

Public Document Pack



STANDARDS COMMITTEE WEDNESDAY, 22 FEBRUARY 2023

A MEETING of the STANDARDS COMMITTEE will be held VIA MICROSOFT TEAMS on

WEDNESDAY, 22 FEBRUARY 2023 at 10.00 am

All attendees, including members of the public, should note that the public business in this meeting will be livestreamed and video recorded and that recording will be available thereafter for public view for 180 days.

J. J. WILKINSON,
Clerk to the Council,

16 February 2023

BUSINESS		
1.	Apologies for Absence.	
2.	Order of Business.	
3.	Declarations of Interest.	
4.	Report on Ethical Standards Framework and Compliance (Pages 3 - 90) Consider report by Monitoring Officer. (Copy attached.)	20 mins
5.	Any Other Items Previously Circulated.	
6.	Any Other Items which the Chair Decides are Urgent.	

NOTES

1. Timings given above are only indicative and not intended to inhibit Members' discussions.
2. Members are reminded that, if they have a pecuniary or non-pecuniary interest in any item of business coming before the meeting, that interest should be declared prior to commencement of discussion on that item. Such declaration will be recorded in the Minute of the meeting.

Membership of Committee:- Councillors S. Hamilton (Chair), J. Anderson, M. Douglas, J. Greenwell, J. Linehan, D. Parker, F. Sinclair and T. Weatherston

Please direct any enquiries to William Mohieddeen
Tel: 01835 826504; Email: william.mohieddeen@scotborders.gov.uk

This page is intentionally left blank



Scottish
Borders

COUNCIL

Report on Ethical Standards Framework and Compliance

Report by Monitoring Officer

Standards Committee

22 February 2023

1 PURPOSE AND SUMMARY

- 1.1 **This report advises Members of the Ethical Standards Framework and advises on Compliance with that framework in 2021 to 2022. It further considers the role and remit of the Standards Committee of Scottish Borders Council.**
- 1.2 The report provides Members with details of the Ethical Standards Framework and also of Scottish Borders Council's compliance with that Framework for 2021-22. The report further considers the question as to whether Scottish Borders Council should consider any changes to the role and remit of the Standards Committee.

2 RECOMMENDATIONS

- 2.1 **I recommend that the Committee:-**
 - (a) **Considers the contents of the Commissioner for Ethical Standards in Public Life in Scotland's Annual Report 2021 / 22 as highlighted in section 4 and contained in full in the Appendix.**
 - (b) **Notes the details regarding Complaints about SBC Councillors contained in section 5 of this report.**
 - (c) **Recommends to Council that function 3 of its functions detailed in the Scheme of administration is removed.**

3 BACKGROUND

- 3.1 Previous work by the Internal Audit service looking at the operation of the Councillors' Code of Conduct found that the Council had "*sound procedures in place to manage the Code of Conduct, the Council's Complaints Procedure for the Standards Committee*". To ensure that these procedures and standards were maintained it was determined that it would be good practice to report annually on compliance with the Code of Conduct. A subsequent Internal Audit also recommended that it would be appropriate to report on general compliance with the overall Ethical Standards Framework. This report therefore considers Code of Conduct Compliance in the Scottish Borders and nationally.
- 3.2 The Standards Committee last met in December 2021. At that meeting Members discussed the functions of the Committee as detailed in the Scheme of Administration. In particular it had been noted that the Committee currently have the potential to fulfil a disciplinary role in respect of each other. There was a level of discomfort with that position and it had been agreed that the matter would be revisited at a meeting which should have taken place in February 2022. That meeting did not however take place and as a result the matter has not been concluded.

4 NATIONAL STATISTICS

- 4.1 The Commissioner for Ethical Standards in Public Life in Scotland's Annual Report was laid before Parliament on 31 October 2022. That Report is appended to this Report as an Annex. Figure 2 and 3 of the Commissioner's report indicate that, in 2021 to 2022, the Commissioner received 330 new complaints about Councillors and Board Members of Public Bodies. 272 of those were complaints about Councillors. Where the Commissioner receives several complaints about the same or closely related issues, they are investigated as one case. Those 272 complaints were therefore treated as 143 separate cases.
- 4.2 Figure 5 gives a breakdown of who the Complainers to the ESC were and it is notable that members of the public were by far the largest number in that breakdown.

5 SCOTTISH BORDERS STATISTICS

- 5.1 During the financial year 2021 to 2022 the Monitoring Officer received 5 formal complaints made directly to her about Councillor conduct. One complaint was received from an SBC Councillor and the others were made by members of the public. Those complaints all related to allegations of disrespect, four of those relating to alleged failure to engage. One of these complaints was dealt by a mediation process involving the Council Convener. All others were investigated by the Monitoring Officer with no further action taken.
- 5.2 Under current processes the Monitoring Officer is not automatically advised when the Ethical Standards Commissioner receives a complaint about an elected Member. She is advised only when an investigation commences and at this time there are significant delays in those investigations commencing.

- 5.3 In the year financial year 2021 to 2022 the Monitoring Officer did not refer any complaints to the Ethical Standards Commissioner. She was made aware of one complaint made by a member of the public directly to the Commissioner. That complaint was investigated and no breach was found to have occurred.
- 5.4 Any complaints which were received after 1 April 2022 will be reported on next year.

6 The Role of the Standards Committee

- 6.2 The Scheme of Administration notes the following among the functions of the Standards Committee:

“The consideration, investigation and determination of all complaints made concerning the conduct of Councillors”

While a procedure was written and has been adopted for the hearing of complaints by the Standards Committee, this function has only ever been exercised once by the Committee in its history.

- 6.3 In this circumstance this function was discussed by the previous Chair and indeed by the Committee itself in December 2021. There was generally a level of discomfort at the prospect of elected Members standing in judgment of their fellows and mixed views on the role of the Committee at all. On the other hand, some Members certainly felt the committee could have a role to play in some form lessons learned approached.
- 6.4 It had been intended that the Committee would reconvene to discuss in more detail in Feb 2022, however that did not occur.
- 6.5 While any changes to the remit or functions of the Standards Committee would be a decision to be made by Full Council, it is considered that this discussion should be continued and that the Standards Committee should be involved in leading that conversation.
- 6.6 Since the Standards Committee has only once conducted a hearing into alleged misconduct by a Councillor, it is considered that SBC should either remove the function from the Scheme of Administration, or, it should reaffirm that this is a way it would like complaints against Councillors to be handled going forward – though such an approach might have significant impact on resources.
- 6.7 At present, the Monitoring Officer uses a range of tools to assist her in responding to complaints about Councillors Conduct. These include:
- simply speaking to an elected Member to remind them of their responsibilities under the Code of Conduct;
 - involving Political Leaders (such as Group Leaders/the Leader of the Council or the Convener) in a mediated process;
 - on occasion seeking an apology and an undertaking regarding changing behaviours;
 - a formal referral to the Ethical Standards Commissioner.
- These tools have proven to be flexible and largely effective.

- 6.8 It is therefore the recommendation of this report that Standards Committee recommend to Council that function 3 –as noted above – is removed from the its functions.

6 IMPLICATIONS

5.1 Financial

There are no costs attached to any of the recommendations contained in this report.

5.2 Risk and Mitigations

If the Committee fail to consider the information regarding compliance with the Code of Conduct, there is a risk that an opportunity to learn and develop understanding of the Code will be lost.

There is a further risk in leaving an unused function for the Standards Committee within the Scheme of Administration that the Council is not being fully transparent about its processes.

5.3 Integrated Impact Assessment

An IIA screening has been conducted and the proposal contained in this report has no impact on the Council's Public Sector Equality Duty nor its Fairer Scotland Duty.

5.4 Sustainable Development Goals

The proposal has no impact on Sustainable Development Goals. If there is no impact/difference, then say so, but bear in mind the Goals are wide ranging – complete the checklist!

5.5 Climate Change

The proposal has no impact on Climate Change.

5.6 Data Protection Impact Statement

There are no personal data implications arising from the proposals contained in this report.

5.7 Changes to Scheme of Administration or Scheme of Delegation

There are no immediate changes required to the Scheme of Administration or Scheme of Delegation as a result of this report. Standards Committee can only make a recommendation to Council. If Council accepts the recommendation there will be a requirement to remove function 3 from the functions of the Standards Committee in the Scheme of Administration. It currently provides:

“The consideration, investigation and determination of all complaints made concerning the conduct of Councillors”

6 CONSULTATION

6.1 The Interim Chief Financial Officer, the Chief Officer Audit and Risk, the Director (People Performance & Change), the Clerk to the Council and Corporate Communications have been consulted and any comments received will be advised at Committee.

Approved by

Name

Nuala McKinlay

Title

Author(s)

Name	Designation and Contact Number
Nuala McKinlay	Interim Chief Officer Corporate Governance

Background Papers: [insert list of background papers used in compiling report]

Previous Minute Reference: [insert last Minute reference (if any)]

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. [Insert name] can also give information on other language translations as well as providing additional copies.

Contact us at [insert name, address, telephone number, e-mail]

This page is intentionally left blank

Ethical Standards Commissioner

ANNUAL REPORT AND ACCOUNTS

2021/22

This report is available in alternative formats on request by telephoning 0300 011 0550 or by emailing info@ethicalstandards.org.uk.

CONTENTS

PAGE

1. Performance Report	
Overview	3
Commissioner's statement	3
Our purpose	8
Our structure	9
Our objectives	10
Our performance	11
Complaints about conduct	11
Public appointments	12
Key issues and risks	14
Going concern assessment	15
Performance analysis	16
Complaints about conduct	16
Complaints about local authority councillors and board members of public bodies	16
Complaints about MSPs	24
Complaints about lobbyists	30
Public appointments	31
Corporate and financial performance	40
2. Accountability Report	
Corporate governance	45
Commissioner's report	45
Statement of Accountable Officer's responsibilities	46
Governance statement	47
Remuneration and staff reports	52
Remuneration report	52
Staff report	56
Audit report	60
The audit process	60
Independent auditor's report	61
3. Financial Statements	
Statement of Comprehensive Net Expenditure	66
Statement of Financial Position	67
Statement of Cash Flow	68
Statement of Changes to Taxpayers' Equity	69
Notes to the Financial Statements	70
4. Appendices	
Appendix 1: Accounts Direction	80

PERFORMANCE REPORT

for the Commissioner for Ethical Standards in Public Life in Scotland known as the Ethical Standards Commissioner

OVERVIEW

This section of the report provides a summary of our performance as well as outlining any significant activities undertaken during the year. It also describes the organisation's purpose and the key risks affecting it.

COMMISSIONER'S STATEMENT

At the time of writing this statement I continue to fulfil the role of Acting Ethical Standards Commissioner for Scotland, following my temporary appointment by the Scottish Parliamentary Corporate Body (SPCB) on 20 April 2021. The Commissioner was on an extended period of leave from early March 2021 and resigned with effect from 30 April 2022.

Public appointments

Melanie Stronach, Acting Public Appointments Manager, and our team of Public Appointments Advisers continued to work alongside the Scottish Government with a view to improving on public appointments practices. That activity has borne fruit. We received an unprecedented number of reports of good practice on the part of the Scottish Government this year. Board diversity figures are improving, likely as a result, as detailed later in this report. The increases are relatively modest, although those for disability rose quite substantially in comparison with others, and I congratulate everyone whose efforts have led to these positive changes.

We were also able to publish a revised Code of Practice prior to our year end, which will come into effect in October 2022. I am grateful to the Scottish Ministers, the Standards, Procedures and Public Appointments Committee, and all of the other stakeholders who we consulted on prospective revisions to the Code for their very constructive comments, which were invaluable to us in finalising it.

These achievements were significant given the backdrop. The Commissioner's unavailability has had an adverse impact on our work and in particular our work on public appointments. My post as Public Appointments Manager was backfilled by Melanie Stronach, our Public Appointments Officer. Her substantive post was not backfilled due to uncertainty over the Commissioner's return to the office and this has meant that this section of the office was significantly under-resourced during the year. We leveraged in support, primarily from the Corporate Services section of the office. As a result, both sections were impacted and some key activities, primarily related to gathering applicant views and promoting compliance with the Code of Practice, could not be completed.

In 2022/23 we will focus on producing guidance on application of the Code and training for everyone involved in its implementation.

MSP complaints

Setting aside the “super complaint”, which we began investigating in our last financial year, complaint volumes about MSPs remain at an historic high (see figure 12 below). We continue to receive high numbers of complaints about the treatment of others although many of these relate to conduct on social media which is not covered by the Code unless it is in relation to members fulfilling their parliamentary duties.

The “super complaint” itself has required a significant amount of investigatory work during the year involving the gathering and forensic analysis of a substantial amount of material.

The complexity of the cases that made up the “super complaint” and the various pieces of legislation that were engaged made it necessary to commission extensive legal advice, which will serve us well for the future. We expect to complete investigation of the “super complaint” in the next financial year.

The entire investigatory team has also now been trained on MSP complaint handling, and all were engaged in the investigation of the “super complaint”. This means that the office is now very well placed to handle complaints of this nature and all MSP complaints more generally.

Councillor and member complaints

The volume of complaints received about councillors and board members continues to be very high. The number of active complaints and complaints received this year are higher than in the two preceding financial years (see figure 2 below).

The number of complaints completed is lower in comparison and is also reflected in the high number of complaints open as at 31 March 2022 compared to preceding financial years. This backlog is attributable to significant staff vacancies and turnover in 2020/21, which meant increasing loss of capacity to handle day to day workload and loss of corporate memory in relation to all aspects of complaints handling. We recruited three new full time Investigating Officers in September 2021, out of a complement of four, and completed their induction in October 2021. These new officers have been actively working their way through the backlog and new complaints received. All new and existing staff, including those in the investigations team, went through an extensive training programme. One element of this was training on presenting at hearings so that this work could, again, be brought in-house.

In March 2021 the Standards Commission for Scotland (“SCS”) issued Directions requiring the Commissioner to investigate all complaints received about Councillors and Members, except in specified circumstances. Live investigation rates are higher than in previous years, largely as a result of the Directions to which we continue to adhere. The number of live investigations per month in 2021/22 into complaints about Councillors shows a pattern of either closely matching, if not exceeding, the highest levels recorded since 2017, and, as can be seen from the data shown in this report, the percentage of complaints (cases) requiring investigation has doubled in comparison to 2020/21 (see figure 6).

At our year end, we concluded that we required to conduct further workforce planning, as it was clear that our investigatory capacity was not sufficient to work through complaints at the pace at which complainers and respondents rightly anticipate.

The vast majority of complaints continue to be from members of the public, and the key concerns continue to be allegations of disrespectful behaviour. This is consistent with the previous year. One other notable trend is the increase in the number of complaints received about board members in comparison to previous years. Further details are available in the 'Our Performance' and 'Performance Analysis' sections of this report.

We also instituted a programme of meaningful stakeholder engagement during the year with a view to restoring trust and faith in the work of the organisation.

Against this backdrop, we also updated and revised all of our investigatory procedures in the form of an Investigations Manual which was at iteration 6 at the year end. We have consulted with the SCS and the Society of Local Authority Lawyers and Administrators in Scotland ("SOLAR") on the manual and our procedures and will consult more widely with the public and our stakeholders in 2022/23.

Finance and governance

Total funding awarded to the office for the year, including contingency funding, was £1,093,100 and £1,086,200 was drawn down.

We reviewed and completely revised our governance arrangements during the course of the year. Measures included:

- the production of a [revised strategic plan](#) for 2021-24, which now incorporates the values that were missing from the previous version together with clear statements of intent about how the office will fulfil its statutory obligations in accordance with the expectations of the Parliament, public and stakeholders
- a new rolling [biennial business plan](#) covering all office functions and addressing each of the auditor's recommendations (see next heading below)
- the reintroduction of a performance management framework which ensures that section and staff action plans are all aligned to our business and strategic plans
- the reinstatement of Senior Management Team (SMT) meetings in accordance with previous good governance arrangements and re-engagement with our Advisory Audit Board (AAB), whose members are drawn from the independent members of the SPCB's AAB
- the reinstatement of appropriate risk management arrangements for the organisation
- tendering for and appointing internal auditors whose initial focus will be on our governance arrangements.

In 2021/22, we planned to embed risk management into our performance framework and at the time of finalising this report, that had been achieved.

Section 22 Report

The Auditor General for Scotland laid a [Section 22 Report](#) with the Scottish Parliament in December 2021, which set out a number of observations about our performance in 2020/21 and recommendations for implementation to address the concerns raised following the wider scope review under the Code of Audit Practice. The [concerns and recommendations](#) covered our governance, our transparency, our risk management, our staffing levels and their level of training and development and performance management more generally. The majority of the recommendations already coincided with work that I had concluded had to be conducted and already had in train, as set out above.

We also commissioned an [independent review](#) into the way in which the Commissioner had handled a complaint about us. A number of the recommendations and findings set out in the resultant report coincided with those in the Section 22 report. Our responses to the recommendations are included in the published report, available on our [website](#).

More information about our responses to the issues raised in the Section 22 report can be found in the Governance Statement and [progress against the auditor's recommendations](#) are reported on our website.

For the financial year 2021/22, the outstanding recommendations that we had under consideration, setting aside the future plans already alluded to, included:

- further engagement with the SPCB about external oversight of our governance
- potentially reviewing the Commissioner's decisions in respect of complaints received and dealt with between August 2020 and March 2021
- a comprehensive workforce planning exercise
- a review of all outstanding policies and our website, alongside our publication scheme.

All of this work was scheduled in our rolling [biennial business plan](#) and we will report on further progress on an ongoing basis.

Our engagement with the SPCB about external oversight of our governance has continued, although we consider that there should be direct engagement between the auditors and the SPCB on recommendations over which we have no real control.

We conducted our full workforce planning exercise over April and May 2022, earlier than scheduled, as it was clear by that point in time that we had insufficient resources to fulfil our statutory functions. That remains the case and it is having an adverse impact on members of the public who bring complaints to us in the expectation that they will be dealt with timeously. It clearly also has an adverse impact for the same reason on councillors, board members and MSPs who are subject to such complaints. In addition, the situation is having an adverse impact on the dedicated staff of a relatively small office which lacks resilience and capacity. There was no prospect of our clearing our investigations backlog and it preyed on all of our minds on a daily basis, which is why workforce planning had to be prioritised.

A comprehensive workforce plan and business case for additional resources was submitted to the SPCB in May and I was able to make the case to them in person in October. Our request for all of the resources that we had asked for was granted shortly thereafter. Recruitment to fill the additional posts will begin in 2022/23.

In June 2022 we sought legal advice in relation to the competence of the recommendation that we should revisit admissibility decisions made by the prior Commissioner. The advice concluded that a Commissioner's decision cannot be revisited. As a result, a review would only be for lessons learned. The SMT discussed and ultimately concluded that there was no value in investigating internally without being able to remedy or seek further evidence. The SMT agreed not to pursue this recommendation on this basis.

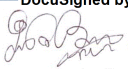
Our policy, website and policy review work continues and has been planned for as a standalone activity.

