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## STANDARDS COMMITTEE THURSDAY, 18 JANUARY 2024

A MEETING of the STANDARDS COMMITTEE will be held VIA MICROSOFT TEAMS on  
THURSDAY, 18 JANUARY 2024 at 10.00 am

N. MCKINLAY,  
Director Corporate Governance,

12 January 2024

BUSINESS		
1.	<b>Apologies for Absence</b>	
2.	<b>Order of Business</b>	
3.	<b>Declarations of Interest</b>	
4.	<b>Minute</b> (Pages 3 - 4) Consider Minute of the Meeting held on 22 February 2023 for approval and signature by the Chair. (Copy attached.)	2 mins
5.	<b>Report on Ethical Standards Framework and Compliance</b> (Pages 5 - 56) Consider Report by Monitoring Officer. (Copy attached.)	15 mins
6.	<b>Any Other Items Previously Circulated</b>	
7.	<b>Any Other Items which the Chair Decides are Urgent</b>	

### 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

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**SCOTTISH BORDERS COUNCIL  
STANDARDS COMMITTEE**

MINUTES of Meeting of the STANDARDS  
COMMITTEE held via Microsoft Teams on  
Wednesday, 22 February 2023 at 10.00 am

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Present:- Councillors S. Hamilton (Chair), J. Anderson, M. Douglas, J. Greenwell,  
F. Sinclair and T. Weatherston

Apologies:- Councillors J. Linehan and D. Parker

In Attendance:- Chief Legal Officer and Democratic Services Officer (W. Mohieddeen)

**1. REPORT ON ETHICAL STANDARDS FRAMEWORK AND COMPLIANCE**

- 1.1 There had been circulated copies of a report by the Monitoring Officer that advised Members of the Ethical Standards Framework and advised on Compliance with that framework in 2021 to 2022. It further considered the role and remit of the Standards Committee of Scottish Borders Council. The report provided 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 considered the question as to whether Scottish Borders Council should consider any changes to the role and remit of the Standards Committee. The Chief Legal Officer presented the report and summarised its content. During the financial year 2021-22 the Monitoring Officer received 5 formal complaints made directly to her about Councillors' conduct. One complaint was received from an SBC Elected Member and the others were made by members of the public. Those complaints all related to allegations of disrespect, of which four of those related 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.
- 1.2 The Scheme of Administration noted the following among the functions of the Standards Committee: "The consideration, investigation and determination of all complaints made concerning the conduct of Councillors". This function had only been exercised once in the Committee's history. In that circumstance, the function was discussed by the previous Chair and the Committee itself in December 2021 when there was generally a level of discomfort at the prospect of Elected Members standing in judgment of their fellows. Some Members still felt the committee could have a role to play in some form of 'lessons learned' approach. Any changes to the remit or functions of the Standards Committee would be a decision to be made by Council. It was considered that this discussion should continue and that the Standards Committee should be involved in leading that conversation. Members considered a proposal to remove the function of determining complaints against Councillors conduct.

**DECISION**

**(a) NOTED:**

- (i) the contents of the Commissioner for Ethical Standards in Public Life in Scotland's Annual Report 2021-22 as highlighted in section 4 of the report and contained in full in the Appendix of the report;**

- (ii) **the details regarding Complaints about SBC Councillors contained in section 5 of this report; and,**
- (b) **AGREED to RECOMMEND to COUNCIL that function 3 of its functions detailed in the Scheme of administration is removed.**

*The meeting concluded at 10.17 am.*



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## **Report on Ethical Standards Framework and Compliance**

**Report by Monitoring Officer**

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**Standards Committee**

**18 January 2024**

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### **1 PURPOSE AND SUMMARY**

- 1.1 This report advises Members of the Ethical Standards Framework and advises on Compliance with that framework in 2022 to 2023.**
- 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.

### **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.**

### **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.

### **4 NATIONAL STATISTICS**

- 4.1 The Commissioner for Ethical Standards in Public Life in Scotland's Annual Report was laid before Parliament on 30 October 2023. That Report is appended to this Report as an Annex. Exhibits 1 and 2 of the Commissioner's report indicate that, in 2022 to 2023, the Commissioner received 156 new complaints about Councillors and Board Members of Public Bodies. No separate breakdown is given to identify which related to Councillors and which related to Board Members. Where the Commissioner receives several complaints about the same or closely related issues, they are investigated as one case. Those 156 complaints were therefore treated as 109 separate cases.
- 4.2 Exhibit 3 details the types of complaint received, the largest number being complaints about disrespect towards employees or members of the public.
- 4.3 Exhibit 4 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. This was also the case last year.

### **5 SCOTTISH BORDERS STATISTICS**

- 5.1 During the financial year 2022 to 2023, 4 formal complaints were made directly to the Monitoring Officer about conduct of elected Members. One complaint was made by an SBC Councillor and three were made by members of the public. Three of the complaints related to allegations of disrespect. One related to alleged failure to declare an interest. In 3 complaints, following investigation by the Monitoring Officer, no further action was taken. In once complaint there was an attempted mediation between the parties. Since this did not resolve the complaint, the matter was then referred by the Monitoring Officer to the Ethical Standards Commissioner (the ESC). It is still being considered by the Commissioner.
- 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 still significant delays in those investigations commencing.

- 5.3 In the year financial year 2022 to 2023, and in addition to the matter she referred to the ESC, the Monitoring Officer was made aware of two other complaints made directly to the ESC. One was made by an elected Member and one by a member of the public. One related to alleged breaches of Part 7 of the Code (Quasi Judicial Decisions) and the other related to alleged failure to declare and interest. The complaint relating to Part 7 of the Code was investigated by the ESC and no breach was found to have occurred. The other matter is ongoing.
- 5.4 Any complaints which were received after 1 April 2023 will be reported on next year as will any conclusion to the matters currently outstanding at the ESC.

## **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.

### **5.3 Integrated Impact Assessment**

Since this report only contains information for noting an IIA is not required.

### **5.4 Sustainable Development Goals**

Since this report only contains information for noting, it has no impact on Sustainable Development Goals

### **5.5 Climate Change**

The report 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 changes required to the Scheme of Administration or Scheme of Delegation as a result of this report.

## **6 CONSULTATION**

6.1 The Director Finance and Procurement, the Chief Officer Audit and Risk, the Director (People Performance & Change) 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	Director Corporate Governance

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

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

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# Ethical Standards Commissioner

ANNUAL REPORT

2022/23

This report is available in alternative formats on request by telephoning 0131 347 3890 or by emailing [info@ethicalstandards.org.uk](mailto:info@ethicalstandards.org.uk).

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Laid before the Scottish Parliament by the Commissioner for Ethical Standards in Public Life in Scotland in pursuance of section 25(1) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 as amended.

## COMMISSIONER'S STATEMENT

From the start of the financial year until the end of February 2023, I continued 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. Following a recommendation from the SPCB, I was very privileged to have been appointed by the Scottish Parliament as Commissioner for a six year period from 1 March 2023. I have been building on the foundations that I established whilst still Acting Commissioner and will continue to work effectively and with integrity to earn the trust that has been placed in me.

### Public appointments

Melanie Stronach, who served as Acting Public Appointments Manager since I took up the role of Acting Commissioner, continued to acquit her role exceptionally well in what were challenging circumstances. She was appointed as the permanent Public Appointments Manager from 1 March 2023, a role that she richly deserved. Melanie was joined by a new Public Appointments Officer (PAO) in October 2022, a post that had lain vacant for a year and a half due to uncertainty over the return of the Commissioner. Filling this vacancy has provided us with some much needed capacity and support for Melanie and our work on public appointments. It has already made a difference to the way in which this section of the office is operating and this, in combination with the recruitment of a new Public Appointments Support Officer in July, has allowed us to think more ambitiously about the future.

The three public appointments staff and our team of Public Appointments Advisers continued to work alongside the Scottish Government during the year with the intention of improving on appointment practices. This has now led to a year on year improvement, which is very heartening. We received an unprecedented number of reports of good practice on the part of the Scottish Government this year, exceeding the prior year's figure which was already without precedent. Board diversity figures have also increased in respect of every group that is currently under-reflected. Taken together, these suggest to me a trend in continuing improvement in the work that everyone engaged in the appointments process is conducting. I congratulate and am grateful to everyone whose efforts have led to these positive changes.

We collectively recognise that further improvements can be made in order to achieve effective boards that are reflective of the communities that they serve. The revised Code of Practice for Ministerial Appointments came into effect October 2022 and I can already see it making a difference to practices. Training is now obligatory for selection panel chairs and for independent panel members. We were happy to assist the Scottish Government in the design of that training programme and it has been received well. The respective roles and responsibilities of everyone engaged in the appointments process is clearer, with considerably more responsibility vested in the panel chair, who fulfils that role on behalf of the appointing minister. We are seeing signs that this is reducing bureaucracy, which was one of our intentions, but also that panel chairs are taking considerably more ownership of the appointment process. They are required to report on reasons for the success or failure of the appointment rounds for which they have responsibility so this is understandable.

Taken together, these measures should contribute to the virtuous cycle of continuous improvement that we have seen over the last two years.

In 2023/24 now that we have the additional capacity that we lacked, we will focus on our strategic objectives for 2024 to 2028, including updating the overall strategy for improving board diversity.

### MSP complaints

In October 2022 we completed our investigation of the “super complaint”, which we began investigating in the 2020/21 financial year. It was the largest, most extensive and most complex set of complaints about MSP conduct that our office had ever received and it required a significant amount of staff time and resources to investigate to a conclusion. All investigatory staff had to be trained in MSP complaint-handling in order to progress this work, which will stand us in good stead for the future.

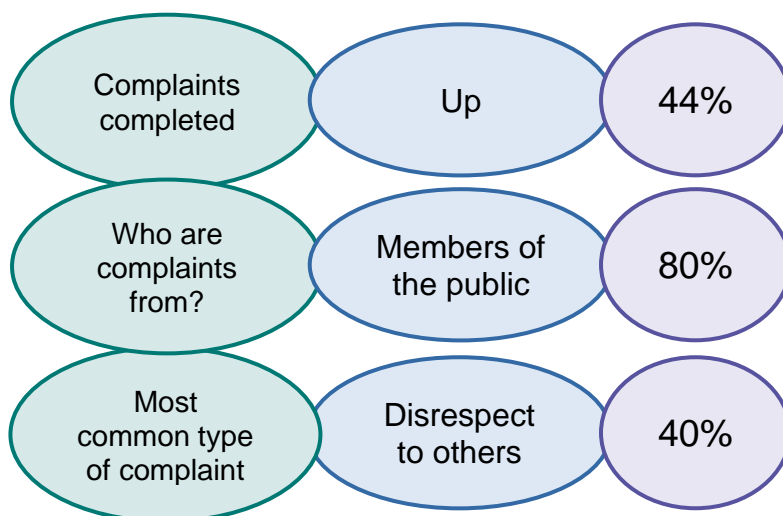
In general terms, and setting the “super complaint” aside, complaint volumes about MSPs have returned to more historic levels. Of those that we do receive, many relate to the treatment of others although a high proportion of these relate to conduct on social media which is not covered by the Code unless it is in relation to members fulfilling their parliamentary duties. Conducting research into what drives complaints and whether complaint trends can be predicted is included in our plans for the future.

