer; one member had complaints from 2 complainers.

## Complainers

14. The 11 complaints came from 8 separate complainers. 7 complained once and one complained four times.

## Content of Complaints

15. Of the 11 complaints received in 2008/09, 2 related to the registration of interests, 6 related to inadequate representation of constituents' interests, 1 related to paid advocacy and consultancy, 1 related to breach of privacy and 1 related to action by a Parliamentary Committee.

## Breach Reports submitted to the Parliament

16. During the year 3 cases<sup>1</sup> were the subject of reports by the Commissioner to the Scottish Parliament where he had concluded that there had been breaches of the Code of Conduct. Details of the decisions taken by the Parliament on these cases is set out in Table 2.

Table 2

Reports	MSP	Subject matter of complaint	Decision of Standards Committee <sup>2</sup> /Parliament
Commissioner's report of 28 April 2008. Standards Committee report published 6 June 2008 <sup>3</sup>	Andy Kerr MSP	Late registration of hospitality from commercial fast food firm (contrary to section 5 of the 2006 Act)	The Committee accepted the findings and the conclusion of breach and agreed no sanction be imposed.
Commissioner's report of 9 June 2008. Standards Committee report	Wendy Alexander MSP	Late registration of donations towards campaign for election of Leader of Labour Group of MSPs	The Committee accepted the findings of fact (except the finding relating to the prejudice test which was a matter of judgment) and

<sup>1</sup> A fourth case relating to a former MSP was also dealt with but covered in last year's Annual Report

<sup>2</sup> The Committee's full title is the Standards, Procedures and Public Appointments Committee

<sup>3</sup> <http://www.scottish.parliament.uk/s3/committees/stanproc/reports-08/stpr08-04.htm>

published 10 July 2008 <sup>4</sup>		(contrary to section 5 of the 2006 Act)	agreed, by majority, the conclusion of breach. The Committee recommended the Member be suspended from Parliament for one day; the Parliament, by majority, disagreed <sup>5</sup> .
Commissioner's report of 18 August 2008. Standards Committee report published 26 September 2008 <sup>6</sup>	Wendy Alexander MSP	Issued a press release about a current complaint being investigated against her (contrary to paras 9.1.2 and 4 of vol 2 of Code of Conduct)	The Committee did not agree with the Commissioner's findings and conclusion and agreed the Member had not breached the Code.

### Summary data over six years

17. 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 six years' amalgamated data, which should provide a more meaningful picture. This is provided in Table 3.

Table 3

<b>SUMMARY DATA AMALGAMATED OVER SIX YEARS (1 April 2003 to 31 March 2009)</b>	
<b>NO. OF COMPLAINTS RECEIVED</b>	<b>142</b>
Withdrawn at Stage 1	7
Still in stage 1 at 31/3/09	2
<b>ADMISSIBILITY CONSIDERED</b>	<b>133</b>
<b>ADMISSIBLE</b>	<b>23 (17% of 133)</b>
<b>INADMISSIBLE</b>	<b>110 (83% of 133)</b>
<b>INADMISSIBLE COMPLAINTS (GROUNDS)</b>	<b>110</b>
Relevance: Section 6(4)	53 (48%)
Procedural: Section 6(5)	4 (3%)
Substance: Section 6(6)	35 (32%)
Both 6(4) and 6(6)	18 (16%)

18. The average rate of receipt of complaints is 24 a year or around two a month. A few are withdrawn during Stage 1. A sixth of complaints

<sup>4</sup> <http://www.scottish.parliament.uk/s3/committees/stanproc/reports-08/stpr08-06.htm>

<sup>5</sup> <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor0904-01.htm>

<sup>6</sup> <http://www.scottish.parliament.uk/s3/committees/stanproc/reports-08/stpr08-07.htm>

completing Stage 1 are considered admissible and go on to full investigation (around four a year). Of those considered inadmissible, in 48% the reason is lack of relevance, in another 32% lack of substance, and in 16% lack of both relevance and substance.

19. Overall, 21 complaints have completed Stage 2 over six years. These can be reduced to 14 cases, as in instances there were a number of complainers making essentially the same complaints about the same Member(s). The outcomes of these, in terms of breaches of the Code of Conduct, are summarised in Table 4.