My thanks are extended to the SPCB for the support that it has provided to the office during my tenure as Acting Commissioner which is longer than, I think, we had anticipated. Given the office's circumstances, their agreement to afford us further resources has been particularly helpful.

This summary of the year does little justice to the challenges we faced as an office and to the extraordinary efforts that the SMT and staff have gone to in order to repair an almost broken organisation and to restore trust in us and in the ethical standards framework in Scotland. We have worked very hard to implement all of the recommendations made by our auditors and have done so alongside acquitting our core statutory functions. At times, it has felt akin to rebuilding a plane in flight.

I recognise that we have much more to do but I feel that we are on the road to recovery and the establishment of an office that earns the trust of the public, the Scottish Parliament, our many stakeholders and every individual and organisation that comes into contact with us. I and the entire team are fully committed to that end and we are already planning recruitment to achieve it and meet everyone's expectations.

I am grateful to each and every one of the staff in the office for their unwavering dedication, their remarkable resilience and their support during this challenging period and remain immensely proud to belong to this team.

DocuSigned by:

49C254F7ADC14C9...

Ian Bruce
Acting Ethical Standards Commissioner

9 November 2022

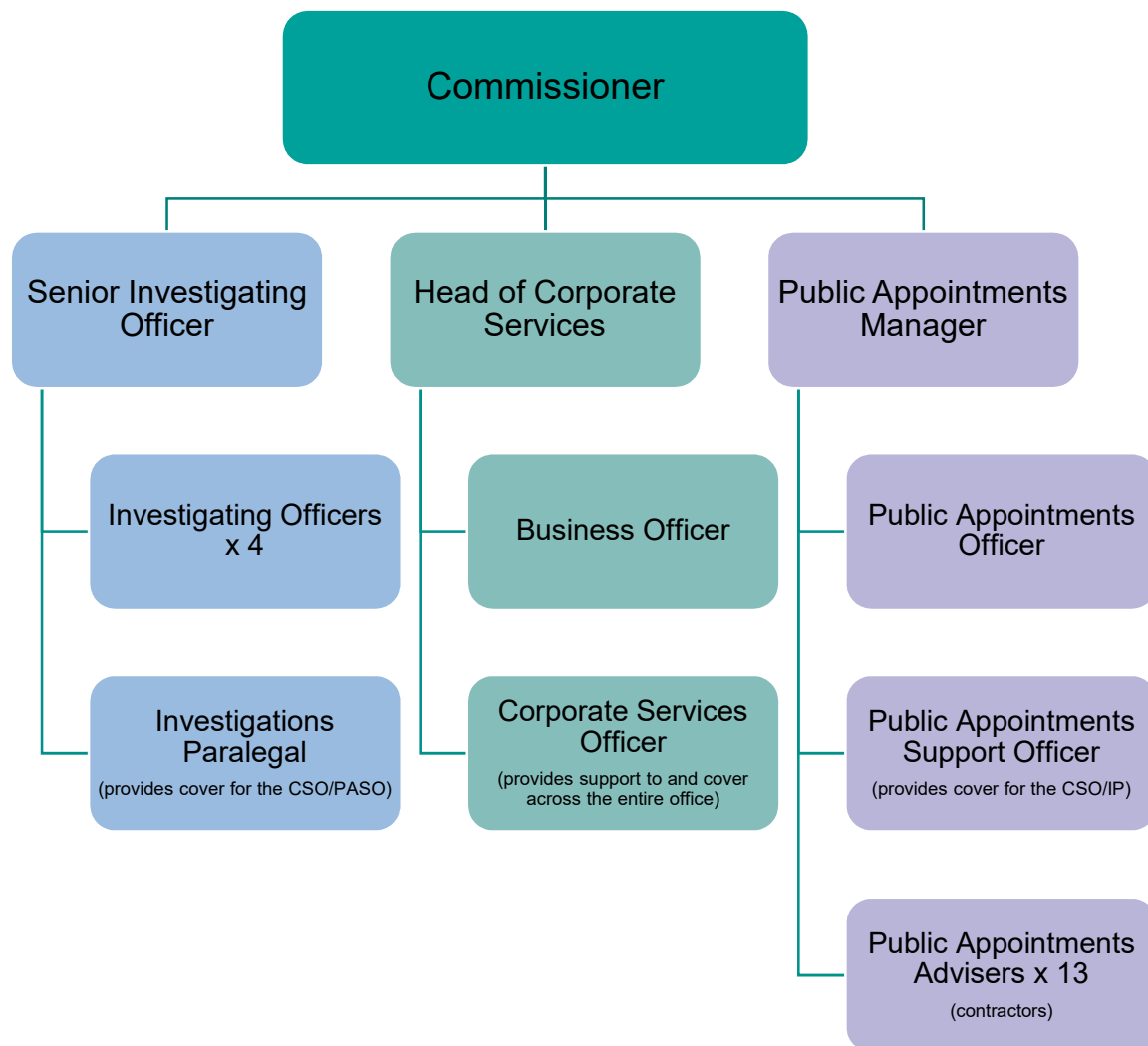
OUR PURPOSE

The Commissioner's primary functions are:

- to investigate complaints about the conduct of Members of the Scottish Parliament (MSPs), local authority councillors and board members of public bodies. Where the Commissioner considers that there has been a breach of the relevant Code of Conduct, they will report
 - in the case of councillors and members of public bodies, to the SCS
 - in the case of MSPs, to the Scottish Parliament.
- to investigate complaints about lobbyists who have failed to register or provide certain information to the Scottish Parliament and, where there has been a contravention, to report to the Scottish Parliament.
- to regulate and monitor how people are appointed to the boards of public bodies in Scotland, and to promote diversity in that process. The key functions are:
 - to prepare, publish and, as necessary, revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code)
 - to issue guidance on the Code and to promote compliance with its provisions
 - to examine the methods and practices employed by the Scottish Ministers when making appointments
 - to report to the Scottish Parliament instances of material non-compliance with the Code of Practice; the Commissioner may direct the Minister to delay making the appointment until Parliament has considered the report, and
 - to ensure that, as far as possible, appointments are made fairly and openly and allow everyone, where reasonably practicable, the opportunity to be considered for an appointment.

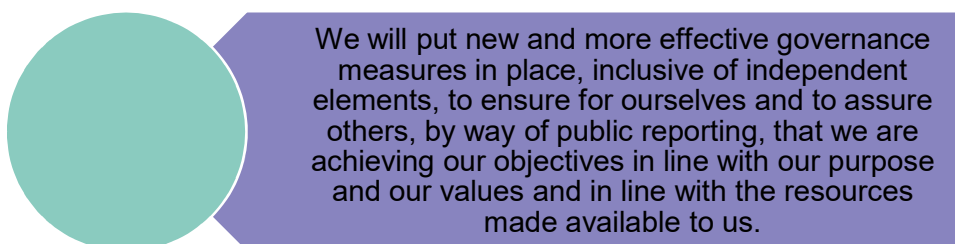
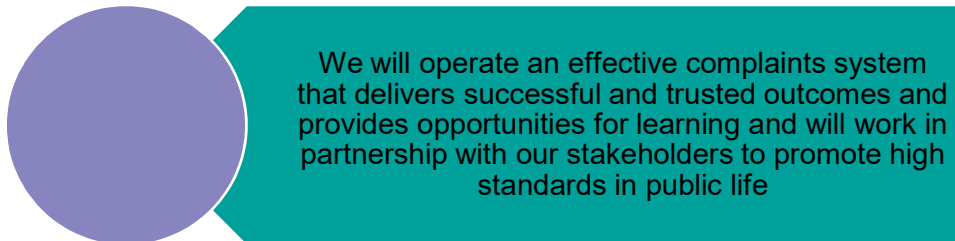
OUR STRUCTURE

Figure 1



OUR OBJECTIVES

Our strategic objectives during 2021/22 are drawn from [the Revised Strategic Plan 2021-2024](#) and summarised here:



Our strategic plan is supported by biennial business plans. These detail the actions we will take over a rolling two-year period to achieve our strategic objectives. Both the [Biennial Business Plan for 2021 - 2023](#) showing the year end position and the current [Biennial Business Plan for 2022 – 2024](#) are available on our website.

OUR PERFORMANCE

COMPLAINTS ABOUT CONDUCT

The year 2021/22 could be characterised as a year of recovery and rebuild. The effects of a worldwide pandemic in 2020/21 meant the office had to adapt to working remotely. In the last year we successfully transitioned to hybrid working when restrictions eased and in order to accommodate individual staff preferences. The team which handles complaints about conduct (the “Standards Team”) have actively worked, in support of the Acting Commissioner, to rebuild relationships with stakeholders including the SCS, SOLAR, the Society of Local Authority Chief Executives and Senior Managers (“SOLACE”), local authorities, COSLA and public bodies. The office’s approach to its interactions with complainers and respondents has also changed and is now fully aligned with the office’s values. Our approach is now characterised by transparency, empathy, kindness and respect.

During the year, we completed a comprehensive update and improvement of our internal processes, including the creation of revised assessment forms and template correspondence for complaints about Councillors and Members, which we consulted on and agreed with the SCS, and for complaints about MSPs, whilst also producing an investigations manual to codify our procedures.

In terms of rebuilding relationships, the Commissioner and Standards Team have participated in the SCS Monitoring Officers’ workshop, attended SCS events to discuss the new Councillor’s Code of Conduct and the new Model Code, assisted the Scottish Government and SCS with drafting the Codes and the SCS with its guidance and co-presented with the SCS at Scottish Government new board member induction events. The Acting Commissioner and the Senior Investigating Officer engaged with the SCS Members at bi-annual meetings, and the Acting Commissioner has met with representatives from COSLA, SOLAR and SOLACE to consult them on his Strategic Plan and to ensure that our ongoing engagement with them is meaningful and constructive.

The SCS Directions remained in place throughout 2021/22, and the Acting Commissioner and the Standards Team continue to comply with them fully. The Team also takes full cognisance of all SCS decisions, which are considered as precedents, in order to improve on practices and decision making. This includes SCS decisions to direct the Commissioner to further investigate a complaint upon receipt of a report. This type of decision had not occurred in previous years. The SCS had directed further investigation in two cases in 2021/22. Both cases directed for further investigation in 2021/22 resulted in a SCS decision to take no further action.

The staff shortage has meant that a backlog of complaints persisted throughout 2021/22, and this remains an ongoing issue. In the interim, the Standards Team continue to keep stakeholders, complainers and respondents informed about the progress and status of complaints and invite contact if any queries arise. The office has been open and transparent about the cause of delays and the steps taken to address them and to apologise for not being in a position to work through the backlog more quickly. In an effort to proactively work through the backlog, we changed our process to triage complaints and to sift out those which are clearly inadmissible. This is so that complainers do not have to wait

a long time in order to hear from us that their complaint will not progress to investigation. We include an explanation in correspondence about why we can't investigate. These reasons include the complaint being outwith our remit (such as not being about a Councillor or Member, or the conduct is not covered by the applicable Codes) or falling in the exceptions to the SCS Direction dated March 2021.

Early in the next financial year, the Standards Team will implement a plan to preserve as much evidence as possible in complaints awaiting assessment for eligibility, to prevent loss through passage of time as we work through the backlog. The team will also review the updates provided to stakeholders to ensure the same level of openness and transparency in our communications as in the previous year. A workforce planning project was prioritised for early in 2022/23 to ensure there is sufficient staff resources to improve on complaint handling work, expedite our investigations, provide cover, build team resilience and allow for succession planning.

PUBLIC APPOINTMENTS

With the appointments process being run online as the norm through 2021/22 and with officials and panels becoming more used to this way of working, appointment activity has returned to a similar level as that in 2019/20. In our last annual report, the number of requests to extend terms of appointment beyond the eight-year maximum permitted by the Code was noted as being at a relatively high level due to a temporary cessation in appointment activity during the early days of the pandemic, when civil servants were relocated to support the Government's response. The knock-on effect of the temporary cessation is still being felt with requests for such extensions remaining at a higher level than would normally be expected. On three occasions during the year, the Commissioner requested that his concerns about a perceived lack of succession planning be highlighted with the appointing minister when agreeing an extension request. Reappointments also seem to be at a higher level than would normally be expected.

It has been positive to note that the applications and appointments for under-reflected groups have increased slightly across almost every group, with targets either being met or close to being met. This has resulted in the demographic profile of all under-reflected demographic groups (other than women) also increasing during the year. This may be as a result of the move to more online application and assessment processes, making the process as a whole more accessible or more generally to the Scottish Government's gradual and ongoing improvement activity. It is worth noting that we received an unprecedented number of reports of good practice on the part of the Scottish Government this year, at just under 50, and this may well be a factor in the improvement in the diversity of boards. Requests for advice on good practice were also very high.

The figures for sector worked or most recently worked in and household income have been gathered for the second year and do not show very much variance from the previous year. It is to be hoped that, while continuing to improve the figures for under-reflected demographic groups, the Scottish Ministers will also continue to think about and work to improve accessibility for those within a wider definition of 'diversity of thought', including those with private sector backgrounds and those with lower household incomes.

We also published a new and very progressive Code of Practice at our year end, which if properly implemented should see further positive changes in both the effectiveness and diversity of our boards.

The backdrop to this work was not straightforward. The year 2021/22 has followed on from 2020/21 in being characterised by the effects and challenges presented by the Covid-19 worldwide pandemic. Although some of the restrictions on the movement of individuals were lifted during the summer months of 2021, and the roll out of vaccines provided hope of some return to normality, the spread of different variants of the virus also held up progress. Civil servants supporting the appointments process mainly continued to work from home throughout the year and the appointments process was conducted remotely using ICT.

Through 2021/22, the public appointments section of the office has also faced significant challenges with resourcing due to the Public Appointments Manager fulfilling the role of Acting Commissioner and the Public Appointments Officer acting up as Public Appointments Manager. It proved difficult to source additional resource in the team to support this aspect of the office's work and this has led to some activities not being completed. For example, the work in surveying the views of applicants about the appointments process had to be put on hold for the time being. One of the key aspects of the business plan, however, was revision and publication of the Code of Practice for Ministerial Public Appointments in Scotland, and this was achieved by the year end, despite the significant resource challenges that we faced.

We have a workforce planning project prioritised for early in the next financial year with a view to ensuring that we have the resources in place that we need to acquit this as well as the other statutory functions of the office. Our aim is to ensure that the positive work that is being done to increase board diversity can be fully supported and that our advice and guidance on compliance with the new Code will add significant value to the work of the Scottish Ministers and at the same time provide public assurance that appointments are made fairly, openly and on the basis of merit.

KEY ISSUES AND RISKS

During the period, the Acting Commissioner identified the following key risks for the office.

Override of governance systems

Risk: The Commissioner or other senior officer overrides governance systems, adversely impacting reputation and credibility, resources and ESC's ability to fulfil its functions.

Mitigating Action: Ensure a range of external and internal oversight processes are in place that cannot be subverted or disengaged.

High levels of staff turnover

Risk: Staff turnover remains high with subsequent impact on staff workload, wellbeing and absence, ultimately impacting ESC's reputation and ability to fulfil its functions.

Mitigating Action: Adherence to robust HR and governance policies, dissemination and demonstration of organisational values and open and full staff engagement.

Loss of stakeholder confidence

Risk: The issues identified in the s22 report for 2020/21 may lead to stakeholders losing confidence in the ability of the organisation to fulfil its functions.

Mitigating Action: A programme of stakeholder engagement to ensure they were aware of the work being undertaken to rebuild the organisation.

Severe disruption to our IT systems

Risk: Unable to carry out functions due to the impact of cyber attack or accidental damage resulting in loss of some or all records/ICT systems.

Mitigating Action: Maintaining and implementing a range of business continuity and information security policies, staff training and external accreditation.

Compliance with SCS directions

Risk: Impacts on workload and resources through additional reporting, investigations and hearings due to adherence to SCS directions.

Mitigating Action: Ensure effective working relationship with SCS in place including regular, open communication.

Insufficient workforce

Risk: Workforce capacity is insufficient to adequately fulfil all functions and statutory requirements.

Mitigating Action: Complete workforce planning project and prepare business case for SPCB.

Further information about management of risks is given in the Governance Statement.

GOING CONCERN ASSESSMENT

These accounts must be prepared in line with the UK Government's Financial Reporting Manual.

Management have assessed the appropriateness of the going concern basis of accounting, that is whether the organisation will continue to operate.

The functions of the Commissioner are set out in legislation passed by the Scottish Parliament. The Commissioner's office must continue to fulfil these functions unless the Scottish Parliament rescinds the legislation or transfers the functions to another body.

In common with similar public bodies, the future financing of the Commissioner's office will be met by funding approved annually by the Scottish Parliament. Funding for 2022/23 has already been awarded and there is no reason to believe that future approvals will not be forthcoming.

Accordingly, it is considered appropriate to adopt a going concern basis for the preparation of these financial accounts.

PERFORMANCE ANALYSIS

COMPLAINTS ABOUT CONDUCT

Complaints about local authority councillors and board members of public bodies

HOW MANY COMPLAINTS WERE PROCESSED?

When we receive several complaints about the same or closely related issues, we investigate them as a single case. We report the number of cases as well as complaints to better reflect our actual workload.

Figure 2

	2021/22		2020/21		2019/20	
	Complaints	Cases	Complaints	Cases	Complaints	Cases
Open at 1 April	24	8	63	35	35	24
Received	330	164	238	130	284	154
Active during year	354	172	301	165	319	178
Completed	208	88	277	157	256	143
Open at 31 March	146	84	24	8	63	35
Completed, hearing to follow ¹	3	3	- ²	- ²	1	1

1. The number of complaints and cases recorded as 'Open at 31 March', include instances where breach or no breach reports have been submitted to the SCS, with the hearing to be held in the following year. These are still shown in the 'Completed' total but also recorded separately to reflect the ongoing work required.

2. The SCS decision in two cases heard on 10 September 2020 was quashed on appeal. Re-scheduled hearings were held on 3 May 2021.