We made two reports to the Standards, Procedures and Public Appointments Committee (SPPA Committee) during the year, both following investigations into allegations that MSPs had failed to declare an interest. Our reports concluded that the members concerned had failed to declare registered financial interests at parliamentary committee meetings. The SPPA Committee agreed with these conclusions.

### Councillor and member complaints

We saw a welcome reduction in the number of new complaints received during the year as this allowed us to dedicate more staff time to reducing our backlog. At the time of writing this had reduced significantly such that it is now taking up to four months, instead of the previous wait of 11, for an initial complaint to be assessed. In the interests of transparency, our website has a banner and a [supporting page](#) which sets out waiting times and investigation times for all of these complaints. When we receive several complaints about the same or closely related issues, we combine these complaints together and assess and/or investigate them in what we describe as a single case. Following feedback from stakeholders, we are providing more simplified statistical tables this year which show complaints and cases separately.

At the start of 2022/23, there were a large number of complaints and cases already open as a result of the backlog of cases that had built up in the previous year. Over the course of the year, the Standards Team worked their way through a total of 127 cases (see Exhibit 2), an increase of 44% from the previous year.



The Standards Commission for Scotland’s (SCS) Directions that came into effect in July 2020, November 2020 and March 2021 remained in place during the financial. The SCS Direction of March 2021 requires me to investigate all complaints received about councillors or members, except in fairly narrow circumstances. In essence, any conduct which has happened in the 12 months prior to the complaint being made and where, on the face of it, a breach of the applicable code has taken place must be investigated. This Direction was renewed for a five month period in March 2023. The SCS agreed not to renew the Direction beyond August 2023 following my agreement that I would include wording from it on the face of our Investigations Manual. As such, I continue to investigate all complaints that could, on their face, represent a breach of the Code. This has increased the number of complaints being investigated since the start of 2021/22.

Figure 1

	2022/23	
	Complaints	Cases
Completed	218	
Closed following initial assessment	121	
Full investigation carried out	79	45
Breach	17	9
No breach	62	36

The initial assessment determines whether the complaint matches the eligibility criteria set out in the prior SCS Direction.

We report to the SCS on the outcomes of all cases where an investigation took place. As such, 45 cases (36% of cases) were reported and referred to the SCS this year. This is an increase from 29% reported in the 2021/22 financial year. It is almost double the number of cases reported and referred to the SCS in 2020/21.

We currently collect information relating to the average number of days taken for both initial assessment (Stage 1) and investigation (Stage 2). In 2022/23, the average number of days taken for initial assessment was 171, while for investigation it was 180. Exhibit 15 sets out the information for 2022/23 and the three previous years. These remain higher than in previous years. This reflects the fact that we had a significant historic backlog to clear, meaning that a high number of complaints were waiting in a queue to be assessed. At the stage 2 investigation, several factors impact the waiting time, such as the scale of the investigation required, time taken for a party to seek legal representation and extensions of time required for a party to respond to the office. We recognise that we need to bring down the investigations' timescales and, earlier this year, we recruited four full-time staff members to support this. We have introduced new KPIs for complaint handling times and will report on our performance against these in the next annual report. These will help drive improvements in our performance.

Against this backdrop, we updated and revised all of our investigatory procedures in the form of an Investigations Manual which, following extensive consultation with the SCS and the Society of Local Authority Lawyers and Administrators in Scotland ("SOLAR") as well as with the public and our stakeholders, was published on our website in March 2023. We also completed workforce planning in respect of our complaints handling function and recruited into the resultant posts, which is described in more detail below.

These were truly significant achievements, given the pressures that we faced. Angela Glen, our Senior Investigating Officer, was effectively completing the work of at least two full time grade 5 people, which our workforce planning identified were required. I am grateful to her and the entire investigations team for the remarkable dedication and resilience they have shown. I am delighted that this section of the office now too also has the capacity required to fulfil this aspect of our role as effectively as practicable in the future.

#### Finance and governance

Total funding awarded for the year, including contingency funding, was £1,228,000 (2021/22: £1,093,000). Of the funds awarded £960,000 was drawn down (2021/22: £1,086,200). The difference was attributable to the later than anticipated recruitment of new staff members and reduced spend on professional fees.

Having reviewed and completely revised our governance arrangements during the course of the prior year we are now in a period of relative stability. We are now operating to a [revised strategic plan](#) for 2021-24 and a new rolling [biennial business plan](#) covering all office functions. The business plan continues to also demonstrate progress against each of the external and internal auditors' recommendations. More detail on progress is included below. We have drafted a new strategic plan to run from 2024-28 and will consult on that from November of 2023.

Our performance management systems are working well to ensure that section and staff action plans are all aligned to our business and strategic plans.

Our governance and associated transparency reporting has all been reinstated, with the minutes of our mostly monthly Senior Management Team (SMT) meetings being published on our website. Engagement with our Advisory Audit Board (AAB), whose members are

drawn from the independent members of the SPCB's AAB, is also now well established and working well and to the organisation's benefit.

Over and above this, and to provide the public with the independent assurance that our systems are robust, appropriate and appropriately implemented, we have commissioned internal auditors to conduct a range of reviews into our work. During the course of the financial year they reviewed our governance, our investigations procedures and our risk management. The systems of control in respect of the first two of these was considered substantial and in respect of the last it was given a rating of strong. We have already implemented the rump of the recommendations that they had for us.

As with the other sections of the office, our workforce planning exercise demonstrated that the corporate services team was severely understaffed. From April 2021 to February 2023, Karen Elder fulfilled the role of Accountable Officer, having been appointed to that post by the Scottish Parliamentary Corporate Body when I was appointed Acting Commissioner. Karen continued to fulfil her role as Head of Corporate Services during this period. With only one member of full time and one member of part time staff over most of the year, Karen was responsible, amongst many other tasks, for the overall management and governance of the office, its financial procedures, our facilities and IT systems and infrastructure, our records management our HR and our policy review and implementation. As with other members of the SMT, she coped incredibly well under enormous pressure. Following recruitment, Karen is now well supported by a new HR and Facilities Officer and a new Information Management and IT Officer.

### Section 22 Report

Our last annual report made reference to a section 22 Report laid by the Auditor General for Scotland into the work of our office. Audit Scotland laid a further section 22 report in January 2023 which followed up on our office's progress in the usual way. It reflected positively on the work we have done to rebuild our office and the services we provide, and to restore confidence in the ethical standards framework. However, it also made it clear that more work had to be done to embed the good practices that we have adopted since the prior section 22 report was laid by the Auditor General.

In terms of the progress made, a comprehensive update was published on our website and has been revised to [demonstrate the current picture](#). In brief, we have now fully or partially implemented all of those auditor's 26 recommendations that we were able to and for which we had sole or partial responsibility. We have concentrated on re-establishing our governance, our systems of assurance, our relationships with stakeholders and ensuring our staffing levels are appropriate to the work that we do. I refer above to the recruitment exercises, which all related back to a recommendation made by our auditors on workforce planning. Our Advisory Audit Board has commented very positively on the work that we have done to fully recover as an organisation, which is now functioning very well. None of this would have been possible without the tireless dedication of a team of staff who showed remarkable resilience in the face of challenging circumstances that were not of their making.

More information about our progress in relation to the issues raised in the Section 22 report can be found in the Governance Statement.



My thanks are again extended to the SPCB for the support that it has provided to the office during my tenure as Acting Commissioner and for placing its trust in me for the longer term. Given the office's circumstances, their agreement to afford us further resources was particularly helpful and will make a real difference to our work and the experience of people who access our services.

I am confident that we now have a firm foundation for the future including an appropriate governance framework, strong systems of control and a happy and effective workforce. As with all public sector organisations, we continue to have a range of risks and challenges to address. These include risks relating to our cyber resilience and public and stakeholder confidence in our work, the latter understandably attributable to the fact that we have had to rebuild the organisation and weren't processing complaints as quickly as we ought to have been able to. We have ambitious plans in place to be an office that meets and, ideally, exceeds the public's expectations and also to report publicly on our progress in these respects.

I remain very grateful to each and every one of the staff in the office, and to the Senior Management Team in particular, for rising to the challenges that we have faced as an organisation. It is a privilege and a pleasure to lead a team of such remarkable, talented and dedicated people. We all believe strongly in the value of the work that we do and understand how we fulfil our role makes a difference to people's lives. Our values and commitment will continue to inform our work for the period of my tenure.



