



**ANNUAL REPORT**

**2009 / 2010**

SPSC/2010/1

**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

22 July 2010



## Introduction

1. This is the 7<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 2009 to 31 March 2010.

2. 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.

3. In my first year of office since being appointed last year I am pleased to report courteous and constructive communications from all parties involved in my investigations. I look forward to continuing to make a positive and purposeful contribution to ensure the highest of public standards are applied by all Members of the Scottish Parliament.

4. Parliament has now passed the Scottish Parliamentary Commissions and Commissioners etc. Act and I shall do all I can to ensure that the new framework it introduces – including the new Ethical Standards Commission for Public Life in Scotland – is brought into effect as smoothly and effectively as possible.

D Stuart Allan  
Scottish Parliamentary Standards Commissioner  
22 July 2010

## 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 2009/10

7. Table 1 gives a summary of the complaints that were received during the year 2009/10. The year has seen an increase in the number of complaints received. 37 complaints were received compared with 11 the previous year, and an annual average of 26 complaints during the last 4 years.

## Complaints received

Table 1

<b>SUMMARY OF COMPLAINTS ADDRESSED</b>				
<b>1 April 2009 to 31 March 2010 (with previous three years for comparison)</b>				
	2006/07	2007/08	2008/09	2009/10
Carried forward from 31/03/09				2
Received during the year	34	23	11	37
<b>Total</b>	<b>34</b>	<b>23</b>	<b>11</b>	<b>39</b>

## Complaints dealt with

8. Table 2 gives details of the number of complaints dealt with during the year, and whether they were admissible, or dismissed. 35 complaints were completed during the year. 34 were dismissed and 1 was found to be admissible. 4 cases were outstanding at the end of the year.

Table 2

<b>ADMISSIBILITY OF COMPLAINTS (Stage 1)</b>				
	2006/07	2007/08	2008/09	2009/10
Admissible	3	4	-	1*
Inadmissible	30	19	9	34
Still at Stage 1 at 31/03/10	-	-	2	4
<b>Total</b>	<b>33</b>	<b>23</b>	<b>11</b>	<b>39</b>

\* This complaint now goes on to be dealt with at Stage 2.

9. Table 3 gives details of complaints decided as admissible and which therefore proceed to further investigation.

Table 3

<b>ADMISSIBLE COMPLAINTS (Stage 2)</b>				
	2006/07	2007/08	2008/09	2009/10
Still at Stage 2 at 31/03/10	-	-	-	1
Completed Stage 2	2	4	-	-
<b>Total</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>1</b>

### Inadmissible complaints

10. Table 4 gives details of the grounds on which complaints were dismissed.

Table 4

<b>INADMISSIBLE COMPLAINTS</b>				
<b>GROUND</b>	2006/07	2007/08	2008/09	2009/10
Complaint not relevant: section 6(4)	12	12	9	16*
Complaint not meeting procedural requirements: section 6(5)	1	2	-	1**
Complaint is insufficient and does not warrant further investigation: section 6(6)	12	3	-	-
Both 6(4) and 6(6)	5	2	-	17
<b>Total</b>	<b>30</b>	<b>19</b>	<b>9</b>	<b>34</b>

\* Of those cases dismissed on grounds of relevance, 11 were excluded complaints (that is complaints which are excluded from the Commissioner's jurisdiction and fall to be dealt with by other authorities, such as the Presiding Officer of the Scottish Parliament, or the Scottish Parliamentary Corporate Body).

\*\* This was a committee leak complaint reported to the Standards, Procedures and Public Appointments Committee (SPPA Committee) as an undirected complaint (that is it failed to meet one of the specified requirements for a complaint in the Act, but otherwise met the requirements for admissibility). The SPPA Committee decided on 20 April 2010 to issue a direction to dismiss the complaint.