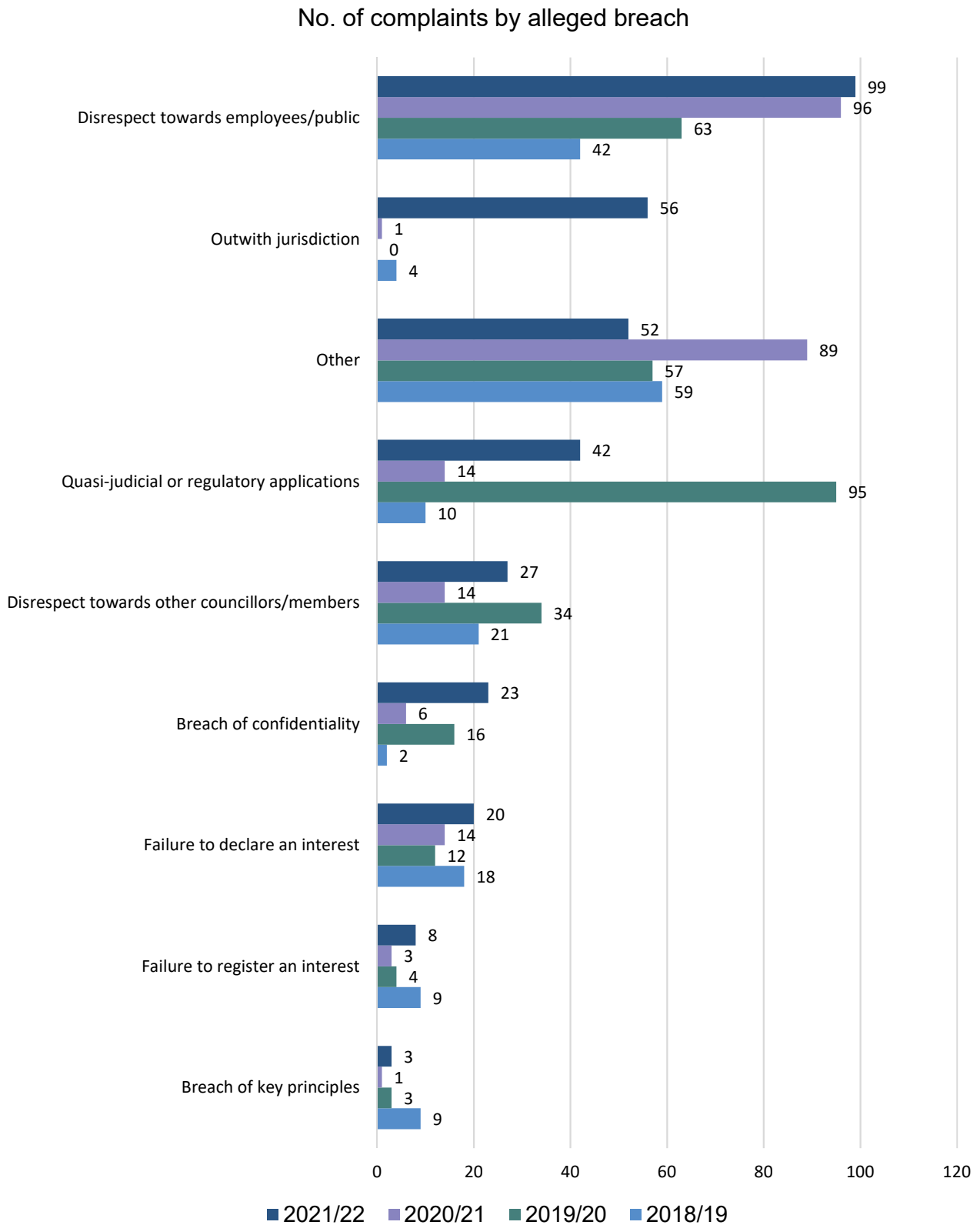
Figure 3

Complaints received	2021/22		2020/21		2019/20	
	Complaints	Cases	Complaints	Cases	Complaints	Cases
Councillors	272	143	225	121	274 ¹	146 ¹
Board members	58	21	13	9	10	8
Totals	330	164	238	130	284	154

¹ In the 2020/21 annual report and accounts, these figures were shown as 273/145 with a separate line for one complaint (one case) recorded as 'Outwith Jurisdiction'. We now report all complaints as either concerning a Councillor or a board member.

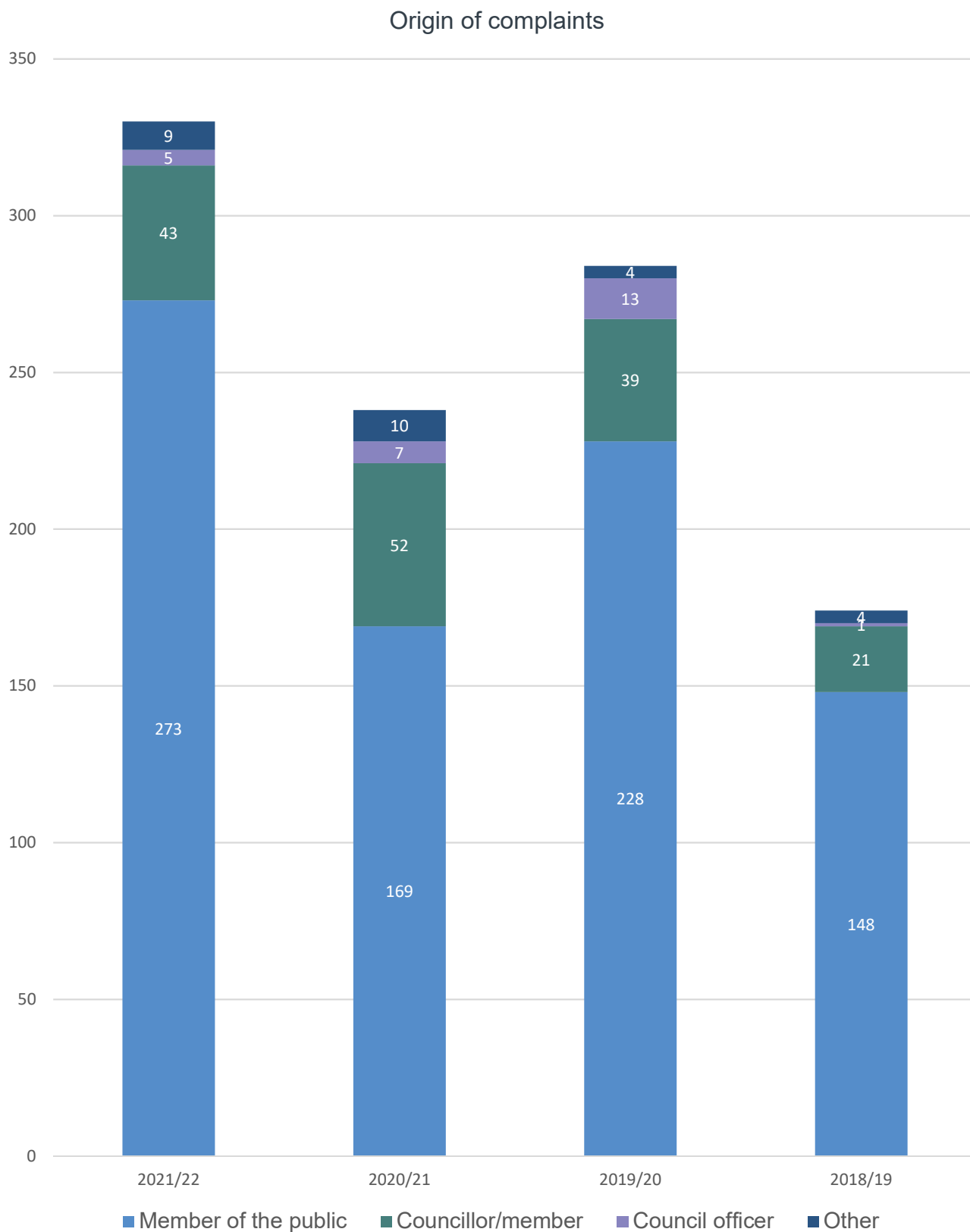
WHAT WERE THE COMPLAINTS ABOUT?

Figure 4



WHO MADE THE COMPLAINTS?

Figure 5



WHAT WAS THE OUTCOME OF THE COMPLAINTS?

Figure 6

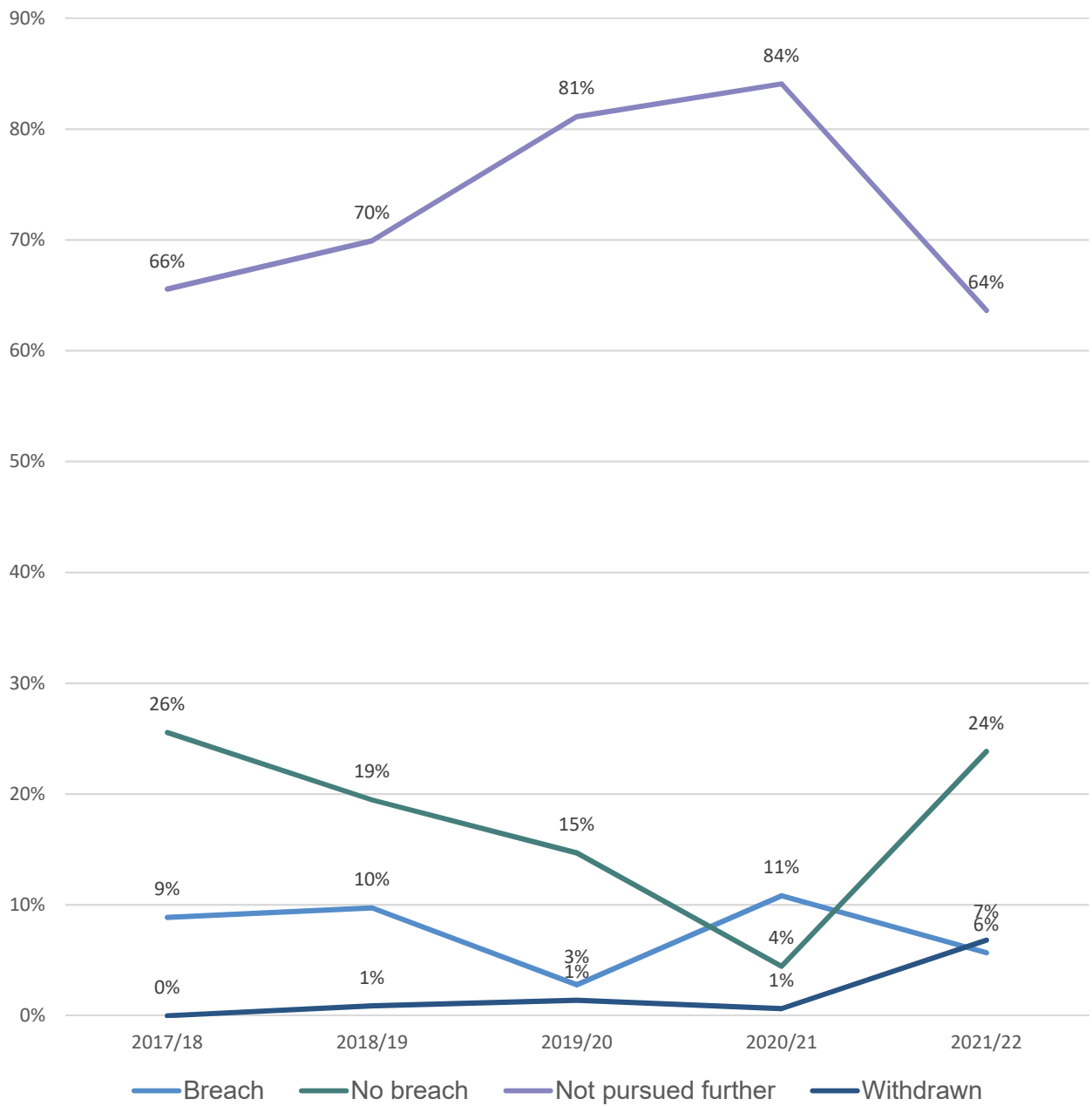
	2021/22				2020/21			
	Complaints		Cases		Complaints		Cases	
Full investigation	75	36%	26	30%	49	18%	24	15%
Breach	6	3%	5	6%	39	14%	17	11%
No breach	69	33%	21	24%	10	4%	7	4%
Initial assessment	125	60%	56	63%	227	82%	132	84%
Withdrawn	8	4%	6	7%	1	-	1	1%
Totals	208		88		277		157	

- The SCS Directions came into effect in July 2020, November 2020 and March 2021. They remain in place.
- The SCS Direction of March 2021 requires the Commissioner to investigate all complaints received about Councillors and Members, except in specified circumstances where the Respondent is incapacitated, the conduct complained of is outwith one year from the date of complaint, or where, on its face, no breach of the applicable Code has taken place.
- A full investigation was carried out in respect of 75 complaints – 26 cases
 - 6 complaints – 5 cases resulted in a report being submitted by the Commissioner to the SCS with a finding that there had been a breach of the Code.
 - Following investigation, 69 complaints which were investigated as 21 cases, were concluded with a finding of no breach of the Code.
- There were 125 complaints– 56 cases which, after initial assessment, were subject to no further action due to there being, on its face, no breach of the applicable Code.
- 8 complaints – 6 cases were withdrawn.

The SCS directed the Commissioner to carry out further investigations on two complaints (two cases) during the year (2020/21: Nil). In both cases, the SCS took no further action.

Figure 7

Trends in outcome of cases completed



This table details the findings in relation to cases completed during the year.

Figure 8

2021/22	Breach	No breach	Not pursued further	Withdrawn	Totals
Introduction/Key Principles					-
Outwith 12 months			4		4
Personal conduct/not acting as Councillor			6		6
Insufficient/no evidence to support allegation*		18	37		55
Code not engaged/no misconduct					-
Not about a Councillor or Member			1		1
Breach	5				5
Not in the public interest					-
Body outside our remit			2		2
Previously investigated			1		1
Withdrawn				6	6
Other		3	5		8
2021/22 Totals	5	21	56	6	88
2020/21 Totals	17	7	132	1	157
2019/20 Totals	4	21	116	2	143

*These are terms used in the Case Management System. Complaints where, on its face, no breach of the applicable Code had taken place are recorded under this heading.

WERE THERE ANY INTERIM REPORTS ISSUED?

The Commissioner has the power to issue an interim report to the SCS requesting that a Councillor or board member be suspended prior to the completion of an investigation. This may be required where the further conduct of an investigation is likely to be prejudiced if a suspension is not imposed or it is in the public interest to impose a suspension. The SCS can direct the Commissioner to submit such an interim report. On receiving the interim report, the SCS may suspend the Councillor or board member.

This step is reserved for the most serious complaints received, where the conduct complained of poses a risk of harm to others, including members of the public, other councillors or council staff, or has the potential to significantly undermine the ethical standards framework.

The Commissioner did not issue any interim reports in 2021/22 (2020/21: Nil).

WERE THERE ANY HEARINGS?

Under current Directions, the Commissioner reports the outcome of all investigations to the SCS. They may hold a hearing, direct the Commissioner to conduct further investigation or do neither. The following table provides further information about reports submitted and hearings held during 2021/22. If the SCS concludes at a hearing that a breach of the Code has occurred, they must impose a sanction. A further 17 reports where the Commissioner found there was no breach were submitted to the SCS. The SCS required further investigation in two instances and no further action in the remaining 15 cases.

Figure 9

Complaint number	Council / Public Body	Nature of Complaint	ESC Decision	Hearing date	Hearing decision	Sanction imposed
Report submitted in 2020/21; hearing held in 2021/22						
LA/R/3262 ¹	Renfrewshire Council	Disrespect towards other Councillors	Breach	03/05/2021	Breach	Disqualification
LA/R/2257 ¹	Renfrewshire Council	Disrespect towards other Councillors	Breach	03/05/2021	Breach	Disqualification
Report submitted and hearing held in 2021/22						
LA/CES/3453	Comhairle nan Eilean Siar	Disrespect towards employees/public	Breach	SCS decision: no further action		
LA/Mo/3469	Moray Council	Other	Breach	SCS decision: no further action		
LA/AC/3495	Aberdeen City Council	Disrespect towards other Councillors	No breach	05/10/2021	Not found in breach	
A/PK/3477	Perth & Kinross Council	Disrespect towards other Councillors	Breach	18/10/2021	Not found in breach	
LA/AC/3497	Aberdeen City Council	Disrespect towards employees/public	Breach	06/12/2021	Not found in breach	
LA/Mo/3516	Moray Council	Disrespect towards employees/public	Breach	16/02/2022	Not found in breach	
Report submitted in 2021/22; hearing to be held in 2022/23						
LA/D/3580	Dundee City Council	Disrespect towards employees/public	No breach	01/06/2022		
LA/AC/3600	Aberdeen City Council	Disrespect towards employees/public	No breach	07/06/2022		
LA/An/3561	Angus Council	Disrespect towards other Councillors	No breach	15/06/2022		

1. The SCS decision in two cases heard on 10 September 2020 was quashed on appeal. Re-scheduled hearings were held on 3 May 2021.

COMPLAINT TRENDS

When we receive several complaints about the same or closely related issues, we investigate them as a single case. We report the number of cases as this better reflects our actual workload. In 2021/22, we received 164 cases and completed 88 (2020/21: 130/157).

Figure 10

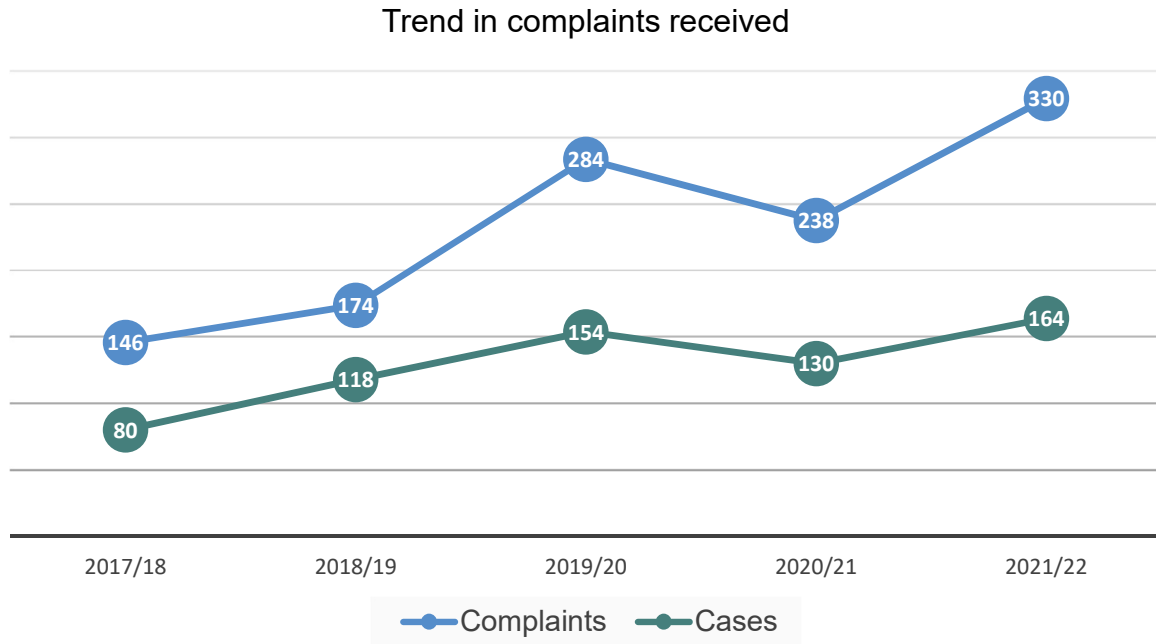
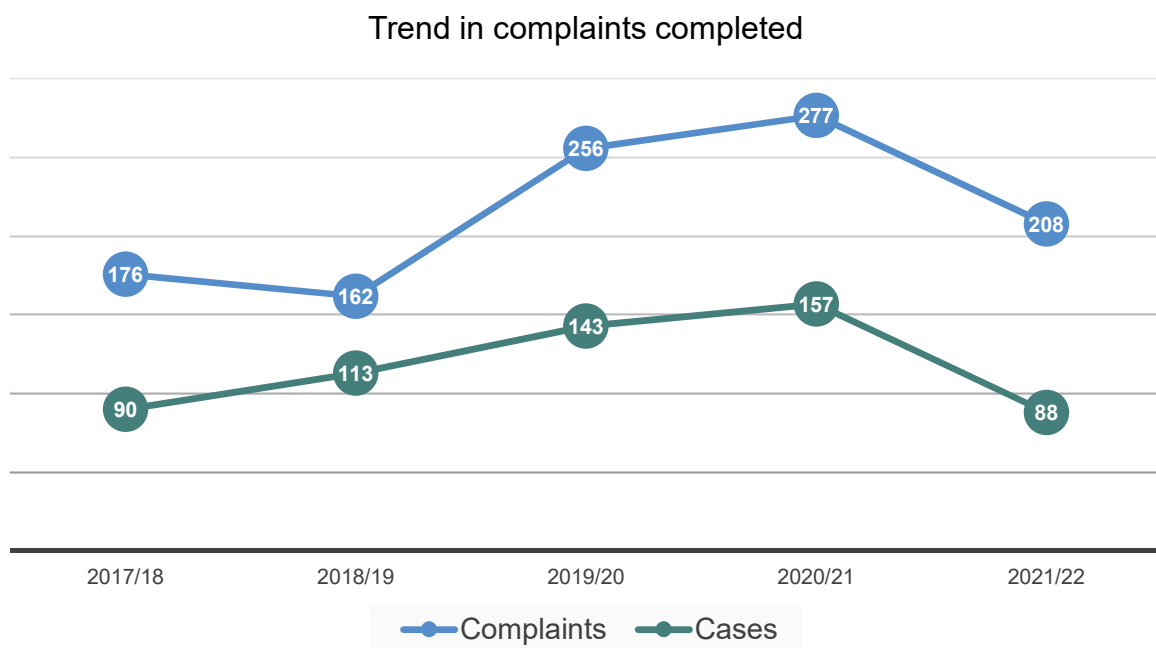


Figure 11



Complaints about MSPs

We investigate complaints about the conduct of MSPs.