Ian Bruce  
Ethical Standards Commissioner

30 October 2023



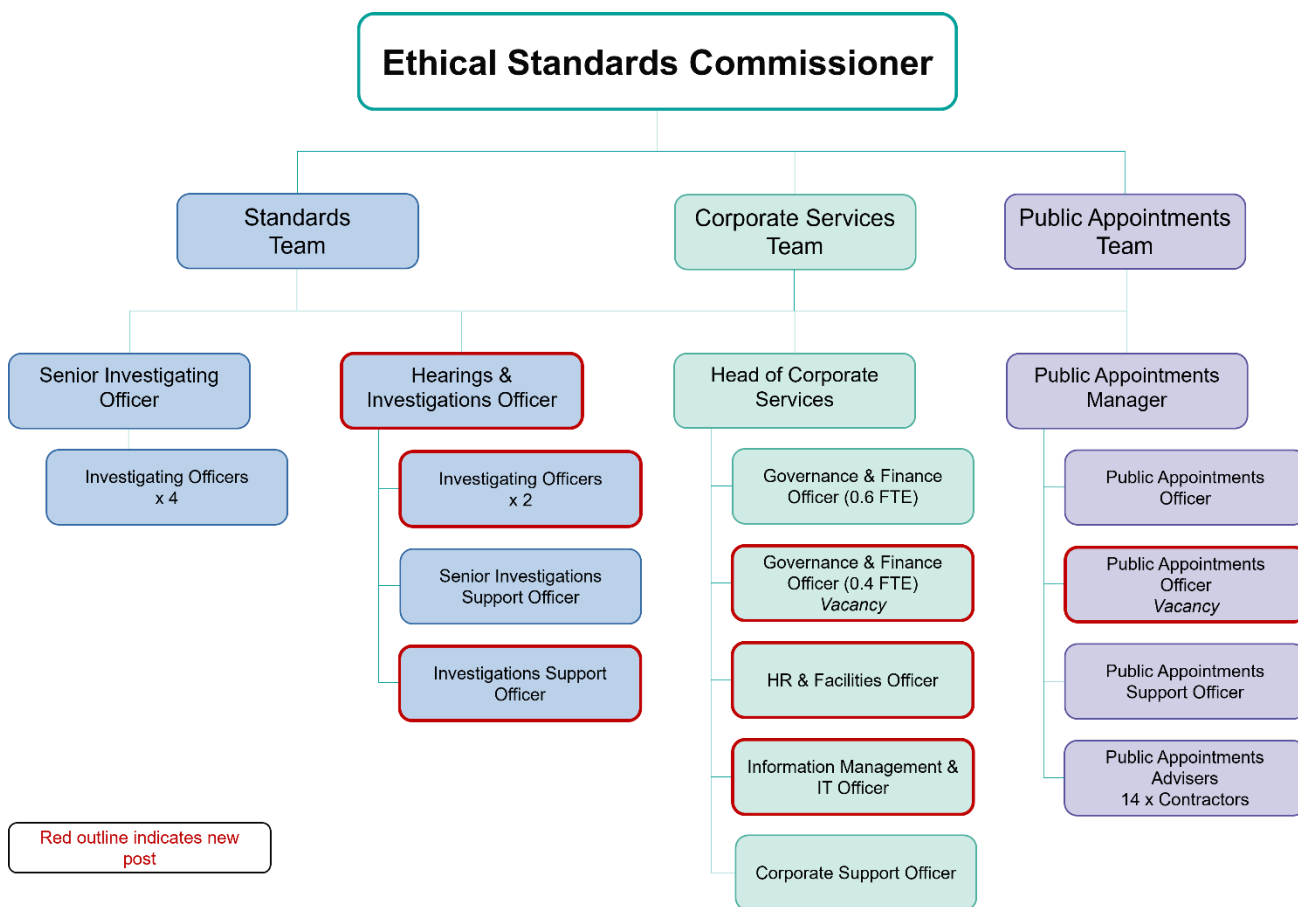
## OUR PURPOSE

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 Standards Commission for Scotland (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 2



The Senior Investigating Officer (SIO) and Hearings and Investigations Officer (HIO) jointly manage and oversee the work of the Standards Team. Line management for the team is split equally between the SIO and HIO.

The ESC completed a workforce planning exercise in May 2022 and submitted a business case to the SPCB for an additional 8 staff (7.4 full-time equivalents - FTEs). This was approved in October and recruitment began in December 2022. Six new staff started work between March and May 2023 with recruitment to the two remaining posts (1.4 FTEs) still to be completed.

## OUR OBJECTIVES

Our strategic objectives during 2022/23 are drawn from [the Revised Strategic Plan 2021-2024](#) and summarised here:

Figure 3



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 2022 - 2024](#) showing the year end position and the current [Biennial Business Plan for 2023 – 2025](#) are available on our website.

## OUR PERFORMANCE

### Complaints about conduct

The 2022/23 financial year saw a continued focus on recovery and renewal within the team which handles complaints about conduct (the “Standards Team”). Whilst the challenge of managing a backlog of cases persisted, there were many new and positive developments to report as outlined below.

We developed a comprehensive Investigations Manual (the “Manual”), drafts of which were subject to wide ranging consultation with the Standards Commission for Scotland (“SCS”), local authorities, public bodies, members of the public and other key stakeholders. The Manual codifies and publishes the processes and policies which the Standards Team has worked to since 2020. It sets out the approach to dealing with complaints and provides assurance to those who come into contact with us that we have robust and transparent processes in place that ensure fair and trusted outcomes. The Manual includes the templates and forms which the Standards Team has used and continues to use to ensure all our work is of the highest quality and carried out in a consistent way. The Manual was drafted based on a manual used internally since 2018 from similar manuals for other investigatory bodies in the UK, to ensure it was fit for purpose and reflective of investigatory good practice.

The SPCB’s support of our request for additional funding to help increase staffing was particularly significant for the Standards Team. In December 2022, we launched a recruitment campaign for a number of key posts within the team, which we successfully filled in February and March 2023. These new appointees bring significant knowledge and experience to the team and we expect the impact of such appointments to be felt during 2023/24. The new appointees completed a full induction programme in May 2023.

We had a renewed focus on training and development within the Standards Team and across the office as a whole. Staff have now all completed training in key areas such as sexual harassment complaint handling and MSP complaint handling. Plans are in place to further build on our approach to training in 2022/23. Engagement with our stakeholders continues to be a key feature of the work of the Standards Team. The Team continues to support the Commissioner in engaging with a wide range of stakeholders including the SCS, Local Authorities, the Society of Local Authority Lawyers and Administrators (SOLAR), COSLA and public bodies.

The backlog of cases that has persisted since 2021/22 is now starting to reduce. Long wait times still remain in some cases, but overall, we reduced the backlog of cases by half during 2022/23. We continue to be open and transparent about this backlog and the steps taken to address it. Full details are included on a banner on our website and a dedicated page showing wait times for all complaint types. Importantly, we have put in place a robust triage system to quickly identify complaints out with our remit, so we can swiftly inform complainers of this outcome and signpost them to a more appropriate body. We expect that increased staffing capacity will significantly improve progress on clearing the backlog of cases. At the time of finalising this report, the waiting time for initial assessment of admissible complaints had reduced from 11 to 4 months.

The SCS Directions remained in place throughout 2022/23, and the Commissioner and the Standards Team continue to comply with them fully. The SCS Directions are expressly referred to in the Manual and are in place to provide assurance to the SCS and the wider public that the office is executing its statutory functions in accordance with the 2000 Act. The eligibility Direction was not renewed in August 2023 as we agreed with the SCS that the eligibility criteria for complaints would be written into our Investigations Manual.

Our commitment to ensuring that all interactions with complainers and respondents are characterised by transparency, empathy, kindness and respect continues to underpin all of our work.

## Public appointments

By and large there is positive news to report in the progress of Public Appointments work during the 2022-23 financial year.

Work to consult on and revise the Code of Practice for Ministerial Appointments to Public bodies in Scotland concluded at the end of the previous financial year with the Code being published at the end of March 2022. It came into effect from October 2022 and a handbook of statutory guidance was also published in October 2022. The revised Code of Practice is intended to be progressive and as it beds in should see positive changes in both the effectiveness and diversity of boards.

Some of the immediate changes that have been realised with the launch of the revised Code have been around the role and responsibility of the panel chair within each appointment round. Under the revised Code, it is a requirement that each panel chair must be trained on the appointments process and on diversity, equality and inclusion in the context of making public appointments. Independent panel members must also similarly be trained.

Previously, there was no such requirement for formal training in advance of undertaking an appointment round and where we were aware of some training being provided it was not formally recorded. We are able to report that 28 panel chairs and 6 independent panel members were trained in the financial year 2022/23 (not every panel will have an independent member). Panel members who are not the chair or independent can also request to receive training. Eleven such panel members were also trained.

Contacts with our office about compliance with the Code highlighted that there were three reports of non-compliance under the revised 2022 Code during the financial year. All three related to situations in which the panel chair had not received training in advance of the round commencing. In each case, the training was complete very shortly after the round commenced and each instance of non-compliance was attributable to confusion over initial implementation of the requirement under the revised Code. It is not expected to become an ongoing trend.

Another change to the revised Code related to the role and responsibilities of the panel chair is that they now have increased responsibility in decision making (as the appointing minister's representative on the panel). This includes responsibility for writing a report at the end of the appointment round, outlining the extent to which it delivered or failed to

deliver the desired outcome set by the appointing minister. Reasons for success or failure must be included in that report. A copy of the report is to be provided to the appointing minister and to the Commissioner. Only two such reports were received in the financial year 2022/23, these being related to the only two appointment rounds run under the 2022 Code and concluded in that year. It is expected that these reports will be a critical element of learning and improvement, with panel chairs having to thoughtfully reflect on why each round succeeded or otherwise.

The business plan for Public Appointments, as set out later, includes introducing a system of reporting transparently to the Scottish Parliament's subject committee, for good or bad, with a view to fostering improvements in the appointments process. Panel chair reports will be crucial to that commitment. Work is ongoing to analyse and understand the best way to make the maximum use of all the information available to aid in these transparent reporting arrangements.

Alongside continuing to support the Scottish Ministers and their officials in implementing the revised Code, the business plan also shows that a refresh of the Diversity Strategy (which was initially produced in 2008) is also due to commence in 2023. It has therefore been encouraging to note the incremental and sustained increases of reflection on public body boards of those groups of people who share certain protected characteristics. The membership profile of every group has increased during 2022 and there has also been an increase in the percentage of applications made by every group, other than disabled applicants. It was positive that we were also able to report on the percentage of applicants who consider themselves as trans, or having a trans history for the first time. Scottish Government officials have reported to us that a range of actions has had a positive impact on diversity statistics over time, including tailoring the requirements for board vacancies and engagement activity to target applicants.

As we look to review and update our Strategic objectives in 2024, we will consider the way in which our regulatory role will have most impact in influencing ministerial action to secure boards which are effective and reflective of society and we will seek to work alongside Scottish Government officials to understand and promulgate the good practice which they are taking and which already appears to be securing positive outcomes.

As we update our plans for the future, we will do so bearing in mind that, although it is positive to see the increases in those who share protected characteristics rightly taking their place on public bodies boards, there is still more to be done. This will include: ensuring that the pipeline through to chair positions is further developed and better understanding and addressing the impact of intersectionality on board diversity. We will also always be cognisant of the fact that diversity of thought, which is fundamental to good governance, is not only achieved through diversity of protected characteristics.