Table 4

<b>FINDINGS OF BREACHES OF A RELEVANT PROVISION, BY STANDARDS COMMISSIONER AND BY STANDARDS COMMITTEE<sup>7</sup>, 1 APRIL 2003 TO 31 MARCH 2009</b>				
			<b>Standards Committee</b>	
			Breaches	No breach
<b>Standards Commissioner</b>	Breaches	9	7	2
	No breach	5	0	5
	<b>Total</b>	<b>14</b>	<b>7</b>	<b>7</b>

20. In relation to 12 out of the 14 cases, the same conclusions were reached by the Commissioner and the Committee. In 2 cases, the Commissioner concluded that breaches of the Code of Conduct had occurred and the Committee, in its final judgment, disagreed<sup>8</sup>.

## Finances

21. The annual budget is currently £90,000. Expenditure from 1 April 2008 to 31 March 2009 is shown below, with data from the previous two years for comparison.

Table 5

<b>EXPENDITURE (£)</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>
Salary costs (including National Insurance and pension contribution)	53,359	54,665	55,862
Legal costs	11,468	18,416	22,617
Other running costs	6,992	4,659	5,194
<b>TOTAL EXPENDITURE</b>	<b>71,819</b>	<b>77,740</b>	<b>83,673</b>

<sup>7</sup> The general term "Standards Committee" is used here to encompass changes in name over the years.

<sup>8</sup> See Standards Committee 5<sup>th</sup> Report 2004 (Session 2) and Scottish Parliamentary Standards Commissioner Annual Report 2004-2005, p4, and the Committee's 7<sup>th</sup> Report, 2008 (Session 3) - (see also footnote 6 above).

## **Future priorities 2009-10**

### **Improved public service**

22. During the year 2009-10 it is intended to improve public access to the service provided by the Commissioner's office. The improvements will include office and administrative support to assist the public. The costs involved (which will be modest as the services will be shared with other public bodies) will be financed within the current budget by reprioritising.

### **Continuous improvement**

23. The core function of the Commissioner will continue to be dealing with complaints about the conduct of MSPs fairly, thoroughly and with all due expedition. The standards of investigation and reporting must be at the highest level.

24. Nevertheless, it is important that any public service should continually strive to achieve improvements in its overall level of performance and with this in mind it is intended to prepare a business plan for next year which will set out the priorities of the office and proposals on how the service can be further improved to ensure it is being delivered as effectively and efficiently as possible.

### **Review of SPCB Supported Bodies Committee**

25. In 2008 the Scottish Parliament established a Committee to consider and report on whether alterations should be made to the terms and conditions of the office holders and the structure of the bodies supported by the Scottish Parliamentary Corporate Body; to consider how any proposals, including the addition of any new functions, for future arrangements should be taken forward, including by way of a committee bill, and to make recommendations accordingly.

26. My predecessor and I gave evidence to the Review Committee and its report was published on 21 May 2009.<sup>9</sup>

27. Among a range of recommendations, the Review Committee has specifically proposed that the Office of the Commissioner and the Office of the Chief Investigating Officer to the Standards Commission for Scotland be amalgamated and, together with the Office of the Public Appointments Commissioner, should become a new public life and public appointments commission.

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<sup>9</sup> See review of SPCB Supported Bodies Committee first report, 2009 (session 3) <http://www.scottish.parliament.uk/s3/committees/rssb/reports-09/rssb09-01.htm>

28. The Review Committee's proposals will, in due course, be set out in a committee bill to be laid before and debated in Parliament in its next session. For my part I will be happy to make any contribution thought appropriate to that debate and to work positively and constructively in managing any changes brought into effect by new legislation.

## ANNEX

### **The Commissioner and the Role**

*The Scottish Parliamentary Standards 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, Procedures 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 the Standards, Procedures and Public Appointments Committee)*
- *deal with complaints about use of allowances or parliamentary facilities or services (these go to the Scottish Parliamentary Corporate Body)*
- *deal with complaints about engagement and liaison with constituents (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 rules were 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, Procedures and Public Appointments Committee. The Member is first given sight of the draft report and can suggest corrections

**Stage 3 – consideration by Standards, Procedures 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 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) and on his website (see below).

**Contacting the Commissioner**

- Write to

**The Scottish Parliamentary Standards Commissioner  
The Scottish Parliament  
Edinburgh  
EH99 1SP**

- Telephone

**Direct Tel: 0131 348 6666**

- email

**standards.commissioner@scottish.parliament.uk**

- website

**<http://www.spsc.co.uk>**



**Commissioner: Mr D Stuart Allan  
The Scottish Parliament  
Edinburgh  
EH99 1SP**

**Direct Tel: 0131 348 6666**

**[standards.commissioner@scottish.parliament.uk](mailto:standards.commissioner@scottish.parliament.uk)  
[www.spsc.co.uk](http://www.spsc.co.uk)**