HOW MANY COMPLAINTS WERE PROCESSED?

Figure 12

		2021/22		2020/21		2019/20	
		Complaints	Cases	Complaints	Cases	Complaints	Cases
Open at 1 April	Stage 1	738 ¹	14	-	-	6	5
	Stage 2	1	1	1	1	-	-
Received		118	54	799 ¹	54	109	39
Active during year		857	69	800¹	55	115	44
Completed		97	50	61	40	114	43
Open at 31 March	Stage 1	760	19	738 ¹	14	-	-
	Stage 2	-	-	1	1	1	1

1. Prior year figures have been amended following an in-year re-assessment of the "super complaint".

Upon receipt of a complaint about an MSP, the Commissioner assesses the admissibility of that complaint: this is known as Stage 1. Where a complaint is admissible, it moves to Stage 2 – investigation.

No complaints were withdrawn during the year (2020/21: Nil).

WHAT WERE THE COMPLAINTS RECEIVED ABOUT?

Figure 13

	2021/22	2020/21	2019/20
Allowances and expenses/Use of Parliamentary facilities	-	-	-
Breach of confidentiality	11	632 ¹	1
Engagement and liaison with constituents	-	-	3
General conduct	-	-	9
Other	98	133 ¹	89
Registration/declaration of interests	3	3	5
Treatment of other MSPs/staff	6	31	2
Totals	118	799¹	109

1. Prior year figures have been amended following an in-year re-assessment of the “super complaint”.

Towards the end of 2020/21 the Commissioner received over 730 complaints relating to a similar issue. The majority of these complaints were grouped together into what we have described as a “super complaint” and are currently being processed. It is anticipated that they will be concluded in the coming year.

WHAT WAS THE OUTCOME OF THE COMPLAINTS?

When the Commissioner receives a complaint about the conduct of an MSP, we assess whether it falls within our jurisdiction – ‘admissible’ – in which instance we can investigate further. The following table shows the number of complaints assessed and the outcome.

Figure 14

Reasons for inadmissibility	2021/22	2020/21	2019/20
Dismissed under the first statutory test – the complaint was not ‘relevant’ – for example, it did not concern conduct of an MSP	92	56	41 ¹
Dismissed under the third statutory test – was the complaint of enough substance to justify further investigation – that is, was there sufficient evidence?	-	-	1 ¹
Complaints “outwith” jurisdiction were referred to			
Presiding Officer	1	1	67
First Minister	-	-	3
SPCB	1	3	-
Standards Procedures and Public Appointments Committee	-	-	1
Inadmissible	94	60	113
Admissible	2	1²	2³
Totals	96	61	115

1. These were originally shown as 40 and 2 in the 2019 /20 report giving a total of 113 complaints assessed. Following a review of our records these have been amended to 41 and 1 respectively.
 2. One complaint assessed as admissible in 2020/21 with the Stage 2 investigation completed in in 2021/22.
 3. Of the two complaints assessed as admissible in 2019/20; one Stage 2 investigation was completed in the same year and one was completed in 2020/21.

Where a complaint is ‘admissible’ we investigate and report our findings to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament. There were two such reports in 2021/22 (2020/21: one). There were no admissible cases under investigation as at 31 March 2022 (2020/21: one).

Figure 15

Case Ref.	Nature of Complaint	Commissioner’s Conclusion	Committee date	Committee decision	Sanction imposed by the Scottish Parliament
3291 (2020/21)	Failure to register an interest	Breach	20/01/2022	Not found in breach	-
3485 (2021/22)	Treatment of other MSPs / staff	Breach	16/12/2021	Not found in breach	-

During the year, the Commissioner was not directed by the Scottish Parliament to carry out any further investigations.

TIMESCALES

Stage 1 (Assessment of admissibility)

The Commissioner is required to report to the Standards, Procedures and Public Appointments Committee, and also to the MSP complained about and the complainer, if Stage 1 takes longer than two months. Of the 96 complaints (49 cases) that were assessed for admissibility in 2021/22 (2020/21: 61/40), seven complaints (four cases) (2020/21: 1/1) took over two months.

There were 760 complaints (19 cases) open at Stage 1 at the end of the reporting year (2020/21: 738/14).

Stage 2 (Further investigation)

The Commissioner is also required to report to the Committee, to the MSP complained about, and to the complainer, if Stage 2 takes longer than six months. Three complaints (two cases) proceeded to Stage 2 in 2021/22 (2020/21: 2/2). Two complaints (one case) were completed within the six-month time limit (2020/21: 1/1) and one took over six months (2020/21: Nil).

There were no Stage 2 investigations in progress at the end of the reporting year (2020/21: one).

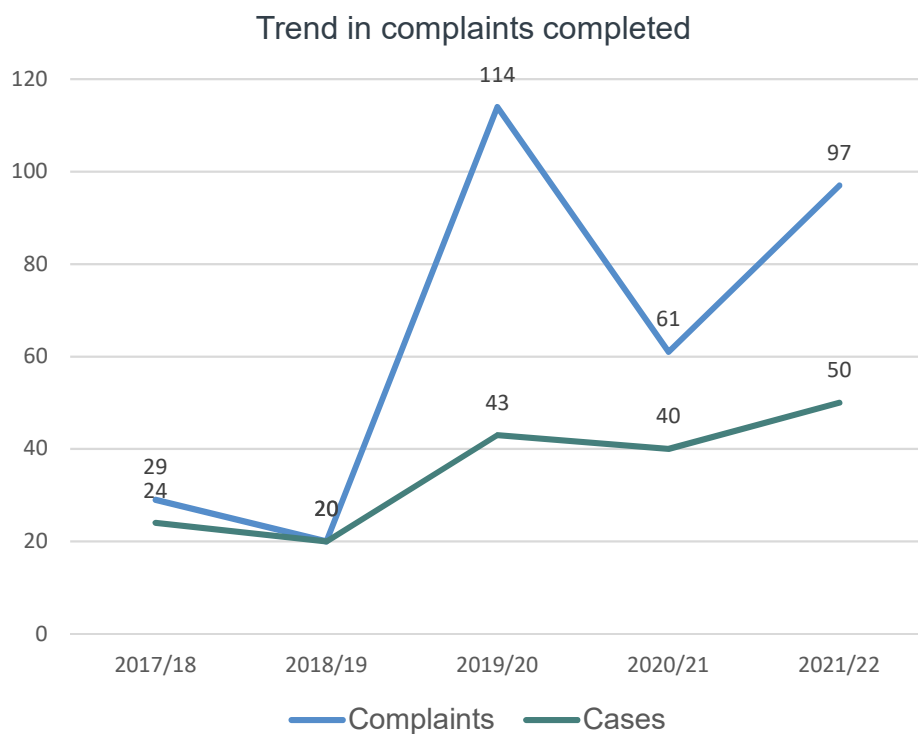
COMPLAINT TRENDS

When we receive several complaints about the same or closely related issues, we investigate them as a single case. We report the number of cases as this better reflects our actual workload. In 2021/22, we received 54 cases and completed 50 (2020/21: 54/40).

Figure 16



Figure 17



Performance against our business plan

The Commissioner’s biennial business plan for 2021-2023 included actions intended to contribute to the achievement of our strategic objectives relating to standards. Progress against the business plan is summarised in the following table:

Figure 18

Standards		Milestones	Achieved
C1 and C2	<p>We will consult all relevant stakeholders on our current complaint handling procedures and revise them and publish them in the form of an investigations manual which takes account of the views received. Parts of the manual will be produced in Easy Read, BSL and other languages to ensure accessibility.</p> <p>We will adapt our procedures to take account of stakeholder views and engender trust in the way that we work.</p>	<ul style="list-style-type: none"> i. Upgrading and updating of procedural documentation (templates, factsheets, flowcharts, checklists etc) for MSP, councillor and board member complaint handling. ii. Adopt new procedures for interim period. iii. Map key stakeholders. iv. Make initial informal contact. v. Contact formally by way of introduction to AESC and plans for office. vi. Issue manual to key stakeholders for comment. vii. Develop an action plan documenting an appropriate suite of arrangements in anticipation of amending legislation (sexual misconduct plus removal of the time bar) coming into force. 	<ul style="list-style-type: none"> i. ● (procedural documentation upgraded and updated in May 2021 and restarted in August 2022 to account for Manual’s consultation results) ii. ✓ iii. ✓ iv. ✓ v. ✓ vi. ✗ (delayed due to lack of capacity, working draft Manual in place for internal use since November 2021, pre-consultation with key stakeholders complete in June 2022 and aim for publication for wider comments at end of August 2022) vii. ✓
C3	<p>We will publish our procedures as revised so that everyone knows what to expect</p>	<ul style="list-style-type: none"> i. Publish revised investigations manual. ii. Have parts of manual that are of interest and relevance to the public translated into BSL, Easy Read and other languages. 	<ul style="list-style-type: none"> i. ✗ (upon completing public consultation, aim for publication in Nov/Dec 2022) ii. ✗ (aim for completion late in financial year of 2022/23)
<p>✓ Achieved ● Partially achieved ✗ Not achieved</p>			

We publicly report progress against our Biennial Business Plan which can be found on the website. The most recent version is here: [Biennial Business Plan 2021-2023 - Progress as at 31 March 2022](#).

COMPLAINTS ABOUT LOBBYISTS

The Commissioner can investigate complaints about a lobbyist who has not:

- a. registered with the Scottish Parliament
- b. provided accurate and complete information in their registration
- c. submitted a return detailing any lobbying undertaken
- d. supplied an accurate and complete response to a request by the Scottish Parliament for information about their lobbying.

WERE THERE ANY COMPLAINTS ABOUT LOBBYING?

During the year we received no complaints regarding failure to register lobbying activity appropriately (2020/21: Nil).

PUBLIC APPOINTMENTS

Improving diversity on the boards of public bodies

We have a statutory duty to use our powers with a view to ensuring that appointments are made fairly and openly and that as far as possible everyone has an opportunity to be considered. As part of our work in this area, the Commissioner agreed targets with the Scottish Ministers in the strategy document “Diversity Delivers” (published September 2008), intended to encourage applications from as wide a range of people as possible. The strategy also included a range of recommendations, agreed with the Scottish Government at the time, intended to improve on the diversity of Scotland’s boards. [Progress against the recommendations](#) is available on our website. The Commissioner has included a refresh and update of the diversity strategy in the [Revised Strategic Plan 2021-2024](#).

The following tables and graphs show the extent to which Scotland’s board members at the end of 2021 reflect the population of the country as a whole and how it has changed over time.

CURRENT DEMOGRAPHIC PROFILE OF SCOTLAND’S BOARDS

Figure 19

Target Group	Change in board membership profile	Profile of board members† at 31 December 2021	Profile of board members† at 31 December 2020	Scottish Population (2011 Census)
Female	-0.9%	50.8%	51.7%	51.5%
Disabled	+1.2%	8.6%	7.4%	19.6%
Black and minority ethnic††	+0.1%	3.7%	3.6%	4.0%
Aged 49 and under	+0.6%	18.3%	17.7%	54.3%*
Lesbian, gay and bisexual	+0.1%	5.0%	4.9%	6.0%**

†All board members inclusive of the chair unless otherwise stated. Percentages do not include those who did not make a declaration.

††Black and minority ethnic figures reflect people from a non-white minority ethnic background.

* Scottish Population aged 18 to 49 as a percentage of the whole population aged 18 and over.

** Estimated based on information from Stonewall Scotland website.

HOW THE DEMOGRAPHIC PROFILE OF SCOTLAND'S BOARDS IS CHANGING AS AT 31 DECEMBER

Figure 20

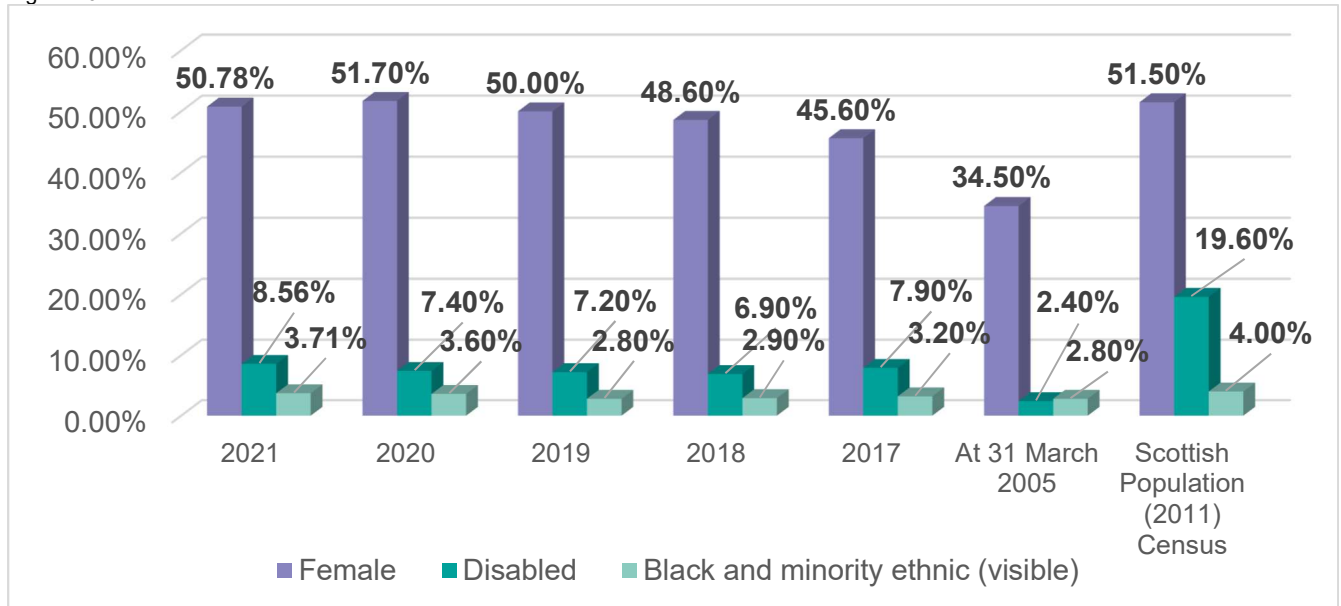
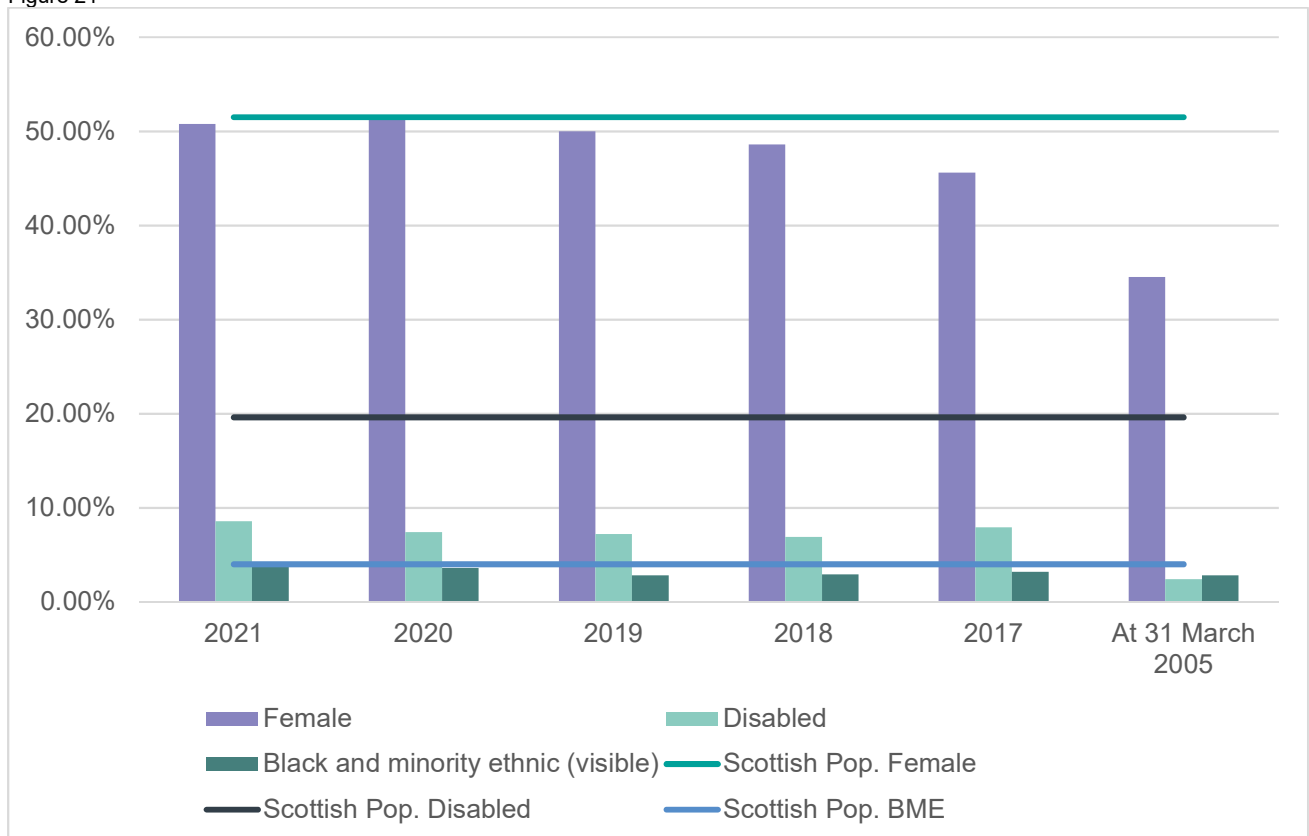
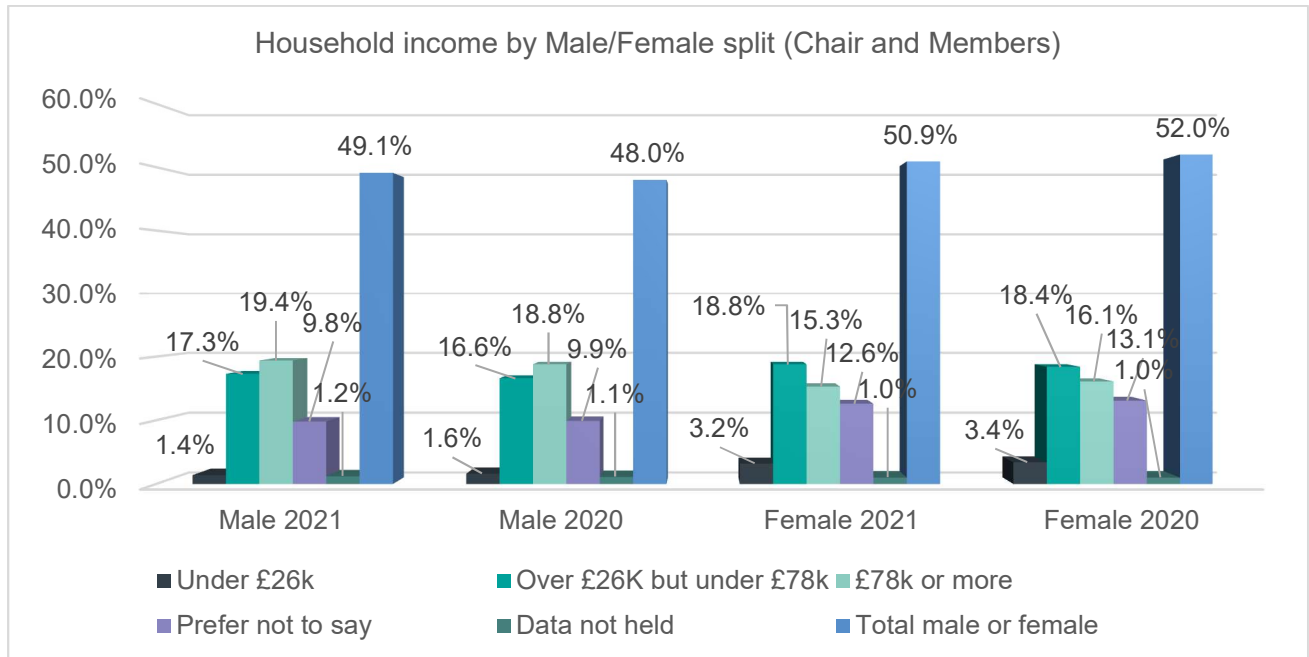