Within the Public Appointments side of the office, the staffing arrangements have settled significantly in the last year. The acting Public Appointments manager has been appointed into the role on a permanent basis and a permanent Public Appointments Officer has also been recruited. In addition, a Public Appointments Support Officer was recruited in July 2023 to provide administration support to this small team. Workforce planning had also identified a further Public Appointments Officer as being required for the team, but given the consideration of what the Strategic objectives in 2024 may require, thought is being given

as to whether this resource would be better dedicated to a further member of staff, or consultancy support. However, the work is eventually supported, it continues to be our aim to provide a regulatory system which not only gives reassurance that public appointments are made in a way that is fair, transparent and made on merit, but that also contributes to securing boards which are effective and reflective of Scottish society.



## KEY ISSUES AND RISKS

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

### 1. **Loss of stakeholder confidence**

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

**Mitigating Action:** Ensure appropriate values are in place, disseminated and demonstrated from the top down. All staff will work to build relationships via open and transparent engagement. Design and roll out a stakeholder communications strategy that engenders confidence in our work.

### 2. **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. Monitor impact of directions to allow open reporting and ensure staffing levels are matched to meet our obligations for compliance.

### 3. **Backlog impacts staff morale and complainer confidence**

**Risk:** Persistent backlog of complaints impacts staff morale leading to loss of motivation and leads to complainers deciding not to raise their concerns.

**Mitigating Action:** Recruit additional staff enabling the backlog to be addressed. Ensure clear and accurate communications within team and with those involved in the complaints process. Implement action plan to address backlog.

### 4. **Complete disruption to our IT systems**

**Risk:** Unable to carry out any functions due to impact of cyber-attack, national power outages or accidental damage resulting in loss of most or all records/ICT systems.

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

### 5. **Severe disruption due to external events**

**Risk:** Unable to carry out functions due to impact of energy costs and inflation. Impacts may include power and broadband outages, travel disruption, staff availability, reduced finance and restricted access to equipment and other supplies.

**Mitigating Action:** Ensure robust Business Continuity Plan, Information Security Policy, Records Management Plan and Schemes of Delegation in place and regularly updated.

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



## PERFORMANCE ANALYSIS

### COMPLAINTS ABOUT CONDUCT

#### Complaints about local authority councillors and board members of public bodies

##### COMPLAINT VOLUMES IN 2022/23

Exhibits 1 & 2 set out the volumes of both complaints and cases that the Standards Team handled during 2022/23. When we receive several complaints about the same or closely related issues, we combine these complaints together and assess and/or investigate them in what we describe as a single case. Reporting on both the number of complaints and cases helps better reflect the actual volume of work in a given year.

At the start of 2022/23, there were a large number of complaints and cases already open as a result of the backlog of cases that had built up in the previous year. Over the course of the year, the Standards Team completed a total of 127 cases, an increase of 44% from the previous year.

Exhibit 1 – Complaint volumes during 2022/23 and previous two years

	2022/23	2021/22	2020/21
Already open at 1 April (beginning of financial year)	150 <sup>1</sup>	24	63
Received	156	330	238
<b>Active during year</b>	<b>306</b>	<b>354</b>	<b>301</b>
Completed	218	208	277
Cases remaining open at 31 March, (end of financial year)	88	146	24

1. There are minor differences in the carry forward totals from 2021/22 to 2022/23. This is due to a small number of cases either being re-opened or additional complaints being added to existing cases during the 2022/23 financial year.

Exhibit 2 – Case volumes during 2022/23 and previous two years

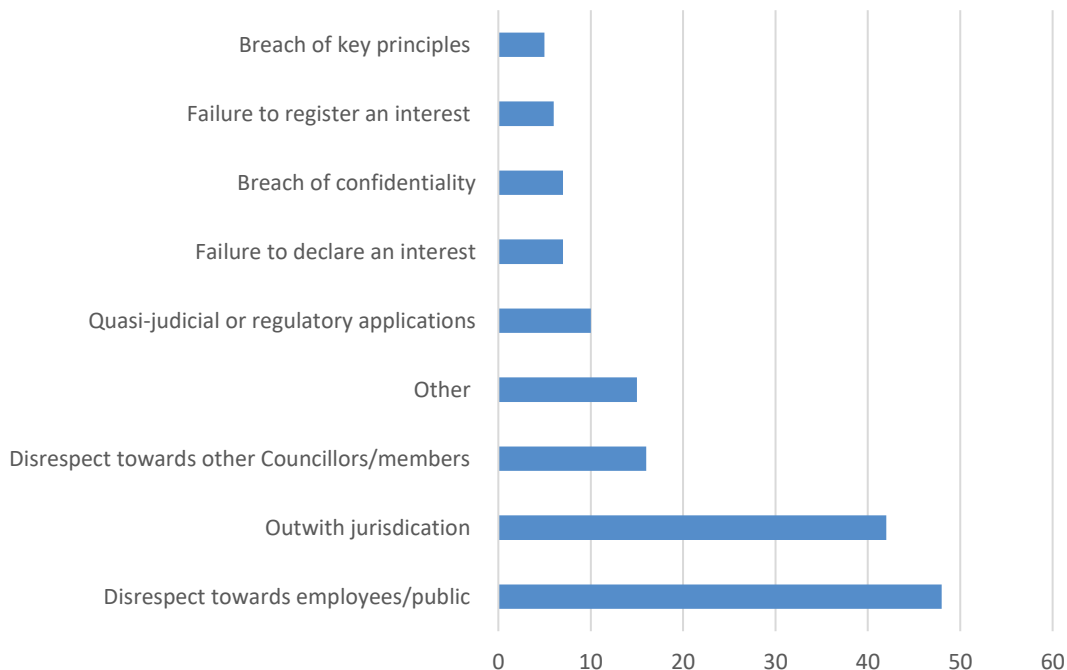
	2022/23	2021/22	2020/21
Already open at 1 April (beginning of financial year)	86 <sup>1</sup>	8	35
Received	109	164	130
<b>Active during year</b>	<b>195</b>	<b>172</b>	<b>165</b>
Completed	127	88	157
Cases remaining open at 31 March, (end of financial year)	68	84	8

1. There are minor differences in the carry forward totals from 2021/22 to 2022/23. This is due to a small number of cases either being re-opened or additional complaints being added to existing cases during the 2022/23 financial year.

**TYPES OF COMPLAINTS RECEIVED**

Exhibit 3 provides details of the types of complaints that we receive each financial year, with disrespect towards employees and the public being the most common type of complaint received. This remains unchanged from previous years. Taking together cases in relation to disrespect towards both councillors/members, employees and the public accounted for 40% of the total complaints received during 2022/23.

Exhibit 3 – Types of complaints received during 2022/23 (Total 156)

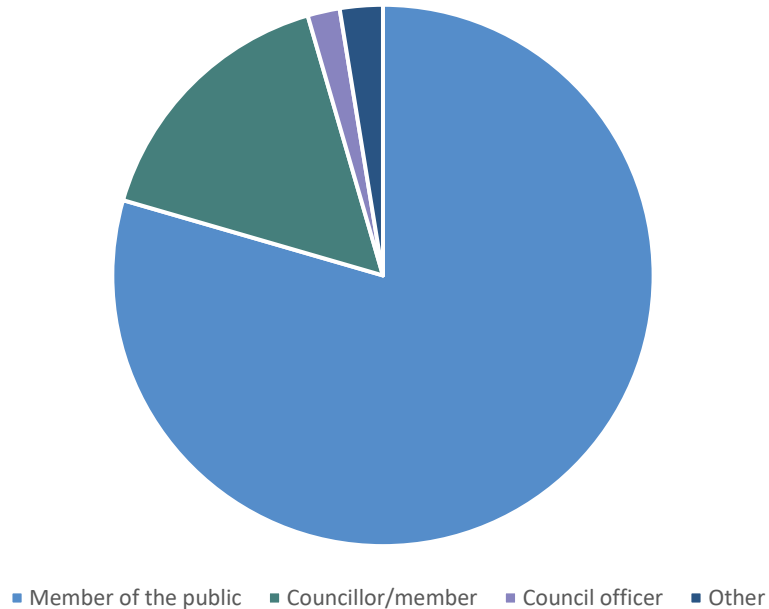


NOTE: Outwith jurisdiction complaints are complaints which are about conduct which, following assessment, does not fall within the remit of the Code. They are distinct from complaints which we cannot accept as they are outwith the jurisdiction of the Commissioner's office, such as a complaint about a Councillor in England.

SUBMISSION OF COMPLAINTS

Exhibit 4 provides details of who made complaints to us in 2022/23. Complaints from members of the public accounted for almost 80% of the total number of complaints received during 2023/24 and this figure is similar to previous years.

Exhibit 4 – Individuals who submitted complaints during 2022/23



## OUTCOMES FROM COMPLAINTS LODGED WITH US

The SCS Directions that came into effect in July 2020, November 2020 and March 2021 remained in place during the financial year. The SCS Direction of March 2021 requires the Commissioner to investigate all complaints received about councillors or members, except in specified circumstances. These are when the respondent is incapacitated, the alleged conduct took place more than 12 months from the date of making the complaint or where, on the face of it, no breach of the applicable code has taken place. This has increased the number of complaints being investigated since the start of 2021/22. This Direction was not renewed by the SCS in August 2023 on the basis that the criteria for eligibility were written into the Investigations Manual.

Exhibits 5 and 6 set out the outcomes of the complaints and cases we received in 2022/23. Of the 218 complaints completed in 2022/23, 121 were closed following initial assessments, as the complaint did not match the eligibility criteria (set out in the SCS Direction) . A full investigation was carried out in 79 complaints (amounting to 45 cases). Of the 79 complaints investigated, we found a breach of the Code in 17 complaints (9 cases) and no breach in 62 complaints (36 cases). We report to the SCS on the outcomes of all cases where an investigation took place. As such, 45 cases (36% of cases) were reported and referred to the SCS this year. This is an increase from 30% reported in the 2021/22 financial year. It is almost double the number of cases reported and referred to the SCS in 2020/21.