## **MSPs complained about**

11. Table 5 gives details of MSPs complained about. The 37 complaints received in 2009/10 related to 24 individual Members and 1 Committee. A number of individuals made more than 1 complaint about different members.

Table 5

<b>MSPs COMPLAINED ABOUT</b>				
	2006/07	2007/08	2008/09	2009/10
Committee leak	1	1	1	1*
MSPs with 1 complaint	26	18	8	21
MSPs with 2 complaints	2	-	1	2
MSPs with 3 complaints	1	-	-	1
MSPs with 4 or more complaints	-	1	-	2

\* There were 9 Members of the Committee (including a substitute member)

## **Complainers**

12. The 37 complaints received in 2009/10 came from 33 separate complainers. 26 complained once, 4 complained twice, and 1 complained 3 times.

## **Timescale for Stage 1**

13. The Commissioner is required to report to the Standards, Procedures and Public Appointments Committee, and also to the Member complained about and the complainer, if Stage 1 takes longer than the indicative period of two months. Decisions on 29 of the 33 complaints received and dealt with in 2009/10 were reached within the two month period and the Parliament was advised that the investigations in respect of 4 cases would take longer than two months to complete Stage 1.

## **Timescale for Stage 2**

14. The Commissioner is also required to report to the Standards, Procedures and Public Appointments Committee, and also to the Member complained about and the complainer, if Stage 2 takes longer than the indicative period of six months. At the end of the year there was no such complaint at Stage 2, outwith the six month period.

## Breach Reports submitted to the Parliament

15. During the year, no reports were submitted to the Scottish Parliament concluding that there had been a breach of the Code of Conduct.

## Content of Complaints

16. Table 6 gives the content of the complaints that were received during the year 2009/10. Only the principal reason for any complaint is given here; there can in fact be a number of reasons for a complaint.

Table 6

Registration / declaration of interests	8
Lobbying and access to MSP's	8
General conduct	4
Confidentiality requirements	2
Awareness of MSP's staff	4
Engagement and liaison with constituents	9
Allowances and expenses	2
<b>Total</b>	<b>37</b>

## Summary data over seven 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 seven years' amalgamated data, which should provide a more meaningful picture. This is provided in Table 7.

Table 7

<b>SUMMARY DATA AMALGAMATED OVER SEVEN YEARS (1 April 2003 to 31 March 2010)</b>	
<b>NO. OF COMPLAINTS RECEIVED</b>	<b>179</b>
Withdrawn at Stage 1	7
Still in Stage 1 at 31/3/10	4
<b>ADMISSIBILITY CONSIDERED</b>	<b>168</b>
Admissible	24 (14%)
Inadmissible	144 (86%)
<b>INADMISSIBLE COMPLAINTS (GROUNDS)</b>	<b>144</b>
Relevance: Section 6(4)	69 (48%)
Procedural: Section 6(5)	5 (4%)
Substance: Section 6(6)	35 (24%)
Both 6(4) and 6(6)	35 (24%)

18. The average rate of receipt of complaints is 26 a year. A few are withdrawn during Stage 1. 14% of complaints completing Stage 1 are considered admissible and go on to full investigation. Of those considered inadmissible, in 48% the reason is lack of relevance, in another 24% lack of substance, and in 24% lack of both relevance and substance.

19. Overall, 21 complaints have completed Stage 2 over seven 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 a breach of the Code of Conduct, are summarised in Table 8.

Table 8

<b>FINDINGS OF BREACH OF A RELEVANT PROVISION, BY STANDARDS COMMISSIONER AND BY STANDARDS COMMITTEE<sup>1</sup>, 1 APRIL 2003 TO 31 MARCH 2010</b>				
			<b>Standards Committee</b>	
			Breach	No breach
<b>Standards Commissioner</b>	Breach	9	7	2
	No breach	5	0	5
	Ongoing	1		
	<b>Total</b>	<b>15</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 a breach of the Code of Conduct had occurred and the Committee, in its final judgment, disagreed<sup>2</sup>. There is 1 ongoing case, still to be concluded.