Figure 21



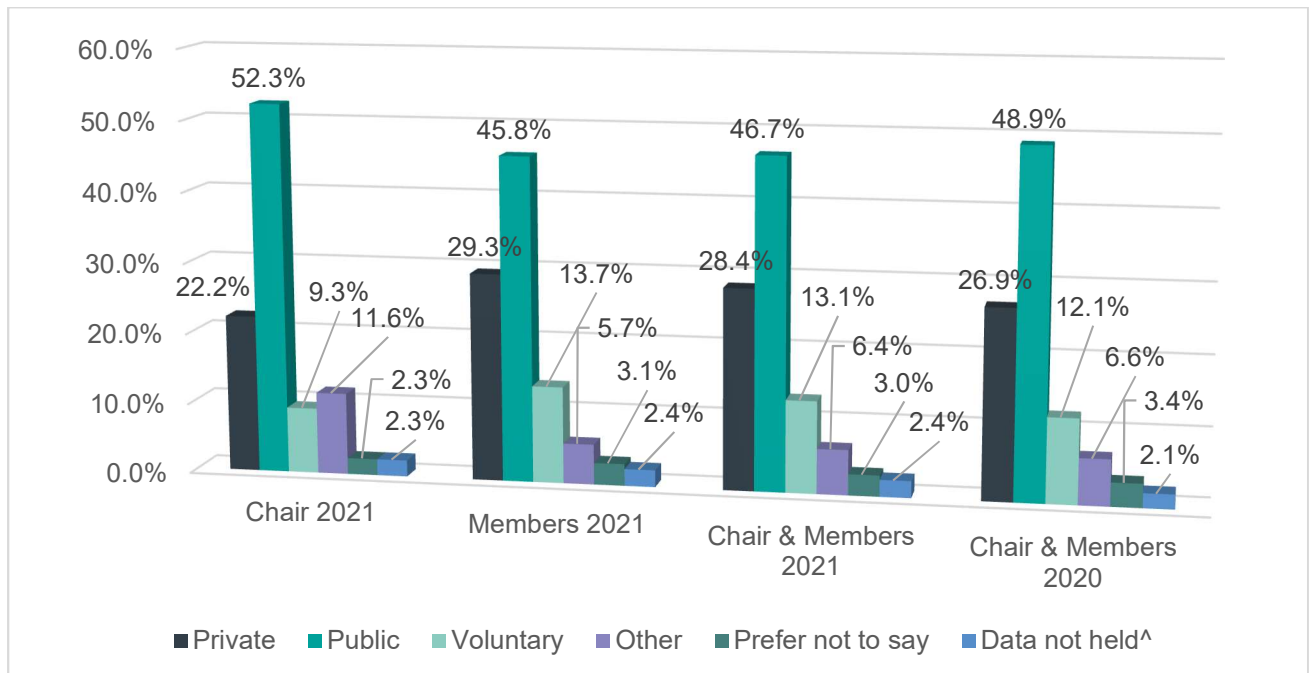
**HOUSEHOLD INCOME OF BOARD CHAIRS AND MEMBERS
AS AT 31 DECEMBER**

Figure 22



**SECTOR WORKED (OR MOST RECENTLY WORKED) IN
AS AT 31 DECEMBER**

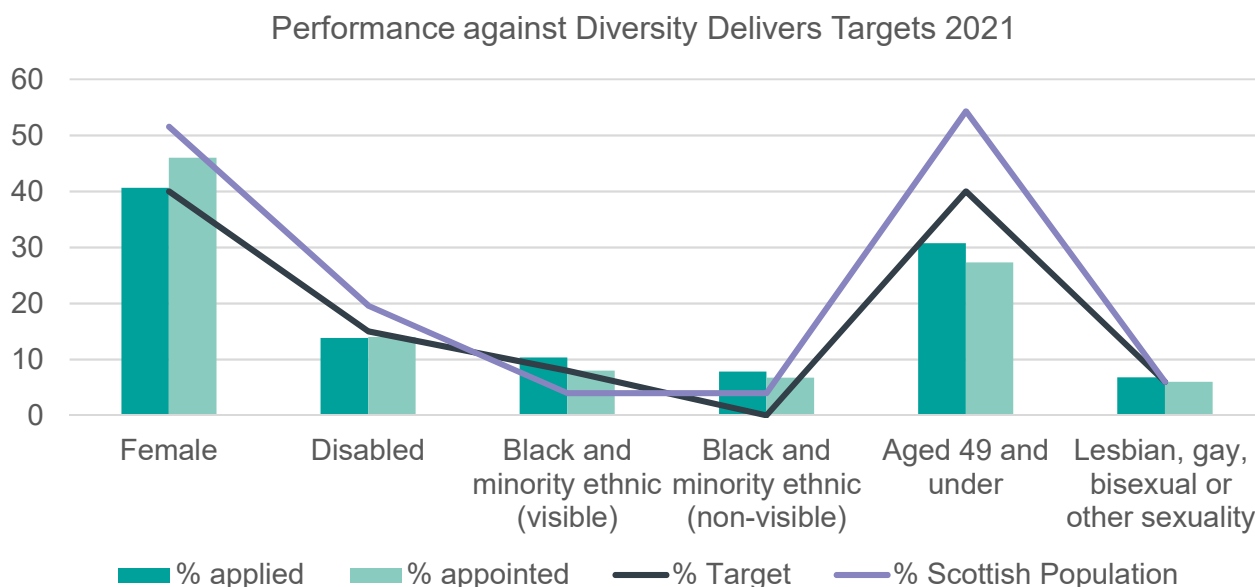
Figure 23



Performance against Diversity Delivers Targets 2021

The following chart shows the percentage of applications and appointments in 2021 by each target group as set out in Diversity Delivers. This information is provided by the Scottish Government and relates to a calendar year.

Figure 24



The table below shows these figures for the preceding three years.

APPLICATIONS AND APPOINTMENTS BY TARGET GROUP

Figure 25

Target Group	Target	2021		2020		2019		Scottish Population*
	●	●	●	●	●	●	●	
	%	%	%	%	%	%	%	
Female	40.0	40.6	46.0	41.4	53.5	42.9	48.1	51.5
Disabled	15.0	13.8	14.0	12.8	12.7	12.9	11.9	19.6
Black and minority ethnic (visible)**	8.0	10.3	8.0	8.5	5.6	8.7	5.9	4.0
Black and minority ethnic (non-visible)	N/A	7.8	6.7	8.9	5.6	6.3	5.9	4.0
Aged 49 and under	N/A	30.7	27.3	28.2	21.2	30.8	27.4	54.3***
Lesbian, gay, bisexual or other sexuality	N/A	6.8	6.0	5.4	5.6	4.9	3.7	6.0****

Key: Applications ● Appointed ●

^ Values for fewer than five have been suppressed to decrease the risk of disclosure of information about individuals.

* Unless otherwise stated, all population figures are extracted from 2011 census data

** The target for the BME population is inclusive of people from non-visible minority groups. Up until 2017 the figures reported on have related to visible minority applicants and appointees. From 2017 onwards, the figures have been provided for both visible and non-visible. For this latter category the monitoring form question responded to is "Other white" and includes those who selected "Irish", "Polish" or "Other white ethnic group".

*** Scottish population aged 18 to 49 as a percentage of whole population 18 and over

**** Estimated based on information from Stonewall Scotland website

Performance against our business plan

The Commissioner’s biennial business plan for 2021-2023 included actions intended to contribute to the achievement of our strategic objective relating to public appointments. Progress against the business plan is summarised in the following table:

Figure 26

Public Appointments		Milestones	Achieved
A1	Develop a revised Code of Practice for Public Appointments	<ul style="list-style-type: none"> i. Lay draft and consult Scottish Ministers, Scottish Parliament and key stakeholders on proposals from July-September 2021. ii. Analyse responses by November 2021. 	<ul style="list-style-type: none"> i ✓ ii ✓ (deadline extended for further consultation with SG. Analysis complete February 2022)
A2	We will take account of all stakeholder views in order to finalise the Code.	<ul style="list-style-type: none"> i. Publish results of analysis by December 2021 ii. Publish revised code and provide to Scottish Parliament by January 2022 iii. Have parts of Code that are of interest and relevance to the public translated into BSL, Easy Read and other languages by December 2021 	<ul style="list-style-type: none"> i ✓ ii ✓ (deadline extended for further consultation with SG. Analysis and revised Code published March 2022) iii ✗ (this action was deferred until October 2022 as that is when the Code is due to come into force).
A3	We will provide guidance and support to everyone engaged in the appointments process with a view to their implementing the new Code's provisions effectively	<ul style="list-style-type: none"> i. Draft and publish statutory guidance by February 2022 ii. Run training for PAAs, Scottish Government’s Public Appointments Team (PAT) and panels on new Code's application from February 2022 iii New Code comes into effect from April 2022 iv Continue to feed into lessons learned for the Scottish Government by running applicant surveys on a round by round basis and providing reports of feedback, whenever a request to run a survey is made. 	<ul style="list-style-type: none"> i ✗ (delayed until 2022/23; Code published March 2022, see A2ii above) ii ✗ (delayed until 2022/23; Code published March 2022, see A2ii above) iii ● (published March 2022 and comes into effect in October 2022) iv ● (backlog due to lack of resource)
A4	We will seek support to revise and republish Diversity Delivers, to include new recommendations for the achievement of greater board diversity.	<ul style="list-style-type: none"> i. Consult informally by September 2021 ii Issue formal request by October 2021 	<ul style="list-style-type: none"> i ✓ ii ✓
<p>✓ Achieved ● Partially achieved ✗ Not achieved</p>			

We publicly report progress against our Biennial Business Plan which can be found on the website. The most recent version is here: [Biennial Business Plan 2021-2023 - Progress as at 31 March 2022](#).

Monitoring and reporting

All information under this heading relates to the Commissioner’s statutory duties to monitor and report on appointment activity and to provide guidance on application of the Code.

The Commissioner’s remit extended to 733 posts on the boards of 99 public bodies at the year end. In the case of a proportion of these bodies, such as regional colleges, only the chair appointments are regulated. Additionally, some bodies are statutorily included in the Commissioner’s remit even though they are either abolished or no longer active.

HOW MANY BODIES AND POSITIONS DO WE REGULATE?

Figure 27

At 31 March	2022	2021	2020
No. of bodies regulated	99	99	97
No. of posts regulated	733	717	755
Avg. no. of regulated positions per board	7.4	7.2	7.8

The National Confidential Forum was removed from the Commissioner’s remit on 23 April 2021 and Environmental Standards Scotland was brought into our remit in October 2021.

A list of the regulated bodies is available at <https://www.ethicalstandards.org.uk/regulated-bodies>.

HOW MANY APPOINTMENTS DID WE OVERSEE?

During the financial year 2021/22, we were active in overseeing 133 appointment rounds).

Appointments are made through a process called an appointment round. Multiple appointments can be made through a single appointment round and the Scottish Ministers can run more than one round in a single year per public body. In certain circumstances we allocate a Public Appointments Adviser (PAA) to oversee all or part of the round. We report on these allocations rather than the number of appointment rounds as this better reflects our actual workload - not every allocation becomes an appointment round.

NUMBER OF ALLOCATIONS MADE

Figure 28

Allocations made	2021/22	2020/21	2019/20
Brought forward from previous year	52 ¹	40 ²	58
Started in year	81	58	70
Active during year	133	98	128
Completed	79	45	83
Open at end of year	54	53	45

Presented by financial year rather than calendar year as information obtained from ESC records rather than those of the Scottish Government.

HOW MANY PEOPLE APPLY FOR A PUBLIC APPOINTMENT?

From the information provided by the Scottish Government, during the calendar year 2021, 150 appointments were made to 53 public bodies following 1,868 applications made by 1,526 applicants (2020: 71 appointments to 30 public bodies; 1,307 applications and 1,117 applicants)..

NUMBER OF APPLICATIONS AND APPOINTMENTS DURING THE YEAR TO 31 DECEMBER

Figure 29

Number of	2021	2020	2019
Applications	1,868	1,307	2,088
Appointments	150	71	135
Average applications per appointment	12.5	18.4	15.5

¹ One round was reported as live at the end of 2020/21 which was subsequently closed with a closing date at the end of March 2021 and therefore should have been included in the "completed in year" category.

² Five rounds were reported as live at the end of 2019/20 which were subsequently closed with a closing date at the end of March 2020 and therefore should have been included in the "completed in year" category

**BREAKDOWN OF APPLICATIONS
DURING THE YEAR TO 31 DECEMBER**

Figure 30

Number of applications	2021	2020	2019
Applied	1,868	1,307	2,088
Reached shortlist	1,868	1,299	2,079
Invited to interview	480	242	442
Recommended for appointment	159	87	151
Appointed	150	71	135

**NUMBER OF REAPPOINTMENTS AND EXTENSIONS
DURING THE YEAR TO 31 DECEMBER**

Figure 31

Number of	2021	2020	2019
Reappointments	111	65	50
Extensions	18	21	N/A

SATISFACTION WITH THE APPOINTMENT PROCESS

Figure 32

Average satisfaction level	2021/22	2020/21	2019/20
PAA's contribution	4.67	4.46	4.51
Appointments process	4.15	3.85	4.05

Satisfaction levels are measured on a scale of 1 to 5 with 1 being very dissatisfied and 5 very satisfied.
Presented by financial year rather than calendar year as information obtained from ESC records rather than those of the Scottish Government.

Any comments or constructive suggestions made are acted upon by the PAT and/or the Commissioner as appropriate.

Providing guidance

ENQUIRIES AND REPORTS ARISING FROM SCRUTINY

The following tables summarise substantive contacts with the ESC office during the reporting year. As this information is gathered by ESC it is reported by financial year.

Figure 33

Issues raised	2021/22	2020/21	2019/20
Enquiry - Asked for advice on the Code of Practice	150	177	166
Enquiry - Asked for advice on good practice	32	14	8
Enquiry – Asked for exceptions to the Code, or term extensions or to discuss options not covered by the Code	39	46	46
Diversity research enquiry	-	-	5
Enquiry - General enquiry on the work of the office	10	42	30
Enquiries and Reports - Miscellaneous or “Other” enquiries or reports	206	346	315
Enquiry - Freedom of information requests	-	-	-
Report a complaint about an appointment round	-	4	1
Report a concern about an appointment round or a failure in administration	71	100	91
Report about good practice	49	20	10
Report an update on round activity ³	41	-	-
Report about non-compliance with the Code of Practice	4	7	8
Totals	602	756	680

GUIDANCE ON APPLICATION OF THE CODE

The Commissioner’s office provides Code interpretation guidance, primarily to officials and PAAs, on a very frequent, ad hoc basis. Where trends are identified, the Commissioner seeks to provide general guidance with a view to improving on practices and increasing understanding.

No new Statutory guidance was provided during the course of 2021/22.

³ This is a new category introduced during 2021/22 to capture instances where a general update on activity related to an appointment round is provided to us which is neither good practice nor something which could be considered as a concern or non-compliance.

CORPORATE AND FINANCIAL PERFORMANCE

Performance against our business plan

The [biennial business plan covering the period April 2021 to March 2023](#) set a range of corporate and financial goals. Progress is summarised below.