Exhibit 5 – Outcome from complaints completed in 2022/23 and previous two years

	2022/23		2021/22		2020/21	
Initial Assessment	121	56%	125	60%	227	82%
Full Investigation	79	36%	75	36%	49	18%
<i>Breach</i>	17	8%	6	3%	39	14%
<i>No Breach</i>	62	28%	69	33%	10	4%
Withdrawn	18	8%	8	4%	1	0%
<b>Total completed</b>	<b>218</b>		<b>208</b>		<b>277</b>	

Exhibit 6 – Outcome from cases completed in 2022/23 and previous two years

	2022/23		2021/22		2020/21	
Initial Assessment	69	54%	56	64%	132	84%
Full Investigation	45	36%	26	29%	24	15%
<i>Breach</i>	9	7%	5	6%	17	11%
<i>No Breach</i>	36	28%	21	23%	7	4%
Withdrawn	13	10%	6	7%	1	1%
<b>Total completed</b>	<b>127</b>		<b>88</b>		<b>157</b>	

## CASE OUTCOMES

As set out in Exhibit 6, in 2022/23 we completed 127 cases. In 9 cases a breach of the relevant code was found. Exhibit 7 provides details of the outcome in the remaining 118 cases completed during the year. In total 66% of cases were closed at assessment stage, with the most common reason for this being due to '*no evidence or insufficient evidence being available to support the allegation*', which is a term used by the internal case management system to show cases that, when assessed, do not match the eligibility criteria, including the Eligibility Direction, for acceptance to investigation.

Exhibit 7 – Cases outcomes (other than a breach) during 2022/23

<b>Categorisation of Complaint</b>	<b>No Breach</b>	<b>Not pursued further</b>	<b>Totals</b>
Introduction/Key Principles		5	5
Outwith 12 months		3	3
Personal conduct/not acting as a Councillor		1	1
Insufficient/no evidence to support allegation	32	57	89
Not about a Councillor or Member		1	1
Withdrawn	3	10	13
Other	4	2	6
<b>2022/23 Total</b>	<b>39</b>	<b>79</b>	<b>118</b>

## INTERIM REPORTS

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 issued an interim report in one case in 2022/23. The SCS decided not to impose an interim suspension on the respondent in this case.

REPORTS REFERRED TO SCS

In 2022/23, 9 reports were referred to the SCS where the Commissioner found that a breach had occurred. A further 36 reports were also referred where no breach was found. This information and the outcome from these reports following referral referred to SCS is set out in Exhibit 8 below.

Exhibit 8 – Details of reports referred to SCS and their outcome

	<b>Cases in 2022/23</b>
Breach report to SCS	9
Hearings held by SCS on breach report	5
Breach reports to SCS where no further action was taken	4
No breach reports to SCS	36
Hearing held by SCS on no breach report to SCS	3
No breach reports to SCS where no further action was taken	33

## HEARINGS

Exhibit 9 provides further information about reports referred to the SCS in both 2021/22 and 2022/23 where a hearing was held or will be held in 2023/24.

Exhibit 9 – SCS Hearings that took place in 2022/23 and planned for 2023/24

Complaint number	Council/Public Body	Nature of Complaint	ESC Decision	Hearing Date	Hearing Decision	Sanction imposed
<b>Report referred in 2021/22 and hearing held in 2022/23</b>						
LA/D/3580	Dundee City Council	Disrespect towards employees/ public	No breach	01/06/2022	No breach	Not found in breach
LA/AC/3600	Aberdeen City Council	Disrespect towards employees/ public	No breach	07/06/2022	No breach	Not found in breach
LA/AN/3561	Angus Council	Disrespect towards other Councillors	No breach	15/06/2022	No breach	Not found in breach
<b>Report referred and hearing held in 2022/23</b>						
LA/G/3563	Glasgow City Council	Use of council facilities	No breach	26/10/2022	Breach	Censure
LA/AN3546	Angus Council	Disrespect towards employees/public	No breach	01/11/2022	Breach	Suspension
LA/E/3651	City of Edinburgh Council	Quasi- Judicial or Regulatory Applications	Breach	22/02/2023	Breach	Censure
<b>Report referred in 2022/23 and hearing held in 2023/24</b>						
LA/An/3690	Angus Council	Disrespect towards other Councillors	Breach	01/05/2023	No breach	Not found in breach
LA/H/3755	Highland Council	Quasi- Judicial or Regulatory Applications	No breach	23/05/2023	No breach	Not found in breach
LA/D/3745	Dundee City Council	Disrespect towards employees/public	Breach	06/06/2023	Breach	Censure
LA/S/3571	Stirling Council	Quasi- Judicial or Regulatory Applications	Breach	21/06/2023	Breach	Suspension
LA/SL/3558(a)	South Lanarkshire Council	Confidentiality	Breach	27/06/2023	Breach	Suspension
LA/SL/3558(b)	South Lanarkshire Council	Confidentiality	Breach	30/08/2023	Breach	Censure

## Complaints about MSPs

We investigate complaints about the conduct of MSPs. Exhibits 10 and 11 set out the volumes of both complaints and cases that the Standards Team handled during 2022/23. We adopt a similar approach to Councillor and Member complaints in that when we receive several complaints about the same or closely related issues, we combine these complaints together and assess and/or investigate them in what we describe as a single case.

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 (ie accepted), it moves to Stage 2 which we term further investigation.

Exhibit 10 – Complaint volumes during 2022/23 and previous two years

	2022/23	2021/22	2020/21
Already open at 1 April (beginning of financial year)	526	739	1
Received	46	118	799 <sup>1</sup>
<b>Active during year</b>	<b>572</b>	<b>857</b>	<b>800</b>
Completed	567	97	61
Cases remaining open at 31 March	5	760	739

1. Towards the end of the 2020/21 financial year the Commissioner received a significant number of complaints relating to a similar issue. The majority of these complaints were grouped together into what we described as a “super complaint”. Following assessment of the “super complaint” during the 2022/23 financial year, we removed 234 complaints where complainers had failed to name the specific MSPs who they wished to complain about, in spite of their being asked to clarify this in correspondence. As these details weren’t provided, we required to reduce the number of complaints recorded for the sake of transparency for reporting purposes. These complaints were all concluded during 2022/23.

Exhibit 11 – Case volumes during 2022/23 and previous two years

	2022/23	2021/22	2020/21
Already open at 1 April (beginning of financial year)			
Stage 1	19	14	
Stage 2		1	1
Received	31	54	54
<b>Active during year</b>	<b>50</b>	<b>69</b>	<b>55</b>
Completed	47	50	40
Cases remaining open at 31 March, (end of financial year)			
Stage 1	3	19	14
Stage 2			1

We deal with a wide range of differing complaints about the behaviour of MSP’s as set out in Exhibit 12. We received a significant number of complaints about behaviour on Twitter in 2022/23. The category relating to other, covers all types of other complaints we received in the office covering for example the use of inappropriate language at events and the work of parliamentary committees.



Exhibit 12 – Types of complaints

<b>Categorisation of Complaint</b>	<b>2022/23</b>	<b>2022/21</b>	<b>2020/21</b>
Breach of confidentiality		11	479
Register/declaration of interest	1	3	3
Treatment of other MSP's/staff	1	6	31
Behaviour on Social Media	11	44	7
Other	33	54	45
<b>Total</b>	<b>46</b>	<b>118</b>	<b>565</b>

When the Commissioner receives a complaint about the conduct of an MSP, we assess whether the complaint is ‘admissible’ pursuant to three statutory tests. If it does, we can accept the complaint for investigation. Exhibit 13 provides this information in more detail.

Exhibit 13 - Outcome of Complaints

<b>Reasons for inadmissibility</b>	<b>2022/23</b>	<b>2021/22</b>	<b>2020/21</b>
Dismissed under the first statutory test – the complaint was not “relevant” – for example, it did not concern the conduct of an MSP	76	91	56
Dismissed under the third statutory test – was the complaint of enough substance to justify further investigation – that is, was there sufficient evidence?	489		
Complaints “outwith” jurisdiction were referred to:			
• Presiding Officer			
• First Minister		1	1
• SPCB			
• Standards Procedures and Public Appointments Committee		1	3
<b>Inadmissible</b>	<b>565</b>	<b>93</b>	<b>60</b>
<b>Admissible</b>	<b>2</b>	<b>2</b>	<b>1</b>
<b>Totals</b>	<b>567</b>	<b>95</b>	<b>61</b>

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 2022/23 (2020/21: two). There were no admissible cases under investigation as at 31 March 2023 (2021/22: nil).

Exhibit 14 - Findings reported to the Standards, Procedures and Public Appointment Committee of the Scottish Parliament in 2022/23

<b>Case Ref.</b>	<b>Nature of Complaint</b>	<b>Commissioner’s Conclusion</b>	<b>Committee date</b>	<b>Committee decision</b>	<b>Sanction imposed by the Scottish Parliament</b>
3633	Failure to declare an interest	Breach	22/12/2022	Breach	The Committee was of the view that its agreement with the ESC on the finding of a breach was sanction enough.
3773	Failure to declare an interest	Breach	11/05/2023	Breach	Recommended exclusion from one meeting of the Equalities, Human Rights and Civil Justice Committee.

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

Our Performance

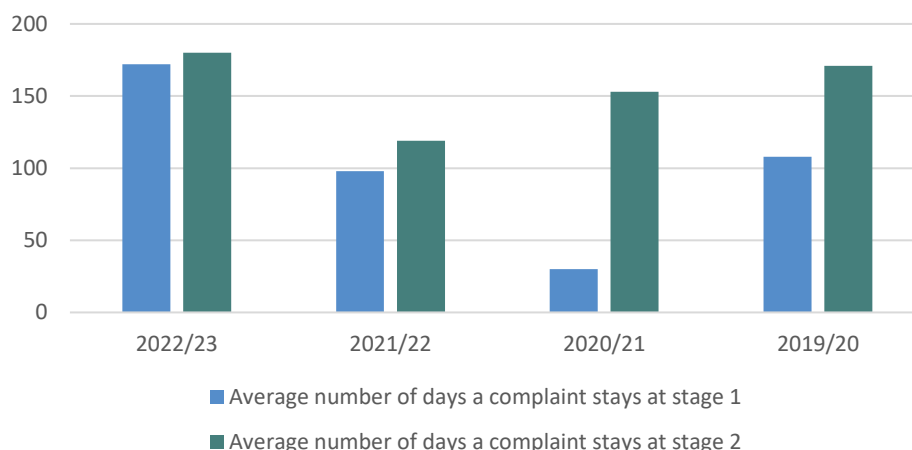
LOCAL AUTHORITY COUNCILLORS AND BOARD MEMBERS OF A PUBLIC BODY

We currently collect information relating to the average number of days taken for both initial assessment (Stage 1) and investigation (Stage 2). In 2022/23, the average number of days taken for initial assessment was 171, while for investigation it was 180. Exhibit 15 sets out the information for 2022/23 and the three previous years.