<sup>1</sup> The general term "Standards Committee" is used here to encompass changes in name over the years.

<sup>2</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).

## Finances

21. The annual budget for the year was £90,000. Expenditure is shown below, with data from the previous three years for comparison.

Table 9

<b>EXPENDITURE (£)</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10</b>
Salary costs (including national insurance and pension contribution)	53,359	54,665	55,862	49,952
Legal costs	11,468	18,416	22,617	248
Other running costs	6,992	4,659	5,194	19,535
<b>TOTAL EXPENDITURE</b>	<b>71,819</b>	<b>77,740</b>	<b>83,673</b>	<b>69,735</b>

## Review of 2009/10

### The Commissioner's Office

22. For my first year in office I have taken clarity of purpose, integrity and resolution in managing and determining cases as being my essential drivers. These have, I consider, been well and consistently applied and have contributed to promoting trust and confidence in the Commissioner's office.

23. I have also seen it as of importance to have good communication links with the Scottish Parliament. This has been particularly important in regard to the relationship with the SPPA Committee and the SPCB.

### Improved Public Service

24. During the year an office has been established in Edinburgh (previously the post was home-based) to provide a comprehensive service for all stakeholders (the public; MSPs; SPCB; SPPA Committee etc).

25. Administrative support staff (on a part-time basis, shared with the Office of the Chief Investigating Officer) have been employed and have settled in very well, providing a good public service.

### Best Value and Continuous Improvement

26. As already explained, the number of complaints cases dealt with during the year has been significantly higher than last year; nevertheless the priority has been to ensure the earliest practical closure to cases, especially when key issues of public interest have been involved.

27. Budget monitoring and redetermined priorities have ensured that expenditure for the year has been within budget. The reprioritising of the budget has materially helped in achieving best value. The significant spend on consultants has been eliminated to allow for a serviced office as referred to above.

### **Parliamentary Review of SPCB Supported Bodies**

28. On 21 May 2009 the Review of SPCB Supported Bodies Committee submitted a report to the Parliament. Among a range of recommendations, the Review Committee 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 for the Commissioner for Public Appointments, should become a new Commission.

### **The Scottish Parliamentary Commissions and Commissioners etc. Act 2010**

29. To implement the Committee's recommendations a Bill was introduced into Parliament in January 2010. The Bill completed its Parliamentary stages on 9 June and received Royal Assent on 19 July 2010.<sup>3</sup>

30. The Act provides for a new Commission for Ethical Standards in Public Life in Scotland which will comprise the new office of the Public Standards Commissioner for Scotland (merging the posts of the Scottish Parliamentary Standards Commissioner and the Chief Investigating Officer) and the Office of the Commissioner for Public Appointments in Scotland.

31. The main provisions of the Act will come into effect on 1 April 2011.

### **Priorities for 2010/11**

#### **Statutory Functions**

32. As far as 2010/11 is concerned, the main priority in relation to the Commissioner's statutory functions is to ensure that the highest standards are applied in relation to the cases dealt with by the office. The key objective will be to ensure there is public trust and confidence in the Commissioner's office.

#### **Continuous Improvement**

33. I consider it is important that any public service should continually strive to achieve improvements in its overall level of performance and this is

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<sup>3</sup> [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk)

particularly essential at a time when there are considerable pressures on the public budget.

34. I shall continue to manage the service to ensure it is delivered as effectively and efficiently as possible and within the budget allocated.