Figure 34

Corporate Goals for 2021/22	Achieved
Prepare business case for SPCB to increase staff complement. Contribute to recruitment and induction.	✓
Reassess corporate needs to produce a final workforce plan	●
All HR related policies revised or updated to take account of our current operational context and to secure staff wellbeing	✓
Full review of governance arrangements	●
Appointment of internal auditor	✓
Re-engage with AAB and ensure engagement on a regular basis	✓
Review of AAB remit and membership	●
Review of whistle-blowing policy	●
Re-establish SMT meetings	✓
Revert to prior arrangements for risk assessment	✓
Review current schemes of delegation	●
Review and formalise the budget process	✓
Ensure complaints handling statistics for previous two years are accurate and comparable with those produced previously	✓
Develop and implement plan for exit of Covid-19 lockdown restrictions	✓
Risk assessment of EU exit on current and future activities	●
Review of records management arrangements in preparation for resubmission of Records Management Plan to the National Records of Scotland	✓
Review and revise all outstanding policies that are currently beyond their published review date	●
Review entire website to ensure up to date Project begun in March 2022 for completion in 2022/23	✗
Review all privacy notices	✓

✓ Achieved
● Partially achieved
✗ Not achieved

Further detail about the risks the organisation faced during the year is provided in the Key Risks and Issues section of the Performance Overview section and in the Governance Statement. Details about the organisation's response to the s22 report is provided in the Commissioner's Statement and Governance Statement and [progress against the auditor's recommendations](#) is reported on our website.

Financial position

BACKGROUND

The Commissioner is an independent office-holder and receives all of its funding directly from the SPCB. The Commissioner operates against an annual cash-based budget that is reviewed by the SPCB and subsequently approved by the Scottish Parliament. The budget may also include access to contingency funding. The accounts are prepared on an accruals basis but the body is funded on a cash basis and management closely monitor financial performance on a cash basis.

FUNDING

The Scottish Parliament allocated a budget of £946,000 to the Commissioner for financial year 2021/22 (2020/21: £937,000). In addition, four contingency funding awards were made:

- £8,000 for internal audit services
- £24,000 for costs associated with an expansion in remit
- £72,900 for additional staffing
- £42,200 to cover payment of previously accrued pension contributions

The Commissioner earned no income in 2021/22 (2020/21: £Nil).

Total funding awarded for the year, including contingency funding, was £1,093,100 (2020/21: £1,029,500). Of the funds awarded £1,086,200 was drawn down (2020/21: £914,600).

EXPENDITURE

The accounts are prepared on an accruals basis meaning that expenses are recognised in the year in which they were incurred, rather than when the cash payment is made.

Including adjustments for accruals and prepayments, expenditure was £995,000 (2020/21: £1,026,000).

EXPENDITURE AGAINST BUDGET

Figure 35

Expenditure	Actual	Budget	Variance	
	£'000s	£'000s	£'000s	%
Staff costs	662	651	11	2%
Staff related costs	6	13	(7)	(54%)
Property	92	90	2	2%
Professional fees*	158	140	18	13%
Running costs	46	50	(4)	(8%)
Depreciation	31	-	31	-
Revenue expenditure	995	944	51	5%
Less depreciation	(31)	-	(31)	-
Capital expenditure	10	2	8	400%
Cash expenditure	974	946	28	3%

* Includes the costs of Public Appointments Advisers

Revenue expenditure is prepared on an accruals basis but the body is funded on a cash basis. The table above allows a comparison between the two.

The original budget was overspent by £28,000 (2020/21: £67,000). Contingency funding of £147,100 was awarded (2020/21: £92,500), but the full amount was not required. An analysis of spend in key areas is given below.

Professional fees were over budget by £17,700. Three issues affected expenditure:

- An additional £37,400 was required for legal advice in relation to the MSP “super complaint”.
- £3,700 was required to carry out an independent review of a significant complaint about us. The resulting report – [Investigation report on a complaint about the ESC – July 2021](#) - is available on our website.
- External audit fees will be £3,700 above budget. This covers both a general increase in fees and follow-up work relating to the recommendations set out in the [External Auditor’s Report for 2020-21](#).
- These additional costs were offset by savings of £27,100 in the PAA budget, predominantly related to a steep reduction in travel costs.

Depreciation was significant this year, applying to the case management system introduced in August 2019, a full refresh of IT hardware in October 2019 and the purchase of additional equipment in 2020 and 2021 to allow all staff to work remotely and to prepare the office for hybrid working.

Covid-19 had an impact across a range of budget headings as summarised below:

Figure 36

	2021/22 £'000s	2020/21 £'000s
Savings	21.5	31.6
Costs	(12.5)	(5.5)
Total savings	9.0	26.1

Much of the underspend related to the significant reduction in travel imposed by Covid-19 and remote working and holds lessons for the future.

A further breakdown of expenditure is given in note 6 to the financial statements.

PAYMENT OF CREDITORS

The Commissioner has committed to the CBI Prompt Payment Code for the payment of bills for goods and services received. Payments are normally made as specified in the agreed contract conditions. Where there is no contractual position or other understanding, they are treated as requiring to be paid within 30 days of receipt of the goods or services. Payment performance for 2021/22 was 99% (2020/21: 99%).

CORPORATE RESPONSIBILITY

Environmental matters

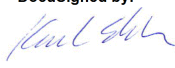
We recognise that our activities may have both positive and negative impacts in Scotland and further afield. As a result of Covid-19, the Commissioner, along with a large proportion of the working population, moved all staff to offsite, remote working. This has reduced the level of commuting to and from the office and physical attendance at external events, such as witness interviews and training events to almost nil. It has also accelerated the use of electronic communications and completed the transition to a near 'paperless' office. Our policies and procedures have always encouraged the use of public transport wherever practicable and reduced reliance on paper copies and postage. Maintaining any environmental benefits will be a key factor in developing a post Covid-19 hybrid working method.

Social, community and human rights issues

The Code of Practice for Ministerial Appointments to Public Bodies adopted in October 2013 includes a principle of "Diversity and Equality", which along with other code revisions is intended to make the appointment process more attractive and accessible to groups who are under-reflected on the boards of public bodies. The revised Code, published in March 2022 now includes an enhanced principle of Equality, Diversity and Inclusion which requires appointment practices to be inclusive for people from all walks of life and backgrounds. The Code also now includes a principle of Respect and associated provisions. These require applicants to be accorded the respect that they are due for their interest and their efforts and appointees for their contribution to public life.

All of our activities are intended to ensure the application of high levels of ethical standards to the conduct of elected members and those appointed to public office by Ministers and to ensure fairness, transparency and equality of opportunity in the appointment process. Our revised strategic plan for 2021-2024 includes a set of values that reflect our approach to our interactions with the public and our stakeholder organisations. We have made a public commitment to treat each individual who comes into contact with us with us with kindness, empathy and respect. The conclusions that we reach on whether councillors, board members or MSPs have breached the rules that are applicable to their conduct are always reached having taken cognisance of the provisions of the European Convention on Human Rights.

Authorisation

DocuSigned by:

A9D97CC82566456...

Karen Elder
Accountable Officer

Date: 9 November 2022

ACCOUNTABILITY REPORT

CORPORATE GOVERNANCE

COMMISSIONER'S REPORT

Officeholders

Caroline Anderson was appointed as Commissioner and Accountable Officer from 1 April 2019 for a period of five years. The Commissioner began a period of absence in March 2021 and resigned with effect from 30 April 2022.

To ensure operational continuity during this period, the Scottish Parliamentary Corporate Body (SPCB) appointed Ian Bruce as Acting Commissioner and Karen Elder as Accountable Officer on 20 April 2021. They will remain in post until a new Commissioner is appointed.

Senior Management Team (SMT)

The Acting Commissioner leads a senior management team which oversees the operation and development of the office. During 2021/22, this comprised:

Name	Position
Ian Bruce	Acting Ethical Standards Commissioner
Karen Elder	Head of Corporate Services and Accountable Officer
Angela Glen	Senior Investigating Officer
Melanie Stronach	Acting Public Appointments Manager (from June 2021)

Register of interests

The Commissioner, Acting Commissioner and members of the Senior Management Team (SMT) must complete a declaration of interests. No significant company directorships or other interests were held which may have conflicted with their management responsibilities and neither the Acting Commissioner nor any member of the SMT had any other related party interests which conflicted with their responsibilities.

STATEMENT OF ACCOUNTABLE OFFICER'S RESPONSIBILITIES

Under paragraph 22 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 the Commissioner must prepare annual accounts for each financial year, in accordance with any directions given by the Scottish Ministers. The Scottish Ministers have directed the Commissioner to prepare accounts in the form and on the basis set out in the Accounts Direction (Appendix 1).

The annual accounts are prepared on an accruals basis and must give a true and fair view of state of affairs of the Ethical Standards Commissioner, its income and expenditure, statement of financial position, changes in taxpayers' equity and cash flows for the financial year.

The SPCB has appointed the Head of Corporate Services as Accountable Officer, with responsibility for preparing the accounts of the Ethical Standards Commissioner and for submitting them for audit.

In preparing the accounts, the Accountable Officer is required to comply with the Financial Reporting Manual (FRoM) and has:

- observed the Accounts Direction issued by the Scottish Ministers, including the relevant accounting and disclosure requirements, and applied suitable accounting policies on a consistent basis
- made judgements and estimates on a reasonable basis
- stated whether applicable accounting standards, as set out in the FRoM, have been followed; and disclosed and explained any material departures in the accounts
- prepared the accounts on a "going concern" basis; and

The Accountable Officer confirms that so far as she is aware, there is no relevant audit information of which the Commissioner's auditors are unaware and that she has taken all the steps that she ought to have taken to make herself aware of any relevant audit information and to establish that the Commissioner's auditors are aware of that information.

The Accountable Officer confirms that this annual report and accounts taken as a whole is fair, balanced and understandable. The Accountable Officer takes personal responsibility for the annual report and accounts and the judgements required for determining that it is fair, balanced and understandable.

The full responsibilities of an Accountable Officer are set out in the [Memorandum to Accountable Officers of other Public Bodies](#).

GOVERNANCE STATEMENT

As Accountable Officer, I have responsibility for maintaining a sound system of governance and internal control that supports the Ethical Standards Commissioner (ESC) in successfully achieving its objectives, policies and aims. I am also responsible for safeguarding the public funds and assets assigned to the organisation, in accordance with the responsibilities set out in the [Memorandum to Accountable Officers for Other Public Bodies](#).

BACKGROUND

The audit for 2020/21 identified serious issues regarding the operation of this office. I, as Accountable Officer, concluded that there was no effective system of governance in operation. The Auditor General for Scotland was sufficiently concerned by the issues identified to conclude that a report under section 22 of the Public Finance and Accountability (Scotland) Act 2000 was required. Significant work has been undertaken during the year to rebuild the organisation's governance arrangements.

SYSTEM OF GOVERNANCE AND INTERNAL CONTROL

A system of governance and internal control should both ensure and demonstrate that an organisation is operating effectively, efficiently and economically. The ESC's system of governance consists of a number of elements.

The Acting Commissioner ensures that the functions of the office are fulfilled and is supported in this by an Accountable Officer.

The Acting Commissioner is further supported by the Senior Management Team (SMT), which comprises the Acting Public Appointments Manager, the Head of Corporate Services and the Senior Investigating Officer. During the year, the SMT was fully reinstated with all members meeting on a monthly basis to discuss operational and strategic matters. Its actions and decisions are recorded in minutes published on our website.

Members of the SMT and individual staff members have delegated authority to make decisions as set out in the Scheme of Delegation. A revised Scheme of Delegation relating to the operation of the office was approved by the SMT in March 2022. It was made available to all staff members and is published on our website. A review of the Schemes of Delegation for complaints handling and public appointments is scheduled for 2023.

During the year, the Acting Commissioner published a revised Strategic Plan for 2021 to 2024. The revised plan sets out the values the ESC will work to and resulted from extensive consultation with stakeholders.

The Acting Commissioner introduced a biennial business plan. As well as capturing key operational requirements, it incorporates actions flowing from the Strategic Plan and addressed early recommendations from external audit. Biennial business plans and associated progress updates are available on our website. Each function prepares an annual action plan based on the biennial plan.

The ESC operates a set of standing orders. These describe the organisation's key operating requirements. The Standing Orders will be reviewed this year.

Managing finances

The ESC is funded through the SPCB and, each year, submits an evidence-based budget bid for scrutiny and approval. The budget is based on the requirements of strategic and biennial business plans as well as projections of anticipated activity and prior year performance. The budget bid is scrutinised and approved by the SMT.

Performance against budget is analysed and reviewed on a monthly basis. Key issues are raised with the Accountable Officer, as they occur and at SMT meetings. This allows any financial concerns to be promptly identified and resolved.

The Scheme of Delegation provides clear guidelines for the ESC's financial management and is supported by a set of financial instructions.

Managing staff

A performance management system fully underpinned by the Strategic Plan, biennial business plans and annual action plans has been reintroduced. Staff members agree a series of specific objectives directly related to and designed to achieve the organisation-wide objectives outlined in these plans. As a result, staff objectives are again aligned to business plans.

As well as the performance management system, the ESC maintains a number of staff policy documents. These reflect both statutory duties to staff, as well as terms and conditions and HR-related procedures. A full suite of updated HR policies, fully reflecting ESC's values, were published in June 2021. Staff members were consulted on and informed about any revisions. This ensures that staff members are fully aware of the rights and responsibilities they have.

The ESC maintains a register of interests. All staff members and key contractors must complete a declaration of interests. No significant company directorships or other interests were held which may have conflicted with their responsibilities.

The ESC operates a whistle-blowing policy. This requires staff to first report internally with limited avenues for reporting unresolved concerns. The underlying structure of the organisation, with power concentrated in a single individual, makes it difficult for staff to find a safe route to report concerns. The policy will be reviewed in the coming year with input from the Advisory Audit Board (AAB) and internal audit.

During the 2020/21 audit, a lack of openness and transparency in the operation of the office was noted. In addition, high levels of staff turnover diverted resources from core functions, destroyed corporate memory and impeded our ability to develop and implement standard operating procedures. Work to address these issues took priority and included developing and publishing a set of core organisational values. These are incorporated into the revised Strategic Plan and into all policy development. Staff members are actively encouraged to consider them when interacting with colleagues and stakeholders. Staff members are encouraged both formally through the performance management system and informally to build strong internal and external networks. The whole team meets on a monthly basis where organisational decisions, challenges and successes are shared. Organisational information and plans are widely shared and staff are encouraged to contribute to them.

During the year, it became clear that the staffing resource available to the Commissioner was insufficient to fulfil all their statutory functions and ensure the resilience of the organisation. We conducted a full workforce planning exercise over April and May 2022. A comprehensive workforce plan and business case for additional resources was submitted to the SPCB in May and the outcome is unknown at the time of writing this report.

Further detail is available in the Commissioner's Statement.

Managing risk

The Acting Commissioner reintroduced the previous risk management system. Risk management processes were updated following a review of the systems operating in other Parliamentary office-holders and bodies with a similar structure and consultation with the AAB and employees. The revised [Risk Management Policy](#) is available on our website. Its key principles are:

- ESC will foster a culture that embeds risk management into all aspects of its business.
- Risk management should be a key feature of corporate decision-making processes to ensure that the impact of policy decisions on risk is considered each time a strategic decision is taken or a policy is approved.
- Risk management should be embedded in strategic, financial and business planning.
- Risk management policies will be clearly communicated to all staff.
- All processes and procedures should be designed to take account of, manage, treat or tolerate risk and the impact of risk, in a manner that is proportionate and affordable.
- ESC will maintain, review and update the risk register regularly.
- ESC's risk management policy and procedures will operate without prejudice to the statutory functions of the Commissioner.

All staff members are encouraged to identify risks on an ongoing basis and at key points in the business cycle. These are documented in our risk register along with any mitigating actions. The risk register is reviewed on a regular basis by the SMT, AAB and internal audit.

The key risks to the organisation are detailed in the Key Issues and Risks section of this report. In summary, the most significant risks to the organisation were identified as being:

- Override of governance systems
- High levels of staff turnover
- Loss of stakeholder confidence
- Severe disruption to our IT systems
- Additional workload due to SCS directions
- Insufficient workforce

External scrutiny

The Acting Commissioner reinstated the AAB, to provide advice on governance and financial issues. Members of the Commissioner's AAB are drawn from the independent members of the SPCB's Advisory Audit Board. The AAB met formally on three occasions during the year and otherwise provided advice and support, in particular contributing to the appointment of an internal auditor and the revision of our risk management procedures.

Following an open competition, the ESC appointed an internal auditor in March 2022. Work planned for the first year includes a review of our governance arrangements, risk management systems and our complaints investigation procedures.

External oversight of our work is provided by the SCS, the SPCB and Committees of the Scottish Parliament. Extensive work has been undertaken to rebuild relationships with these bodies and a range of other stakeholders. This was achieved by ensuring that all parties were aware of the changes the ESC was undergoing and the values we had adopted.

We have actively sought further external oversight of our working arrangements. For example, a full review of our records management procedures was undertaken. As a result, a revised Records Management Plan was approved in March 2022 and submitted to the Keeper of the Records of Scotland for assessment.

FRAUD, BRIBERY AND CORRUPTION

The ESC requires all staff at all times to act honestly and with integrity and to safeguard the public resources for which they are responsible. The Acting Commissioner will not accept any level of fraud, bribery or corruption; consequently, any case will be thoroughly investigated and dealt with appropriately. The ESC is committed to ensuring that opportunities for fraud, bribery and corruption are reduced to the lowest possible level of risk.

The ESC's policies and procedures on fraud, corruption and bribery include the anti-fraud policy, code of conduct, terms and conditions for the supply of goods and services and broader financial governance arrangements.

The ESC's standard procedure is to declare any fraud, whistleblowing or control failure incidents to the AAB and this forms part of the annual assurance process.

In 2021/22 and 2020/21 there were no instances of fraud or bribery identified or detected.

INFORMATION SECURITY

Sound management of the information we hold is essential to our business.

The ESC maintains its Cyber Essentials Plus accreditation ensuring that cyber security arrangements are assessed externally. The ESC also subscribed to the National Cyber Security Centre's early warning systems which flags security gaps and potential threats.

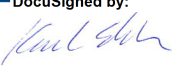
There were no incidents of personal data loss which required to be notified to the Information Commissioner.

EFFECTIVENESS OF GOVERNANCE ARRANGEMENTS

The system of internal control is designed to manage rather than eliminate the risk of failure to implement policies and achieve aims, and objectives; therefore, it can only provide reasonable and not absolute assurance of effectiveness.

I am satisfied that an effective system of internal control for ensuring that finances are managed appropriately was in place during 2021/22. I am satisfied that overall an effective system for ensuring appropriate governance of the organisation was reinstated during the year. There is further work required to create a fully robust system of governance with plans to achieve this in place and fully documented. The increase to our staff complement, approved by the SPCB in October 2022, will make a significant contribution to this ongoing work.

Authorisation

DocuSigned by:

A9D97CC82566456...