The average number of days taken at stage 1 was significantly higher than the previous years. This reflects the fact that we had a significant historic backlog to clear, meaning that a high number of complaints were waiting in a queue to be assessed before allocation to an Investigating Officer. Once allocated, complaints tend to be completed at stage 1 in a significantly shorter period of time. At the same time, the average number of days taken at stage 2 has also increased from previous years. There are various factors that affects investigations timescales. The stage 2 process does not end until a report has been referred to the Standards Commission. It includes waiting time for a party to respond substantively to the office during an investigation, time taken for a party to seek legal representation where they feel it is needed, and extensions of time for a party to respond to the office, which are granted in line with our policies for considering such requests. Whilst stage 2 timescales have increased, the team still managed to complete 44% more cases than the previous year.

It is recognised that we need to bring down investigations’ timescales. A workforce planning exercise in 2022/23 showed that more capacity was needed in the investigatory team in order to properly execute our functions, culminating in the recruitment of four new full-time staff. The Investigations Manual published target timescales for investigations, all of which were publicly consulted on, and the office’s progress against these will be published in future annual reports.

Exhibit 15 – Average number of days a complaint stays at stage 1 and 2 for local authority councillor and board member complaints



## MSPs

There are two performance targets in place for MSP complaints as follows:

At Stage 1, the Commissioner is required to report to the Standards, Procedures and Public Appointments Committee, the Complainer and MSP who is the subject of the complaint, if the stage exceeds two months. Of the 567 complaints that were assessed for admissibility in 2022/22, 495 complaints took over two months.

At Stage 2, this same reporting arrangement as Stage 1 is required if this stage exceeds six months. Two complaints proceeded to stage 2 in 2022/23. There were no Stage 2 investigations in progress at the end of the reporting year.

We have developed additional performance reporting measures which we have included in our Investigations Manual and which set targets for all stages of our investigations. We will report our performance against these in our next annual report. These new KPIs will help measure our performance and drive improvement. During 2023/24 we are also rolling out a complaint survey to gather feedback on the customer service received by both complainers and responders. The results from these will also help drive improvement.

## FORWARD LOOKING ASSESSMENT

In 2023/24 and with increased staffing in the team, we are confident that we will be able to clear the backlog of cases that has built up since 2021/22. Our new Investigations Manual will support and underpin our approach, and ensure outcomes from our work are both trusted and fair. We have already started to develop a quality assurance framework to ensure that all our works meets the required standards and is of the highest quality. We already have assurance from our internal auditors that the controls we have in place for our investigatory procedures are substantial.

We will renew our focus on training and developing across the team, ensuring staff are not only equipped to fulfil the requirements of the role, but also have expert knowledge across important functions in local government (such as planning and licensing) and in areas where we receive the largest number of complaints.

For those that come into contact with us, in whatever form, we want to improve the customer service experience through gathering feedback and acting on it or being able to signpost individuals quickly and efficiently to a more appropriate body, in cases where we cannot help them. We will continue to engage with our stakeholders, seeking opportunities to listen to their views and using this to inform our approach.

PERFORMANCE AGAINST OUR BUSINESS PLAN

The Commissioner’s biennial business plan for 2022-2024 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:

Exhibit 16

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>	<p>i. Upgrading and updating of procedural documentation (templates, factsheets, flowcharts, checklists etc) for MSP, councillor and board member complaint handling.</p> <p>ii. Adopt new procedures for interim period.</p> <p>iii. Map key stakeholders.</p> <p>iv. Make initial informal contact.</p> <p>v. Contact formally by way of introduction to AESC and plans for office.</p> <p>vi. Issue manual to key stakeholders for comment.</p> <p>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.</p>	<p>i. ✓</p> <p>ii. ✓</p> <p>iii. ✓</p> <p>iv. ✓</p> <p>v. ✓</p> <p>vi. ✓</p> <p>vii. ✓</p>	
C3	<p>We will publish our procedures as revised so that everyone knows what to expect</p>	<p>i. Publish revised investigations manual.</p> <p>ii. Have parts of manual that are of interest and relevance to the public translated into BSL, Easy Read and other languages.</p>	<p>i. ✓</p> <p>ii. ✗ (aim for completion late in 2023/24)</p>	
<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 2022-2024 - Progress as at 31 March 2023](#).

## 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 one complaint regarding failure to register lobbying activity appropriately (2021/22 and 2020/21: Nil). The complaint did not pass the statutory tests for admissibility and was therefore closed without proceeding to investigation and reporting.

## 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](#) and some initial high level scoping work has already been undertaken.

The following tables and graphs show the extent to which Scotland’s board members at the end of 2022 reflect the population of the country as a whole and how it has changed over time.

### CURRENT DEMOGRAPHIC PROFILE OF SCOTLAND’S BOARDS

Figure 4

Target Group	Change in board membership profile	Profile of board members† at 31 December 2022	Profile of board members† at 31 December 2021	Scottish Population (2011 Census)
Female	0.46%	51.26%	50.80%	51.50%
Disabled	1.20%	9.80%	8.60%	19.60%
Black and minority ethnic††	1.20%	4.90%	3.70%	4.00%
Aged 49 and under	1.03%	19.33%	18.30%	54.3%*
Lesbian, gay and bisexual	0.32%	5.32%	5.00%	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 5

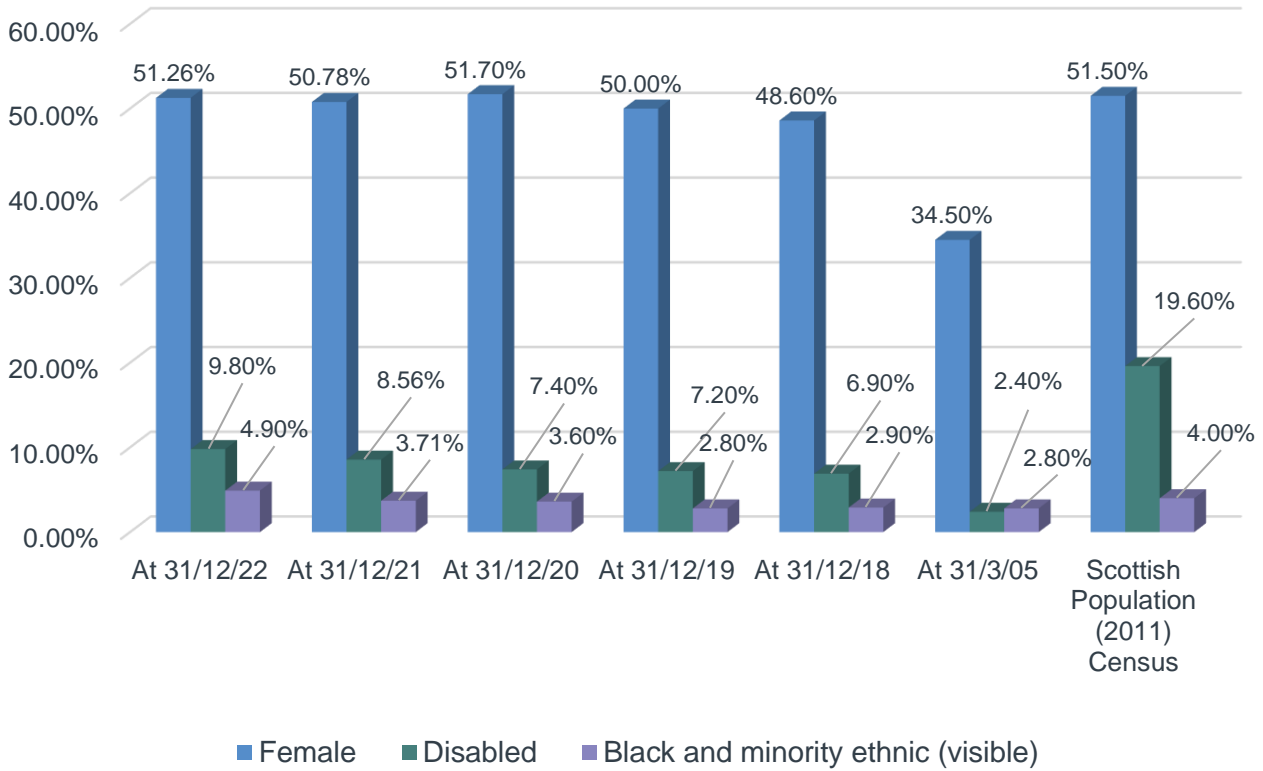
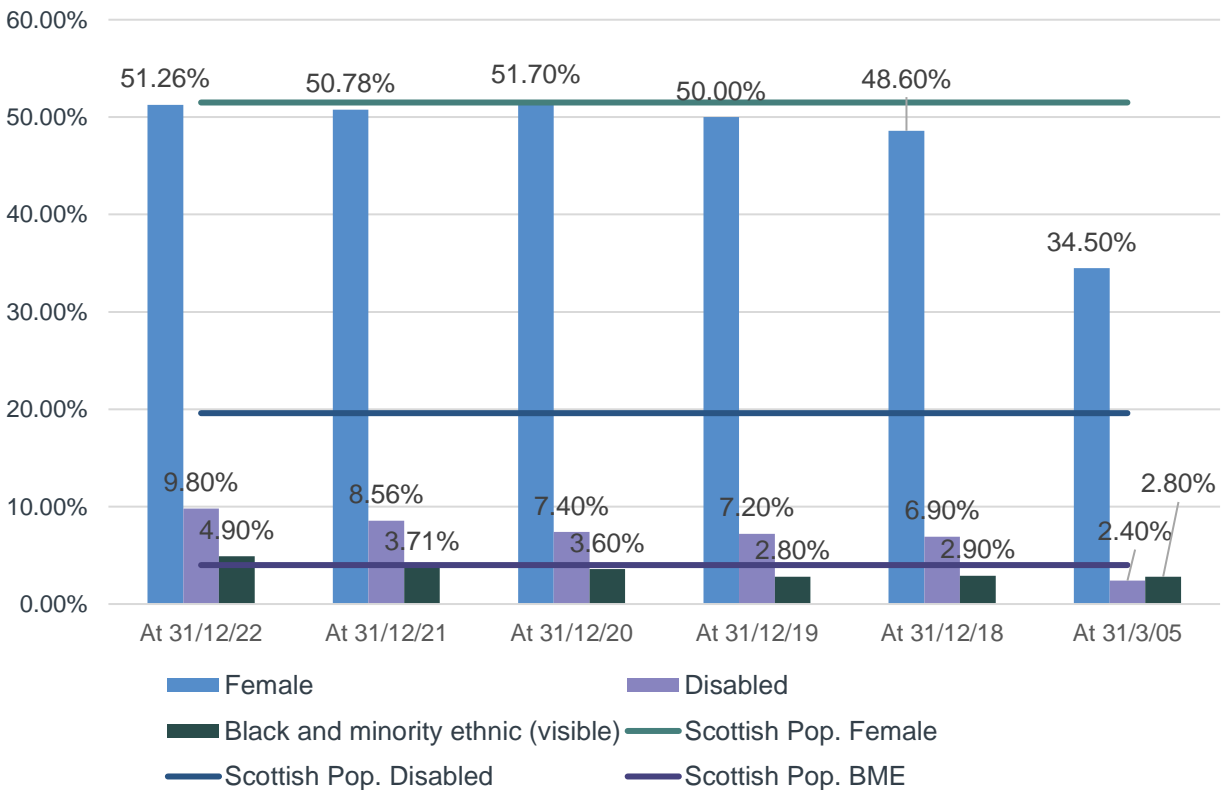