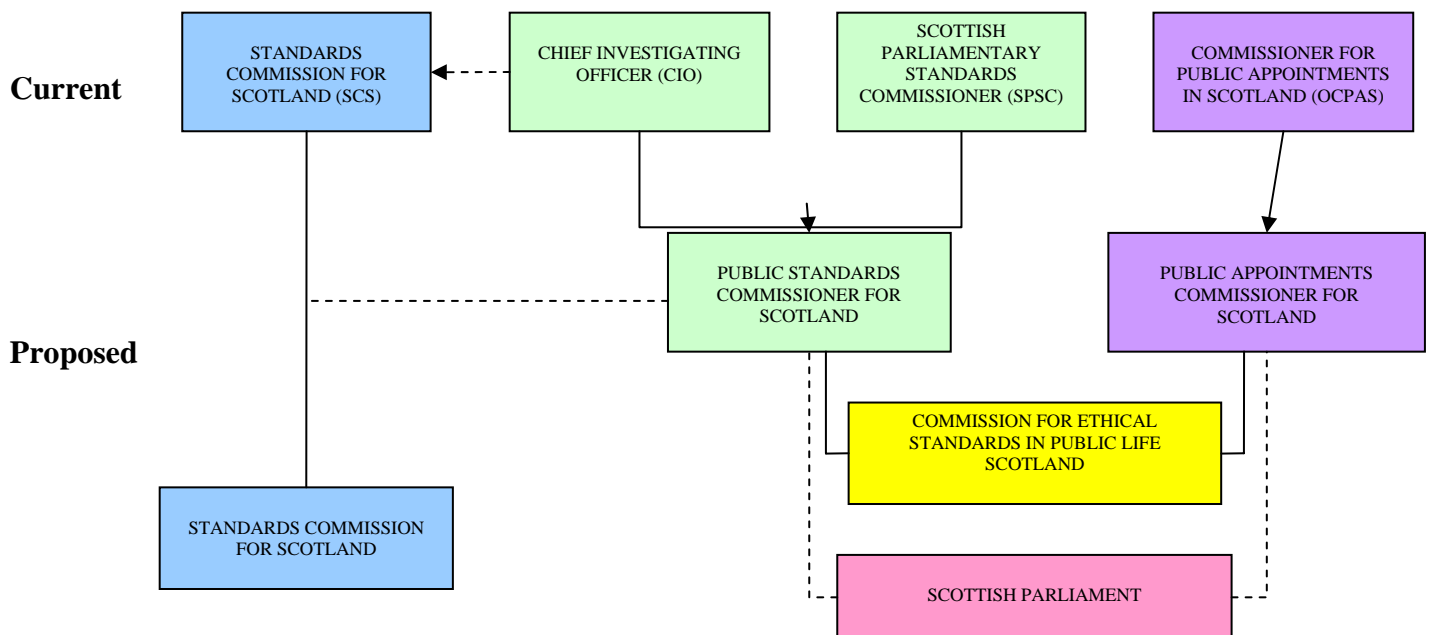
**Ethical Standards in Public Life in Scotland**

35. The Scottish Parliamentary Commissions and Commissioners etc. Act - as already mentioned - will bring about major change relating to the administration of ethical standards in public life in Scotland.

36. I intend to do all that I can – in consultation with my colleague the Public Appointments Commissioner for Scotland – to ensure that the transition to the new Commission for Ethical Standards in Public Life in Scotland is carried out smoothly and effectively as possible resulting in an improved public service.

The diagram below outlines the current and proposed structures.

Diagram 1



## 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 summarised 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 confidentially
- 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 from the Commissioner (also available in Gaelic) and on his website (see below).

**Contacting the Commissioner**

- **Write to**  
**The Scottish Parliamentary Standards Commissioner**  
**44 Drumsheugh Gardens**  
**Edinburgh**  
**EH3 7SW**

- **Telephone**  
**Direct Tel: 0300 011 0550**

- **E-mail**  
**standards.commissioner@scottish.parliament.uk**

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



**Commissioner: Mr D Stuart Allan**  
***The Scottish Parliamentary Standards Commissioner***  
***44 Drumsheugh Gardens***  
***Edinburgh***  
***EH3 7SW***

**Direct Tel: 0300 011 0550**

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