Karen Elder
Accountable Officer

Date: 9 November 2022

REMUNERATION AND STAFF REPORTS

The sections marked (Audited) in this Remuneration and Staff Report are subject to external audit. The other sections of the Remuneration and Staff Report were reviewed by the external auditors to ensure they were consistent with the financial statements.

REMUNERATION REPORT

The Commissioner for Ethical Standards in Public Life in Scotland is appointed by the SPCB with the agreement of the Scottish Parliament. The Commissioner's remuneration is set by the SPCB.

Members of the Senior Management Team are employees. Their terms of employment are set by the Commissioner, are analogous with those of Scottish Parliamentary staff and, in line with the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, are approved by the SPCB.

Single total figure of remuneration (Audited)

Figure 37

Remuneration	2021/22	2020/21
	£'000	£'000
Commissioner³		
Salary ¹	50-54	75-79
Pension benefits ²	20	21 ²
Total	70-74	95-99
Director of Investigations and Solicitor to the Commissioner⁴		
Salary ¹	-	45-49
Pension benefits ²	-	19
Total	-	65-69
Acting Ethical Standards Commissioner⁵ Public Appointments Manager in 2020/21		
Salary ¹	70-74	55-59
Pension benefits ²	20	27
Total	90-94	80-84
Head of Corporate Services⁵		
Salary ¹	50-54	45-49
Pension benefits ²	29	27
Total	80-84	70-74
Senior Investigating Officer⁶		
Salary ¹	45-49	15-19
Pension benefits ²	20	8
Total	65-69	25-29

Remuneration	2021/22	2020/21
Acting Public Appointments Manager⁷		
Salary ¹	35-39	-
Pension benefits ²	16	-
Total	50-54	-

Notes

1. Salary covers both pensionable and non-pensionable amounts. It includes gross salary and, if awarded, overtime, recruitment and retention allowances, taxable allowances and any ex-gratia payments. It does not include employer's national insurance or pension contributions.

The SPCB awarded office-holders a non-pensionable ex-gratia payment of £500. Similarly, and in line with Parliamentary terms, the Acting Commissioner awarded a non-pensionable ex-gratia payment of £250 to all staff. These payments are included in the 'Salary' amounts shown above.

The SPCB does not award performance pay or bonuses to office-holders, nor does the Commissioner operate a performance pay or bonus scheme for staff members. No benefits in kind were awarded to the Commissioner or members of the SMT.

2. The value of pension benefits accrued during the year is calculated as the real increase in pensions and applying the HMRC methodology multiplier of 20 plus the real increase in any lump sum. The real increases exclude increases due to inflation (3.1 per cent) and are net of contributions made by the individual.
3. The Commissioner began a period of absence in March 2021. Salary paid over in 2021/22 was in the band £50k - £54k. The full year equivalent salary would sit in the band £75k - £79k.

The Commissioner's post is pensionable. As allowed for under the terms of her appointment, the Commissioner decided to have her pension contributions paid into an approved private pension scheme of her choice. The employer contribution rate for the period 2019/20 to 2020/21 was 27.9%. All employer contributions, including those accrued for 2019/20 and 2020/21 were paid over during the year. Employer contributions of £20,000 were made for 2021/22 (2020/21: £21,400 and 2019/20: £20,800).

4. The Director of Investigations and Solicitor to the Commissioner was employed until November 2020. The full year equivalent remuneration for 2020/21 was £55k - £59k.
5. The Acting Commissioner and the Accountable Officer received non-pensionable allowances in the range £15k - £20k and £0 - £5k respectively for undertaking their additional responsibilities. These allowances are included in the 'Salary' amount shown above.
6. The Senior Investigating Officer (SIO) was appointed in November 2020. Prior to this the SIO held another role in the organisation. The salary details for 2020/21 above reflect the period from November 2020 onwards. The full year equivalent remuneration was £40k - £44k. Pension benefits reflect the full year.
7. The Acting Public Appointments Manager (PAM) was appointed in June 2021. Prior to this the APAM held another role in the organisation. The salary details for 2021/22 above reflect the period from June 2021 onwards. The full year equivalent remuneration is £45k - £49k. Pension benefits reflect the full year.

Pension benefits (Audited)

Figure 38

Pension benefits	Accrued pension at pension age as at 31/03/2022 and related lump sum	Real increase in pension and related lump sum at pension age	CETV at 31 March 2022	CETV at 31 March 2021	Real increase in CETV funded by the employer
	£'000s	£'000s	£'000s	£'000s	£'000s
Commissioner	See note 3 above				
Director of Investigations and Solicitor to the Commissioner ³	-	-	-	19	-
Acting Ethical Standards Commissioner Public Appointments Manager in 2020/21	15 - 20	0 - 2.5	299	271	12
Head of Corporate Services	15 - 20	0 - 2.5	263	230	21
Senior Investigating Officer ⁵	0 - 5	0 - 2.5	19	10	6
Acting Public Appointments Manager ⁶	0 - 5	0 - 2.5	55	44	8

Notes

1. A CETV is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme or arrangement to secure pension benefits in another pension scheme or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued because of their total membership of the scheme including any benefit transferred from another scheme and not just their service in a senior capacity to which the disclosure applies. The real increase in CETV reflects the increase in CETV effectively funded by the employer. It does not include the increase in accrued pension benefits due to inflation, contributions paid by the employee and uses common market valuation factors for the start and end of the period.

Fair Pay Disclosure (Audited)

Reporting bodies are required to disclose the relationship between the remuneration of the highest-paid director in their organisation, that being the Commissioner, and the lower quartile, median and upper quartile remuneration of the organisation's workforce.

Total remuneration includes salary, non-consolidated performance related pay and benefits-in-kind. It does not include severance payments, employer pension contributions or the cash equivalent transfer value (CETV) of pensions. It is based on annualised, full-time equivalent remuneration as at the reporting period date.

Figure 39

	2021/22	2020/21
Remuneration banding for highest paid individual	£75,000 - £80,000	£75,000 - £80,000
Percentage change from previous financial year for highest paid individual	No change	+3%
Average percentage change from previous financial year for employees	+5.1%	-17.6%
Lower quartile remuneration	£30,679	£27,133
Lower quartile ratio	2.5	2.9
Median remuneration	£38,573	£40,091
Median ratio	2.0	1.9
Upper quartile remuneration	£47,729	£46,548
Upper quartile ratio	1.6	1.7
Remuneration range	£20,000 - £75,000 to £80,000	£20,000 - £60,000 to £80,000

The Commissioner's salary and allowances are unchanged therefore any variations are due to changes in employee salary and allowances. These can be attributed to:

- the number of employees at year end increasing by 33.3% or three staff members
- staff members moving up through their paycales
- allowances paid to three employees for taking on additional responsibilities during the Commissioner's period of absence. In particular, this explains the increase in the remuneration range covering employees.

During the 2021/22 accounting period, the Commissioner maintained Living Wage Accreditation status. In addition, all employees hold permanent appointments which are open-ended until they retire. Early termination, other than through misconduct, would result in the individual receiving compensation.

STAFF REPORT

Staff numbers

The number of full time equivalent (FTE) persons employed by the Commissioner at the end of the reporting year was as follows:

Figure 40

	2021/22	2020/21
	FTE	FTE
Commissioner	1.0	1.0
Acting Commissioner	1.0	-
Senior Management Team	3.0	3.0
Employees	7.6	5.6
Totals	12.6	9.6

The number of persons employed by the Commissioner at the end of the reporting year was as follows:

Figure 41

	2021/22		2020/21	
	Female	Male	Female	Male
Commissioner	1	-	1	-
Acting Commissioner	-	1	-	-
Senior Management Team	3	-	2	1
Employees	7	1	6	-
Totals	11	2	9	1

As at the end of the reporting period, all staff members were employed on a permanent contract (2020/21: all permanent contracts). The organisation was carrying one vacancy at the end of the reporting year as a result of a staff member moving up to cover the Commissioner's absence and the resultant vacancy not being filled due to uncertainty over the Commissioner's return.

Staff costs (Audited)

Figure 42

	2021/22			2020/21		
	Total £'000s	Commissioner £'000s	Employees £'000s	Total £'000s	Commissioner £'000s	Employees £'000s
Salaries	481	52	429	456	82	374
Social security costs	52	7	45	51	10	41
Pension costs	129	20	109	120	21	99
Sub totals	662	79	583	627	113	514
Severance costs				76	-	76
Totals	662	79	583	703	113	590

Salaries include a provision covering the value of outstanding leave (the leave accrual). Staff costs, excluding severance costs, increased by 5.6%. Costs in 2020/21 were lower than anticipated as the organisation was carrying a number of staff vacancies.

Severance payments

The Commissioner undertook a two-phase restructure of the organisation in July 2019 and July 2020. As a result of the restructure, a number of staff members left under voluntary severance terms. No exit packages were required in 2021/22.

Figure 43

Exit Packages	2021/22			2020/21		
	Number of compulsory redundancies	Number of other departures agreed	Total number of exit packages by cost band	Number of compulsory redundancies	Number of other departures agreed	Total number of exit packages by cost band
£25,000 - £50,000					2	2
Total no. of exit packages	-	-	-	-	2	2
Total cost (£'000s)	-	-	-	-	76	76

Staff pension arrangements

Employee pension benefits are provided through the Civil Service pension arrangements.

The Civil Service pension arrangements are unfunded multi-employer defined benefit schemes in which the Commissioner's office is unable to identify its share of the underlying assets and liabilities. The scheme actuary valued the Civil Service pension arrangements as at 31 March 2016. You can find details on the [Scheme Valuations page of the Civil Service Pensions website](#).

During 2021/22, the Commissioner paid employer's contributions of £109,400 to the Civil Service Pension arrangements (2020/21: £99,100) at one of four rates in the range 26.6% to 30.3% (2020/21: 26.6% to 30.3%) of pensionable earnings, based on salary bands.

The Scheme Actuary reviews employer contributions usually every four years following a full scheme valuation.

The contribution rates are set to meet the cost of the benefits accruing during 2021/22 to be paid when the member retires and not the benefits paid during this period to existing pensioners

Outstanding scheme contributions at 31 March 2022 amounted to £12,709 (2020/21: £9,567). Employer contributions for 2022/23 for the Commissioner and employees is budgeted to be £158,000 (2021/22: £129,000).

No persons (2020/21: No persons) retired early on ill-health grounds; the total additional accrued pension liabilities in the year amounted to nil (2020/21: Nil).

Average sickness absence

The average sickness absence per person was as follows:

Figure 44

	2021/22	2020/21
	Days	Days
Commissioner and employees	21.3	3.3

The average sickness absence sharply increased during the year as a result of an extended period of leave. The underlying trend continues to show a decrease and falls well below the organisation's ten-year average of 4.3 days.

Staff turnover

The figures include any agency staff and employees on fixed term contracts.

Figure 45

	2021/22	2020/21	2019/20	2018/19
Employees at the beginning of the period	9	11	12	14
Employees at the end of the period	12	9	11	12
Average employees during the period	11	10	11.5	13
Leavers	1	6	8	6
Staff turnover	9%	60%	70%	46%

Staff turnover had remained high for a number of years, but stabilised during 2021/22. The Acting Commissioner's revised Strategic Plan 2021-2024 includes a specific strategic objective to address this issue.

Diversity, equality and inclusion

The Commissioner supports the principle of equal opportunities in employment and operating practices.

It is the Commissioner's policy to treat all job applicants and employees equitably regardless of age, disability, sex, gender reassignment status, marriage or civil partnership status, maternity or pregnancy, race, religion or belief or sexual orientation. As part of standard recruitment practice, applications are encouraged from all people who share protected characteristics that are currently not reflected in our workforce.

The Commissioner is committed to recognising and valuing what everyone has to offer. We are aware of our equality duties under the Equality Act 2010. In our policy development and our decision making we consider the implications for all staff in line with the Equality Act.

Employee participation

During the 2020/21 audit, our auditors flagged a number of issues regarding openness and transparency within the organisation.

The Acting Commissioner consulted on and published a revised Strategic Plan as a matter of urgency and has incorporated ongoing actions designed to address these issues into our biennial business plans. A new suite of HR policies has been developed and implemented, following staff consultation. The minutes of all Senior Management Team meetings are now circulated to staff and published. Full staff meetings have been established on a monthly basis, to supplement those for individual teams. Staff surveys began in July 2021 and will continue into the future.


Learning and development

Over the years, the organisation has developed a comprehensive annual performance review process, where individuals are encouraged and supported to plan for their own development needs and career plans. During 2021/22, the Acting Commissioner re-instated this performance management system to ensure that staff members receive informal and formal external and internal training. During 2021/22, 10 external training sessions were provided across a range of topics from Health and Safety to management skills.

Health, safety and wellbeing

The Commissioner is committed to promoting the health, safety and wellbeing of all staff, and to ensuring that our working environment supports this. During 2021/22, the Acting Commissioner ensured that staff worked in line with Scottish Government Covid-19 guidance. For the most part this resulted in remote working with the introduction of hybrid working when appropriate. Appropriate equipment and furniture have been provided and all staff have completed Health and Safety assessments of their remote working arrangements. The Commissioner recognised that staff wellbeing would be affected as a result of the pandemic and its associated restrictions and encouraged more flexible working. A remote working policy has been developed. The Acting Commissioner has obtained a confidential counselling support service for all staff that wish to access it.

Authorisation

DocuSigned by:

A9D97CC82566456...

Karen Elder
Accountable Officer

Date: 9 November 2022

AUDIT REPORT

THE AUDIT PROCESS

Auditor


The accounts are audited by the Auditor General for Scotland in accordance with section 22(1) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010. The Auditor General appointed Deloitte LLP as external auditors for a period of six years starting with the year to March 2017.

Auditor's Fees

The external auditor's remuneration for the year was £15,800 (2020/21: £30,900). External audit received no fees in relation to non-audit work.

I authorised these financial statements for issue on 9 November 2022.

Authorisation

DocuSigned by:

A9D97CC82566456...

Karen Elder
Accountable Officer

Date: 9 November 2022

INDEPENDENT AUDITOR'S REPORT

to the Commissioner for Ethical Standards in Public Life in Scotland, the Auditor General for Scotland and the Scottish Parliament

Reporting on the audit of the financial statements

Opinion on financial statements

We have audited the financial statements in the annual report and accounts of Commissioner for Ethical Standards in Public Life in Scotland for the year ended 31 March 2022 under the Scottish Parliamentary Commissions and Commissioners etc. Act 2010. The financial statements comprise the Statement of Comprehensive Net Expenditure, the Statement of Financial Position, the Statement of Cash Flows, the Statement of Changes in Taxpayers' Equity and notes to the financial statements, including significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and UK adopted international accounting standards, as interpreted and adapted by the 2021/22 Government Financial Reporting Manual (the 2021/22 FReM).

In our opinion the accompanying financial statements:

- give a true and fair view in accordance with the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and directions made thereunder by the Scottish Ministers of the state of the body's affairs as at 31 March 2022 and of its net expenditure for the year then ended;
- have been properly prepared in accordance with UK adopted international accounting standards, as interpreted and adapted by the 2021/22 FReM; and
- have been prepared in accordance with the requirements of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and directions made thereunder by the Scottish Ministers.

Basis for opinion

We conducted our audit in accordance with applicable law and International Standards on Auditing (UK) (ISAs (UK)), as required by the [Code of Audit Practice](#) approved by the Auditor General for Scotland. Our responsibilities under those standards are further described in the auditor's responsibilities for the audit of the financial statements section of our report. We were appointed by the Auditor General on 31 May 2016. The period of total uninterrupted appointment is 6 years. We are independent of the body in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK including the Financial Reporting Council's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. Non-audit services prohibited by the Ethical Standard were not provided to the body. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern basis of accounting

We have concluded that the use of the going concern basis of accounting in the preparation of the financial statements is appropriate.

Based on the work we have performed, we have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the body's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from when the financial statements are authorised for issue.

These conclusions are not intended to, nor do they, provide assurance on the body's current or future financial sustainability. However, we report on the body's arrangements for financial sustainability in a separate Annual Audit Report available from the [Audit Scotland website](#).

Risks of material misstatement

We report in our separate Annual Audit Report the most significant assessed risks of material misstatement that we identified and our judgements thereon.

Responsibilities of the Accountable Officer for the financial statements

As explained more fully in the Statement of Accountable Officer's Responsibilities, the Accountable Officer is responsible for the preparation of financial statements that give a true and fair view in accordance with the financial reporting framework, and for such internal control as the Accountable Officer determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Accountable Officer is responsible for assessing the body's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless there is an intention to discontinue the body's operations.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the decisions of users taken on the basis of these financial statements.

A further description of the auditor's responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website www.frc.org.uk/auditorsresponsibilities. This description forms part of our auditor's report.

Extent to which the audit was considered capable of detecting irregularities, including fraud

Irregularities, including fraud, are instances of non-compliance with laws and regulations. We design procedures in line with our responsibilities outlined above to detect material misstatements in respect of irregularities, including fraud. Procedures include:

- considering the nature of the body's control environment and reviewing the body's documentation of their policies and procedures relating to fraud and compliance with laws and regulations. We also enquired with management, internal audit and

those charged with governance about their own identification and assessment of the risks of irregularities;

- obtaining an understanding of the applicable legal and regulatory framework and how the body is complying with that framework;
- identifying which laws and regulations are significant in the context of the body;
- assessing the susceptibility of the financial statements to material misstatement, including how fraud might occur; and
- considering whether the audit team collectively has the appropriate competence and capabilities to identify or recognise non-compliance with laws and regulations.

We obtained an understanding of the legal and regulatory framework that the body operates in, and identified the key laws and regulations that:

- had a direct effect on the determination of material amounts and disclosures in the financial statements. This included the Scottish Parliamentary Commissions and Commissioners etc. Act 2010.
- do not have a direct effect on the financial statements but compliance with which may be fundamental to the body's ability to operate or to avoid a material penalty. These included the Data Protection Act 2018 and relevant employment legislation.

We discussed among the audit engagement team regarding the opportunities and incentives that may exist within the organisation for fraud and how and where fraud might occur in the financial statements.

As a result of the performing the above, we identified the greatest potential for fraud was in relation to the requirement to operate within the expenditure resource limits set by the Scottish Parliamentary Corporate Body. The risk is that the expenditure in relation to year-end transactions may be subject to potential manipulation in an attempt to align with its tolerance target or achieve a breakeven position. In response to this risk, we obtained independent confirmation of the resource limits allocated by the Scottish Parliamentary Corporate Body and, tested a sample of accruals, prepayments and invoices received around the year-end to assess whether they have been recorded in the correct period.

In common with all audits under ISAs (UK), we are also required to perform specific procedures to respond to the risk of management override. In addressing the risk of fraud through management override of controls, we tested the appropriateness of journal entries and other adjustments; assessed whether the judgements made in making accounting estimates are indicative of a potential bias; and evaluated the business rationale of any significant transactions that are unusual or outside the normal course of business.