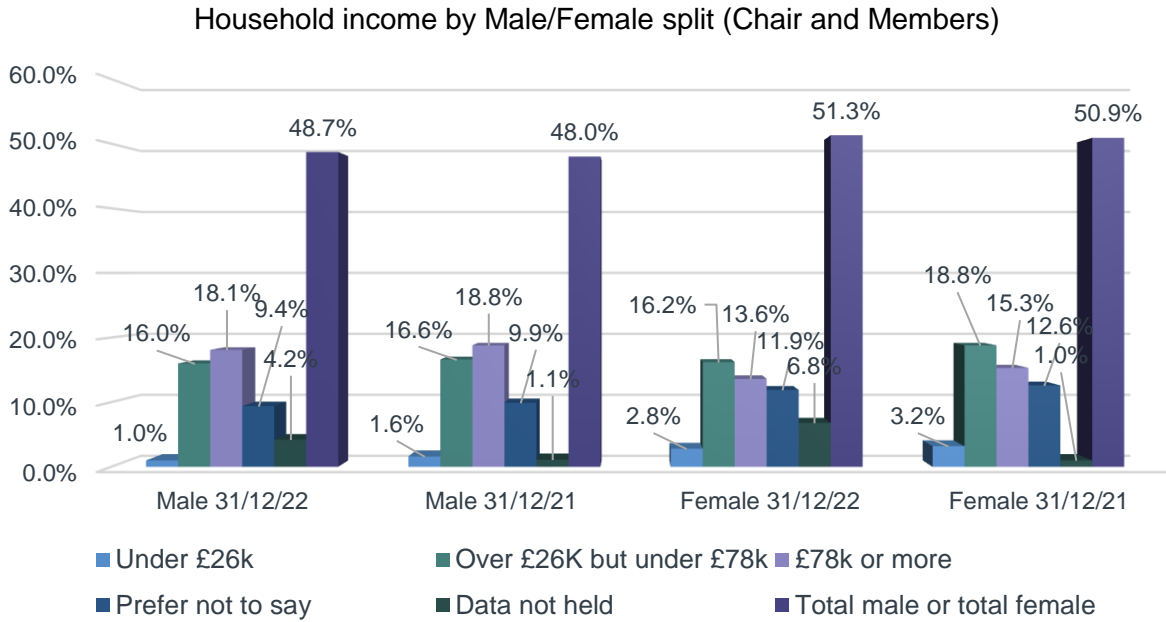
Figure 6





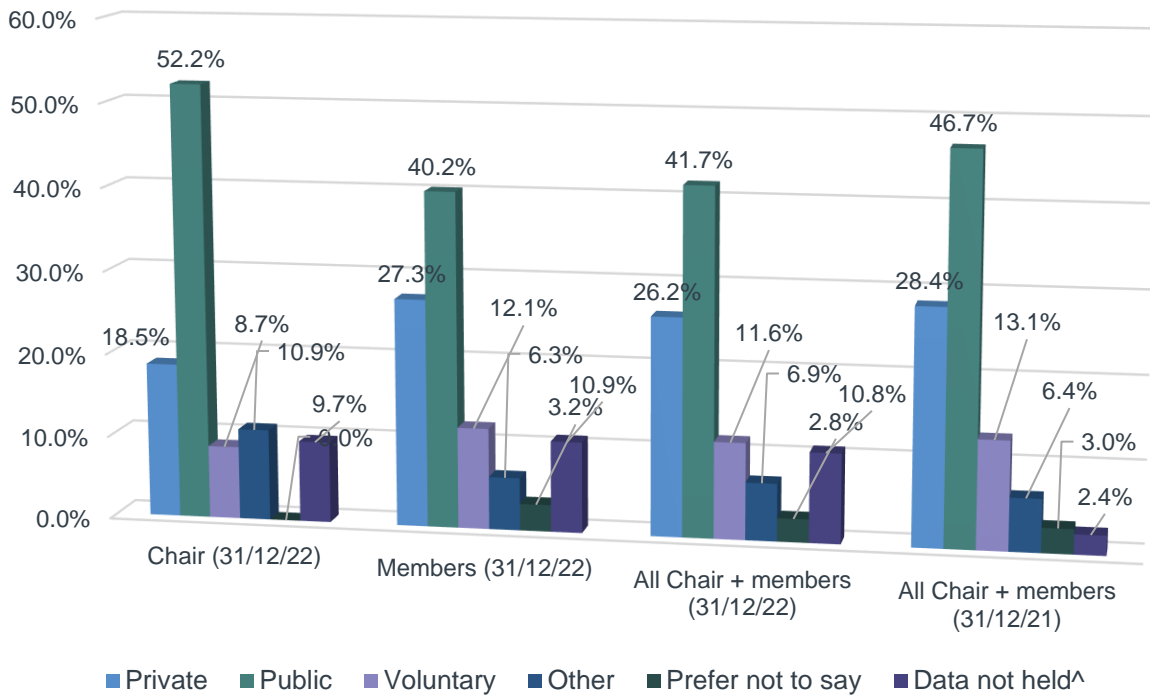
**HOUSEHOLD INCOME OF BOARD CHAIRS AND MEMBERS  
AS AT 31 DECEMBER**

Figure 7



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

Figure 8

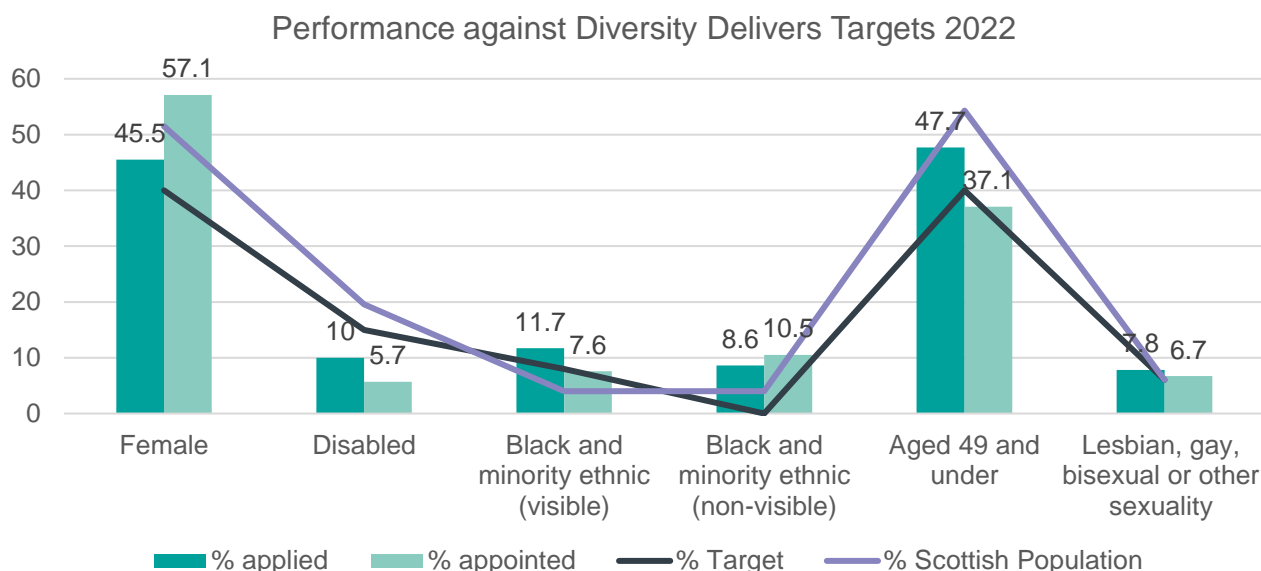


In December 2021, Scottish Government officials introduced a new system for tracking applicants. This was introduced for all Scottish Government recruitment and included Public Appointments. Standard monitoring questions were introduced for all applicants using the system and these did not include the previously asked bespoke questions about household income or sector worked in. The demographic information provided in this report therefore does not include any new applicants recently appointed to boards (since December 2021). As the numbers of board members who provided this information prior to introduction of the new system in December 2021 will reduce year on year and make the information less reliable over time, this information will not be provided after this years' report. In February 2023 the Scottish Government introduced a socio-economic background question to the diversity monitoring form; the style of the question is based on evidence from the [UK Social Mobility Commission](#) which suggests that if you are to ask one socio-economic background-related question, then parental occupation is the most effective one for determining status. Information based on this question will be available for the 2023/24 report.