In addition to the above, our procedures to respond to the risks identified included the following:

- reviewing financial statement disclosures by testing to supporting documentation to assess compliance with provisions of relevant laws and regulations described as having a direct effect on the financial statements;
- performing analytical procedures to identify any unusual or unexpected relationships that may indicate risks of material misstatement due to fraud;
- enquiring of management, internal audit and external legal counsel concerning actual and potential litigation and claims, and instances of non-compliance with laws and regulations; and

- reading minutes of meetings of those charged with governance and reviewing internal audit reports.

The extent to which our procedures are capable of detecting irregularities, including fraud, is affected by the inherent difficulty in detecting irregularities, the effectiveness of the body's controls, and the nature, timing and extent of the audit procedures performed.

Irregularities that result from fraud are inherently more difficult to detect than irregularities that result from error as fraud may involve collusion, intentional omissions, misrepresentations, or the override of internal control. The capability of the audit to detect fraud and other irregularities depends on factors such as the skilfulness of the perpetrator, the frequency and extent of manipulation, the degree of collusion involved, the relative size of individual amounts manipulated, and the seniority of those individuals involved.

Reporting on regularity of expenditure and income

Opinion on regularity

In our opinion in all material respects the expenditure and income in the financial statements were incurred or applied in accordance with any applicable enactments and guidance issued by the Scottish Ministers.

Responsibilities for regularity

The Accountable Officer is responsible for ensuring the regularity of expenditure and income. In addition to our responsibilities in respect of irregularities explained in the audit of the financial statements section of our report, we are responsible for expressing an opinion on the regularity of expenditure and income in accordance with the Public Finance and Accountability (Scotland) Act 2000.

Reporting on other requirements

Opinion prescribed by the Auditor General for Scotland on audited part of the Remuneration and Staff Report

We have audited the parts of the Remuneration and Staff Report described as audited. In our opinion, the audited part of the Remuneration and Staff Report has been properly prepared in accordance with the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and directions made thereunder by the Scottish Ministers.

Other information

The Accountable Officer is responsible for the other information in the annual report and accounts. The other information comprises the Performance Report and the Accountability Report excluding the audited part of the Remuneration and Staff Report.

Our responsibility is to read all the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the course of the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether this gives rise to a material misstatement in the financial statements themselves. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

Our opinion on the financial statements does not cover the other information and we do not express any form of assurance conclusion thereon except on the Performance Report and Governance Statement to the extent explicitly stated in the following opinions prescribed by the Auditor General for Scotland.

Opinions prescribed by the Auditor General for Scotland on Performance Report and Governance Statement

In our opinion, based on the work undertaken in the course of the audit:

- the information given in the Performance Report for the financial year for which the financial statements are prepared is consistent with the financial statements and that report has been prepared in accordance with the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and directions made thereunder by the Scottish Ministers; and
- the information given in the Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements and that report has been prepared in accordance with the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and directions made thereunder by the Scottish Ministers.

Matters on which we are required to report by exception

We are required by the Auditor General for Scotland to report to you if, in our opinion:

- adequate accounting records have not been kept; or
- the financial statements and the audited part of the Remuneration and Staff Report are not in agreement with the accounting records; or
- we have not received all the information and explanations we require for our audit.

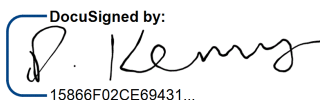
We have nothing to report in respect of these matters.

Conclusions on wider scope responsibilities

In addition to our responsibilities for the annual report and accounts, our conclusions on the wider scope responsibilities specified in the Code of Audit Practice are set out in our Annual Audit Report.

Use of our report

This report is made solely to the parties to whom it is addressed in accordance with the Public Finance and Accountability (Scotland) Act 2000 and for no other purpose. In accordance with paragraph 120 of the Code of Audit Practice, we do not undertake to have responsibilities to members or officers, in their individual capacities, or to third parties.

DocuSigned by:

15866F02CE69431...

Pat Kenny, CPFA (for and on behalf of Deloitte LLP)
110 Queen Street
Glasgow
G1 3BX
United Kingdom

9 November 2022

FINANCIAL STATEMENTS

STATEMENT OF COMPREHENSIVE NET EXPENDITURE FOR THE YEAR ENDED 31 MARCH 2022

	Notes	2022 £'000	2021 £'000
Staff costs	6	662	703
Other administration costs	6	302	292
Depreciation	6	31	31
Net administration costs		995	1,026
Comprehensive net expenditure		995	1,026

All amounts relate to continuing activities. There have been no gains or losses other than those recognised in the Statement of Comprehensive Net Expenditure.

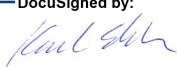
The accompanying notes on pages 70 to 79 form an integral part of these financial statements.

**STATEMENT OF FINANCIAL POSITION
AS AT 31 MARCH 2022**

	Notes	2022 £'000	2021 £'000
Non-current Assets			
Tangible assets	2.1	32	33
Intangible assets	2.2	7	28
Total non-current Assets		39	61
Current assets			
Trade and other receivables	3	14	14
Cash and cash equivalents	4	148	111
Total current assets		162	125
TOTAL ASSETS		201	186
Current liabilities			
Trade and other payables	5	(120)	(196)
Total current liabilities		(120)	(196)
TOTAL ASSETS LESS CURRENT LIABILITIES		81	(10)
Taxpayers' Equity			
General Fund		81	(10)
Total taxpayers' equity		81	(10)

The accompanying notes on pages 70 to 79 form an integral part of these financial statements.

Authorisation

DocuSigned by:

A9D97CC82566456...

Karen Elder
Accountable Officer

Date: 9 November 2022

STATEMENT OF CASH FLOW
FOR YEAR ENDED 31 MARCH 2022

	Notes	2022 £'000	2021 £'000
Cash flows from operating activities			
Net administration costs		(995)	(1,026)
Adjustment for non-cash items:			
Depreciation	6	31	31
Decrease/(Increase) in Trade and Other Receivables	3	-	2
(Decrease)/Increase in Trade and Other Payables	5	(75)	89
Net cash outflow from operating activities		(1,039)	(904)
Cash flows from investing activities			
Purchase of Tangible Assets	2.1	(10)	(9)
Purchase of Intangible Assets	2.2	-	-
Net cash outflow from investing activities		(10)	(9)
Cash flows from financing activities			
From the Scottish Parliamentary Corporate Body (SPCB)		1,086	915
Net financing		1,086	915
Net increase in cash and cash equivalents in the period		37	2
Cash and cash equivalents at the beginning of the period	4	111	109
Cash and cash equivalents at end of the period	4	148	111

STATEMENT OF CHANGES IN TAXPAYERS' EQUITY
FOR YEAR ENDED 31 MARCH 2022

	General Fund 2022 £'000	General Fund 2021 £'000
Balance at 1 April	(10)	101
Comprehensive net expenditure for the year	(995)	(1,026)
Funding from the SPCB	1,086	915
Balance at 31 March	81	(10)

NOTES TO THE FINANCIAL STATEMENTS

1 ACCOUNTING POLICIES

These financial statements have been prepared in accordance with the *Government Financial Reporting Manual (FReM)* in compliance with the Accounts Direction issued by Scottish Ministers. The accounting policies contained in the FReM apply International Financial Reporting Standards (IFRS) as adapted or interpreted for the public sector context. Where the FReM permits a choice of accounting policy, the accounting policy which is judged to be most appropriate to the particular circumstances of the Commissioner for the purpose of giving a true and fair view has been selected. The particular policies adopted by the Commissioner are described below. They have been applied consistently in dealing with items that are considered material to the accounts.

1.1 Accounting Convention

These accounts have been prepared under the historical cost convention. The accounts are prepared on an accruals basis meaning that expenses are recognised in the year in which they were incurred, rather than when the cash payment is made.

1.2 Critical Judgements in Applying Accounting Policies

In applying the accounting policies set out in these Notes, the Commissioner has had to make judgements about financial transactions or those involving uncertainty about future events. The critical judgement made in the financial statements is that the organisation will continue as a going concern and will be appropriately funded by the SPCB.

Pension benefits are provided through the Civil Service pension arrangements. The Civil Service pension arrangements are unfunded multi-employer defined benefit schemes with benefits underwritten by the Government. As a result, the Commissioner's office is unable to identify its share of the underlying assets and liabilities and it is, therefore, accounted for as a defined contribution scheme. No liability is shown in the Statement of Financial Position.

1.3 Key Sources of Estimation Uncertainty

The financial statements contain estimated figures that are based on assumptions about the future or that are otherwise uncertain. These estimates relate to the value of tangible and intangible assets, accruals and property leases. Estimates are made taking account of historical experience, current trends and other relevant factors but cannot be determined with certainty. Actual results could be different from the assumptions and estimates but are unlikely to be material. The estimation techniques used for Tangible Assets and Intangible Assets are given in notes 1.4 and 1.5 respectively. Estimates for accruals are made based on committed operational expenditure using invoices or purchase orders. Estimates for the property lease are based on annual agreements with an inflationary uplift where future years apply.

1.4 Tangible Assets

1.4.1 Capitalisation

Purchases of assets, including grouped IT equipment, for a value exceeding £1,000 inclusive of irrecoverable VAT are treated as capital with the exception of land and buildings where the threshold is set at £10,000.

1.4.2 Valuation

As appropriate, non-current assets are valued at depreciated historical cost (DHC) as a proxy for fair value.

1.4.3 Depreciation

Depreciation is provided on all tangible non-current assets at rates calculated to write off the cost or valuation in equal instalments over the remaining estimated useful life of the asset.

1.4.4 Estimated useful life of assets

The estimated useful life of assets are as follows:

Fixtures, Fittings & Equipment	5 years
IT Equipment	5 years

1.5 Intangible Assets

Software and licences are capitalised as intangible non-current assets and amortised on a straight-line basis over the expected life of the asset (3 years).

1.6 Funding

Funding received from the SPCB is credited directly to the general fund in the year to which it relates.

1.7 Cash and cash equivalents

Cash and cash equivalents includes cash in hand and deposits held at call in a single bank account.

1.8 Leases

The Commissioner holds no finance leases. Costs in respect of operating leases are charged to the Statement of Comprehensive Net Expenditure on a straight-line basis over the life of the lease. Details of operating leases are given in note 7.

1.9 Value Added Tax

The Commissioner is not VAT registered. All amounts are recorded inclusive of VAT.

1.10 Adoption of New and Revised Standards

- Standards, amendments and interpretations effective in the current year

In the current year, the Commissioner has applied a number of amendments to IFRS Standards and Interpretations that are effective for an annual period that begins on or after 1 January 2021. Their adoption has not had any material impact on the disclosures or on the amounts reported in these financial statements:

- **Amendments to IAS 39, IFRS 4, IFRS 7 and IFRS 9:** Interest Rate Benchmark Reform (Phase 2).
- **Amendments to IFRS 4:** Insurance contracts – deferral of IFRS 9
- **Covid-19 Related Rent Concessions beyond 30 June 2021:** (Amendment to IFRS 16)

- Standards, amendments and interpretations early adopted this year

There are no new standards, amendments or interpretations early adopted this year.

- Standards, amendments and interpretations issued but not adopted this year

At the date of authorisation of these financial statements, the Commissioner has not applied the following new and revised IFRS Standards that have been issued but are not yet effective:

- **IFRS 16:** Leases. HM Treasury have agreed to defer implementation until 1 April 2022.
- **IFRS 17:** Insurance Contracts. Applicable for periods beginning on or after 1 January 2023.
- **Amendment to IAS 1:** Classification of Liabilities as Current or Non-Current. Applicable for periods beginning on or after 1 January 2023.
- **Amendment to IAS 1:** Disclosure of Accounting Policies. Applicable for periods beginning on or after 1 January 2023.
- **Amendment to IAS 8:** Definition of Accounting Estimates. Applicable for periods beginning on or after 1 January 2023.
- **Amendments to IAS 16:** Property, Plant and Equipment proceeds before intended use. Applicable for periods beginning on or after 1 January 2022.
- **Amendments to IAS 37:** Onerous Contracts, cost of fulfilling a contract. Applicable for periods beginning on or after 1 January 2022.
- Annual Improvements to IFRS Standards 2018-2020 Cycle. Applicable for periods beginning on or after 1 January 2022.

The Commissioner does not expect that the adoption of the Standards listed above will have a material impact on the financial statements in future periods.

2 NON CURRENT ASSETS

2.1 Tangible Assets

2021/22	Fixtures, Fittings & Equipment	IT Equipment	Total
	£'000	£'000	£'000
Cost			
At 1 April 2021	3	53	56
Additions	-	10	10
At 31 March 2022	3	63	66
Depreciation			
At 1 April 2021	3	20	23
Charge for Year	-	11	11
At 31 March 2022	3	31	34
Net Book Value at 31 March 2022	-	32	32
Net Book Value at 31 March 2021	-	33	33

The Commissioner purchased £9,744 of additional assets in 2021/22 (2020/21: £8,525). These assets consisted of laptops and sundry IT equipment.

2.1 Tangible Assets contd

2020/21	Fixtures, Fittings & Equipment £'000	IT Equipment £'000	Total £'000
Cost			
At 1 April 2020	3	44	47
Additions	-	9	9
At 31 March 2021	3	53	56
Depreciation			
At 1 April 2020	3	9	12
Charge for Year	-	11	11
At 31 March 2021	3	20	23
Net Book Value at 31 March 2021	-	33	33
Net Book Value at 31 March 2020	-	35	35

The Commissioner purchased £8,525 of additional assets in 2020/21 (2019/20: £35,197). These assets consisted of laptops and sundry IT equipment to allow staff to follow Covid-19 regulations and work remotely.

2.2 Intangible Assets

2021/22	Software £'000	Total £'000
Cost		
At 1 April 2021	62	62
At 31 March 2022	62	62
Amortisation		
At 1 April 2021	34	34
Charge for Year	21	21
At 31 March 2022	55	55
Net Book Value at 31 March 2022	7	7
Net Book Value at 31 March 2021	28	28

The Commissioner did not purchase any intangible assets in 2021/22 (2020/21: Nil).

2020/21	Software £'000	Total £'000
Cost		
At 1 April 2020	62	62
Additions	-	-
At 31 March 2021	62	62
Amortisation		
At 1 April 2020	14	14
Charge for Year	20	20
At 31 March 2021	34	34
Net Book Value at 31 March 2021	28	28
Net Book Value at 31 March 2020	48	48

3 TRADE AND OTHER RECEIVABLES

	2021/22 £'000	2020/21 £'000
Prepayments	14	14
	14	14

4 CASH AND CASH EQUIVALENTS

	2021/22 £'000	2020/21 £'000
Balance at 1 April	111	109
Net Change in cash and cash equivalent balances	37	2
Balance at 31 March	148	111
Cash Held at Commercial Banks	148	111

5 TRADE AND OTHER PAYABLES

	2021/22 £'000	2020/21 £'000
Trade and other payables	34	69
PAYE and National Insurance	13	10
Pension Contributions	13	10
Accruals	60	107
	120	196

6 EXPENDITURE BREAKDOWN

	2021/22 £'000	2020/21 £'000
Staff Costs		
Commissioner	79	113
Acting Commissioner	98	-
Senior Management Team	208	212
Other Staff	277	378
	662	703
Other Administration Costs		
Auditor & financial advisers	16	31
IT	29	33
Legal advisers	44	18
Office costs	15	14
Other professional fees	4	-
PAA costs	94	103
Printing	2	3
Property	92	89
Training & recruitment	6	1
	302	292
Depreciation	31	31
	995	1,026

Staff costs include salary as well as employers' national insurance and pension contributions.

Further analysis of staff costs is located in the Staff Report on page 52.

The £16,234 for Auditor & financial advisers includes £15,784 for external auditor's remuneration. The balance of £450 covers accounting services provided by a third party. During the year, the Acting Commissioner did not purchase any non-audit services from its auditor.

During the financial year, £10,000 was used to purchase non-current assets as detailed in note 2 to the financial statements (2020/21: £9,000). These assets consisted of laptops and sundry IT equipment.

7 LEASING COMMITMENTS

The Scottish Legal Aid Board (SLAB) provides the Commissioner with office accommodation and associated services under a Memorandum of Terms of Occupation (MoTO).

	Land & Buildings	
	<u>As at 31</u> <u>March 2022</u> £'000	<u>As at 31</u> <u>March 2021</u> £'000
Operating leases which expire:		
Within one year	95	91
One to five years	-	-
	95	91

Accommodation fees are recharged at cost as agreed each year. The actual cost in 2021/22 was £91,300 (2020/21: £89,300). The increase reflects rises in utility costs and cleaning charges.

A new MoTO ran from 1 April 2021 to 31 March 2022. Thereafter, the MoTO may be extended from year to year until ended by either party giving six months' notice. It is anticipated this arrangement will continue until 31 March 2025.

The MoTO has been extended until 31 March 2023 at an estimated cost of £95,000. SLAB have highlighted that fees may need to be revisited depending on utility costs.

8 CAPITAL COMMITMENTS

There were no contracted capital commitments as at 31 March 2022 (2021: Nil).

9 CONTINGENT LIABILITIES

The Commissioner had no contingent liabilities as at 31 March 2022 (2021: Nil).

10 RELATED PARTY TRANSACTIONS

The Commissioner's role was constituted by legislation enacted by the Scottish Parliament which provides funding via the SPCB. The SPCB is regarded as a related body. The SPCB provided funding of £1,086,000 during the year (2020/21: £915,000).

Neither the Acting Commissioner, nor employees or related parties has undertaken material transactions with SPCB during the year.

11 **POST STATEMENT OF FINANCIAL POSITION EVENTS**

The Commissioner had been on a period of extended absence since March 2021 and resigned in June 2022 with effect from 30 April 2022. This had no material impact on the financial statements for 2021/22. The impact on the financial statements for 2022/23 is estimated to be around £50,000. The Commissioner is appointed, and their terms and conditions set, by the SPCB. All liabilities arising from the Commissioner's resignation lie with the SPCB and will be fully funded by them.

No other events have occurred since the date of the balance sheet which materially affect the financial statements.

APPENDICES

APPENDIX 1: ACCOUNTS DIRECTION



**COMMISSION FOR ETHICAL STANDARDS IN PUBLIC LIFE
IN SCOTLAND**

DIRECTION BY THE SCOTTISH MINISTERS

1. The Scottish Ministers, in pursuance of section 22 of the Scottish Parliamentary Commissions and Commissioners etc Act 2010, hereby give the following direction.
2. The Commission is required to prepare annual accounts.
3. The Statement of accounts for the financial year ended 31 March 2012, and subsequent years, shall comply with the accounting principles and disclosure requirements of the edition of the Government Financial Reporting Manual (FRM) which is in force for the year for which the statement of accounts are prepared.
4. The accounts shall be prepared so as to give a true and fair view of the income and expenditure and cash flows for the financial year, and of the state of affairs as at the end of the financial year.
5. This direction shall be reproduced as an appendix to the statement of accounts.



Signed by the authority of the Scottish Ministers

Dated 27 May 2012

Contact details

Ethical Standards Commissioner
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

0300 011 0550

info@ethicalstandards.org.uk

This page is intentionally left blank