## Performance against Diversity Delivers Targets 2022

The following chart shows the percentage of applications and appointments in 2022 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 9



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

## APPLICATIONS AND APPOINTMENTS BY TARGET GROUP

Figure 10

Target Group	Target	2022		2021		2020		Scottish Population*
	●	●	●	●	●	●	●	
	%	%	%	%	%	%	%	
Female	40	45.5	57.1	40.6	46	41.4	53.5	51.5
Disabled	15	10	5.7	13.8	14	12.8	12.7	19.6
Black and minority ethnic (visible)**	8	11.7	7.6	10.3	8	8.5	5.6	4
Black and minority ethnic (non-visible)	N/A	8.6	10.5	7.8	6.7	8.9	5.6	4.2
Aged 49 and under	40	47.7	37.1	30.7	27.3	28.2	21.2	54.3***
Lesbian, gay, bisexual or other sexuality	6	7.8	6.7	6.8	6	5.4	5.6	6.0****
Has a Trans status or history	N/A	0.6	0.0	0	0	0	0	N/A

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 2022-2024 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 11

Public Appointments		Milestones	Achieved
A1	We will assist with the implementation of the revised Code of Practice for appointments with a greater focus on outcomes, accountability and transparency and an emphasis on learning lessons	i. Have parts of Code that are of interest and relevance to the public translated into BSL, Easy Read and other languages.	i ● (Some content has been translated into BSL, but translation to Easy Read has been delayed due to provider inavailability)
A2	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.	i. Draft and publish statutory guidance ii. Run training and review training developed by SG for all relevant stakeholders on new Code's application iii. New Code comes into effect iv. Continual training and guidance developed to support revised Code	i ✓ (Published October 2022) ii ✓ (SG training reviewed July - October 2022. Joint training for PAAs and SG officials in August 2022) iii ✓ (Published 31 March 2022 and came into effect from October 2022) iv ✓ (guidance provided as required since Code came into effect from October 2022)
A3	We will report publicly on the difference that the new Code of Practice is making to the appointments process, for good or bad, with a view to improving on practices. We will do so by publicising instances of good practice or innovative practice and learning as well as areas for improvement	i Engage with the Scottish Parliament's subject committee about appointments practices with a view to making improvements and increasing transparency ii Agree suitable reporting arrangements iii. Following discussion, submit periodic reports iv. Publish good practice case studies on website. v. Continue to feed into lessons learned for the Scottish Government by seeking applicant and panel member views: • Run applicant surveys on a round by round basis and provide a feedback report, whenever a request to run a survey is made. • Survey panel chairs (and body chairs where appropriate) at the end of appointment rounds to seek their views on PAA performance and the PA process.	i ✓ ii ✗ (Will be agreed once end of round information has been analysed as to the best options available to make this report) iii ✗ (Will not be submitted until a year after implementation of the revised code) iv ✗ (Will not be submitted until there is evidence of good practice in rounds completed under the revised code) v. ● (Applicant surveys have been updated in readiness for the revised 2022 Code and will be run once first rounds are complete) v. ● (The review process is being updated for the revised 2022 Code and will be run once first rounds are complete)

Public Appointments		Milestones	Achieved
A4	We will seek support to revise and republish Diversity Delivers, to include new recommendations for the achievement of greater board diversity.	i. Consult informally from October 2023 ii Run formal consultation from June 2024 iii. Commence research into good practice and what the content of the revised strategy should include	i <b>X</b> (Not due until October 2023) ii <b>X</b> (Not due until June 2024) iii. <b>●</b> (some basic initial research has commenced)
✓ Achieved   ● Partially achieved   X Not achieved			

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 2022-2024 - Progress as at 31 March 2023](#).

## 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 748 posts on the boards of 100 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 12

<b>At 31 March</b>	<b>2023</b>	<b>2022</b>	<b>2021</b>
No. of bodies regulated	100	99	99
No. of posts regulated	748	733	717
<b>Avg. no. of regulated positions per board</b>	<b>7.5</b>	<b>7.4</b>	<b>7.2</b>

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

### HOW MANY APPOINTMENTS DID WE OVERSEE?

Appointments are made through a process called an appointment round. During the financial year 2022/23, we were active in overseeing 96 appointment rounds.

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 13

Allocations made	2022/23	2021/22	2020/21
Brought forward from previous year	54	52 <sup>1</sup>	40 <sup>2</sup>
Started in year	42	81	58
<b>Active during year</b>	<b>96</b>	<b>133</b>	<b>98</b>
Completed	72	79	45
Open at end of year	24	54	53

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

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

## HOW MANY PEOPLE APPLY FOR A PUBLIC APPOINTMENT?

From the information provided by the Scottish Government, during the calendar year 2022, 105 appointments were made to 40 public bodies following 1,962 applications made by 1864 applicants (2021: 150 appointments to 53 public bodies; 1,868 applications and 1,526 applicants).

## NUMBER OF APPLICATIONS AND APPOINTMENTS DURING THE YEAR TO 31 DECEMBER

Figure 14

Number of	2022	2021	2020
Applications	1,962	1,868	1,307
Appointments	105	150	71
Average applications per appointment	18.7	12.5	18.4

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

Figure 15

<b>Number of applications</b>	<b>2022</b>	<b>2021</b>	<b>2020</b>
Applied	1,962	1,868	1,307
Invited to interview	363	480	242
Recommended for appointment	106	159	87
Appointed	105	150	71

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

Figure 16

<b>Number of</b>	<b>2022</b>	<b>2021</b>	<b>2020</b>
Reappointments	129	111	65
Extensions	22	18	21

**SATISFACTION WITH PAA CONTRIBUTION AND THE APPOINTMENT PROCESS**

Figure 17

<b>Average satisfaction level</b>	<b>2022/23</b>	<b>2021/22</b>	<b>2020/21</b>
PAA's contribution	4.51	4.67	4.46
Appointments process	3.91	4.15	3.85

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 18

Issues raised	2022/23 (2013 Code)	2022/23 (2022 Code)	2021/22	2020/21
Enquiry - Asked for advice on the Code of Practice	81	72	150	177
Enquiry - Asked for advice on good practice	15	19	32	14
Enquiry – Asked for exceptions to the Code, or term extensions or to discuss options not covered by the Code	20	10	39	46
Diversity research enquiry	-	-	-	-
Enquiry - General enquiry on the work of the office	7	6	10	42
Enquiries and Reports - Miscellaneous or “Other” enquiries or reports	85	73	206	346
Enquiry - Freedom of information requests	-	-	-	-
Report a complaint about an appointment round	-	-	-	4
Report a concern about an appointment round or a failure in administration	40	24	71	100
Report about good practice	24	41	49	20
Report an update on round activity	65	45	41	-
Report about non-compliance with the Code of Practice	10	3	4	7
<b>Totals</b>	<b>640</b>	<b>602</b>	<b>602</b>	<b>756</b>

### 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 2022/23 other than the statutory guidance published to accompany the revised Code.

## CORPORATE AND FINANCIAL PERFORMANCE

### Performance against our business plan

The biennial business plan covering the period April 2022 to March 2024 set a range of corporate and financial goals. Progress is summarised below.

Figure 19

Corporate Goals for 2022/23	Achieved
Complete workforce planning exercise	✓
Submit business case to the SPCB for an increase to the staff complement.	✓
Recruit to vacancies in existing posts	✓
Recruit to the additional posts	●
Induct new staff	●
Prepare bi-ennial business plan and annual action plans for each function cascaded to individual action plans.	✓
Complete annual performance reviews and undertake full programme of training	✓
Formally survey staff on a range of topics	●
Ensure all staff aware of our values as an office	✓
Review governance arrangements	✓
Review risk management policies and procedures	✓
Review investigation procedures	✓
Obtain legal advice on whether a Commissioner has the authority to review and revise a previous Commissioner's decision. Take appropriate action.	✓
Review current schemes of delegation	●
Prepare a medium-term financial plan	●
Agree organisation-wide KPIs	✓
Develop a feedback survey for the complaints system	●
Review contractual and practical arrangements for Case Management System	●
Resubmit Records Management Plan to the National Records of Scotland	✓
Review and revise all outstanding policies that are currently beyond their published review date	●

✓ 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 £1,143,000 to the Commissioner for financial year 2022/23 (2021/22: £946,000). In addition, two contingency funding awards were made:

- £12,000 for a full review of our governance arrangements
- £73,000 to cover any recruitment and employment costs incurred during 2022/23 related to the new staff complement.

Contingency funding was not required and was surrendered to the Scottish Parliament in February 2023.

The Commissioner earned no income in 2022/23 (2021/22: Nil).

Total funding awarded for the year, including contingency funding, was £1,228,000 (2021/22: £1,093,000). Of the funds awarded £971,000 was drawn down (2021/22: £1,086,000).

### 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 £1,014,000 (2021/22: £995,000).

EXPENDITURE AGAINST BUDGET

Figure 20

Expenditure	Actual	Budget	Variance	
	£'000s	£'000s	£'000s	%
Staff costs	715	789	(74)	(9%)
Staff related costs	13	16	(3)	(19%)
Property	96	92	4	4%
Professional fees*	130	187	(57)	(30%)
Running costs	42	53	(11)	(21%)
Depreciation	18	-	18	-
<b>Revenue expenditure</b>	<b>1,014</b>	<b>1,137</b>	<b>(123)</b>	<b>(11%)</b>
Less depreciation	(18)	-	(18)	-
Capital expenditure	14	6	8	133%
<b>Cash expenditure</b>	<b>1,010</b>	<b>1,143</b>	<b>(133)</b>	<b>(12%)</b>

\* 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 underspent by £133,000 (2021/22: £28,000 overspend). Contingency funding of £85,000 was awarded (2021/22: £147,100), but was not required. An analysis of spend in key areas is given below.

Staff costs were under budget by £75,000.

- When submitting the budget bid for 2022/23, we anticipated a staffing complement of 12.6 full-time equivalents through-out the year. The earliest opportunity for the SPCB to assess our bid for additional staff was in October with a subsequent impact on recruitment. As a result our staffing complement for 2022/23 was an average of 11.3 full-time equivalents reducing this budget line by £68,000.
- The appointment of an Acting Commissioner and Accountable Officer offset the Commissioner's salary costs by £7,000.

Professional fees were under budget by £57,000.

- There was an under spend of £54,500 in the PAA budget made up as follows;
  - Travel costs - £11,400. The number of in person events remain low.
  - Training costs - £13,200. The budget was based on six training events but only four were required.
  - Appointment oversight costs - £18,900. The number of active appointment rounds fell by 28%, with a resulting impact on expenditure.
  - Recruitment and ad hoc costs - £11,000. Not required.
- The balance was made up of an underspend in the legal fees budget, with less than anticipated advice and representation being required.

Depreciation fell to £18,000 this year (2021/22: £31,000), 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.

The immediate impact of Covid-19 on expenditure has fallen away. The longer-term impact will remain the move to hybrid working and a reduction in travel costs. However, the number of in person events is increasing and travel costs may increase.

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 2022/23 was 99.7% (2021/22: 99%).

## CORPORATE RESPONSIBILITY

### Environmental matters

We recognise that our activities may have both positive and negative impacts in Scotland and further afield. The Commissioner operates a hybrid working system with staff primarily working remotely. The level of in person events, such as conferences, seminars and witness interviews remains much reduced. As a result the level of commuting to and from the office and to external events remains low, reducing car mileage and road use. The use of electronic communications has 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.

### Social, community and human rights issues

The Code of Practice for Ministerial Appointments to Public Bodies adopted in October 2022 includes a 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 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 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.

## Contact details

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