



# The Standards Commission for Scotland and the Chief Investigating Officer

Annual Report and Accounts for 2010/11

# The Key Principles of Conduct in Public Life

## **DUTY AND PUBLIC SERVICE**

Holders of public office should uphold the law and act in accordance with the law and the public trust placed in them. They should act in the interests of the council or public body.

## **SELFLESSNESS**

Holders of public office have a duty to act solely in terms of the public interest. They must not act in order to gain financial or other material benefit for themselves, family or friends.

## **INTEGRITY**

Holders of public office must not place themselves under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties.

## **OBJECTIVITY**

Holders of public office must make decisions solely on merit when carrying out public business.

## **ACCOUNTABILITY AND STEWARDSHIP**

Holders of public office are accountable for their decisions and actions to the public. They have a duty to consider issues on their merits, taking account of the views of others and must ensure that the council or body uses its resources prudently and in accordance with the law.

## **OPENNESS**

Holders of public office have a duty to be as open as possible about decisions and actions they take, giving reasons for their decisions and restricting information only when the wider public interest clearly demands.

## **HONESTY**

Holders of public office have a duty to act honestly. They must declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

## **LEADERSHIP**

Holders of public office have a duty to promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the council and its councillors or the public body and its members in conducting public business.

## **RESPECT**

Holders of public office must respect all other holders of public office and employees of the council or public body and the role they play, treating them with courtesy at all times.

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# 1

# Introduction by the Convener of the Standards Commission for Scotland



It is my pleasure to introduce you to the Ninth Annual Report of the Standards Commission for Scotland (the Standards Commission), and the Chief Investigating Officer (CIO) which covers the period from

1st April 2010 to 31 March 2011.

This is the last joint report on their work by the Standards Commission with the Office of the CIO. The Scottish Parliamentary Commissions and Commissioners Act came into effect on 1st April 2011 and it established the Public Standards Commissioner for Scotland to replace the CIO. The Standards Commission will remain as an independent body in its own right, supported by the Scottish Parliamentary Corporate Body.

This has been a year of change for the Standards Commission that included the appointment of two new Commission Members - Carol Paton and Julie Ward.

During 2009 a limited review of the Code of Conduct for elected members of Councils was carried out to address two key areas: the implications for the Code in the legislative reform of the Scottish Planning System; to review those areas of the Code that would benefit from clarification or reconsideration, drawing on experience gained in its application. The Scottish Government published the revised Code in December 2010.

In February 2011 the Standards Commission began a series of 'road shows' across Scotland to assist councillors and their advisers in their understanding of the revised Code and to reinforce the importance of the ethical standards framework. It has also been a useful opportunity to publicise the intention of the Standards Commission to become more proactive in promoting observance of the Code.

The Standards Commission will publish Guidance on the revised Code during 2011, following consultation with local councils, through the 'road shows', and other stakeholders such as COSLA etc.

I cannot conclude without thanking my fellow Members and the staff of the Standards Commission for their continued and valued contribution to the work of the Commission and to ethical standards in Scotland. In particular, I would like to thank Okain McLennan and John Dowson who made significant contributions to the raising of ethical standards in public life in Scotland whilst Members of the Standards Commission.

**Ian A. Gordon OBE, QPM, LL.B (Hons)**  
**Convener**

# 2 The Ethical Standards Framework in Scotland

## Mission

The Standards Commission for Scotland is an independent body which encourages high ethical standards in public life through the promotion and enforcement of Codes of Conduct for Councillors and those appointed to the Boards of devolved public bodies.

The Chief Investigating Officer is an independent office holder who has responsibility for the investigation, and referral to the Commission, of alleged breaches of the Codes of Conduct for Councillors and those appointed to the Boards of devolved public bodies.

## The Statutory background

The Ethical Standards in Public Life etc. (Scotland) Act 2000 (“the 2000 Act”) provided for a framework to encourage and, where necessary enforce, high ethical standards in public life. The Act established the Standards Commission for Scotland (“the Standards Commission”) and the post of Chief Investigating Officer (“CIO”). The Scottish Parliamentary Commissions and Commissioners etc. Act 2010 provides for a new office – the Public Standards Commissioner for Scotland (merging the posts of CIO and Scottish Parliamentary Standards Commissioner). From 1 April 2011, the functions previously exercised by the CIO will be exercised by the Public Standards Commissioner for Scotland (PSC).

In essence, the 2000 Act creates a framework whereby local authorities and devolved public bodies are required to adopt Codes of Conduct for their members, and complaints of breaches of these Codes can be investigated by the CIO and adjudicated upon by the Standards Commission. A chart outlining this process is shown on page 5.

## The Codes of Conduct

The Councillors’ Code of Conduct applies to all the councillors of every local authority in Scotland.

There are also Codes of Conduct for members of those public bodies which are listed in schedule 3 to the Act and therefore covered by the Framework. Details of all those covered by the Codes of Conduct can be found on the

## 2 The Ethical Standards Framework in Scotland

Standards Commission's website:

[www.standardscommissionscotland.org.uk](http://www.standardscommissionscotland.org.uk).

These bodies are required to have their own Code which is based on the Model Code of Conduct approved by the Scottish Parliament (available at [www.scotland.gov.uk/Publications/2002/04/14493/2563](http://www.scotland.gov.uk/Publications/2002/04/14493/2563)). Individual Codes are approved by Scottish Ministers.

During 2009/10, the Cabinet Secretary for Finance and Sustainable Growth announced a limited review of the Councillors' Code of Conduct. The main purpose of the review was to revise the Code to take account of changes to the planning regime which came into effect during 2009. As the Code had been in force since 2003, the review also afforded the opportunity to consider areas that could benefit from clarification or redrafting.

The review was led by the Scottish Government who set up a review group, of which the Standards Commission was a member.

The revised Councillors' Code of Conduct which came into effect on 21 December 2010 takes into account the current planning regime in Scotland and is intended to set out in even clearer terms the standards the public can expect of their councillors. The revised Councillors' Code of Conduct is available online at: <http://www.scotland.gov.uk/Publications/2010/12/10145144/0>.

The revised Councillors' Code of Conduct, and the Model Code of Conduct, are based on the principles of public life set out by the Committee on Standards in Public Life.

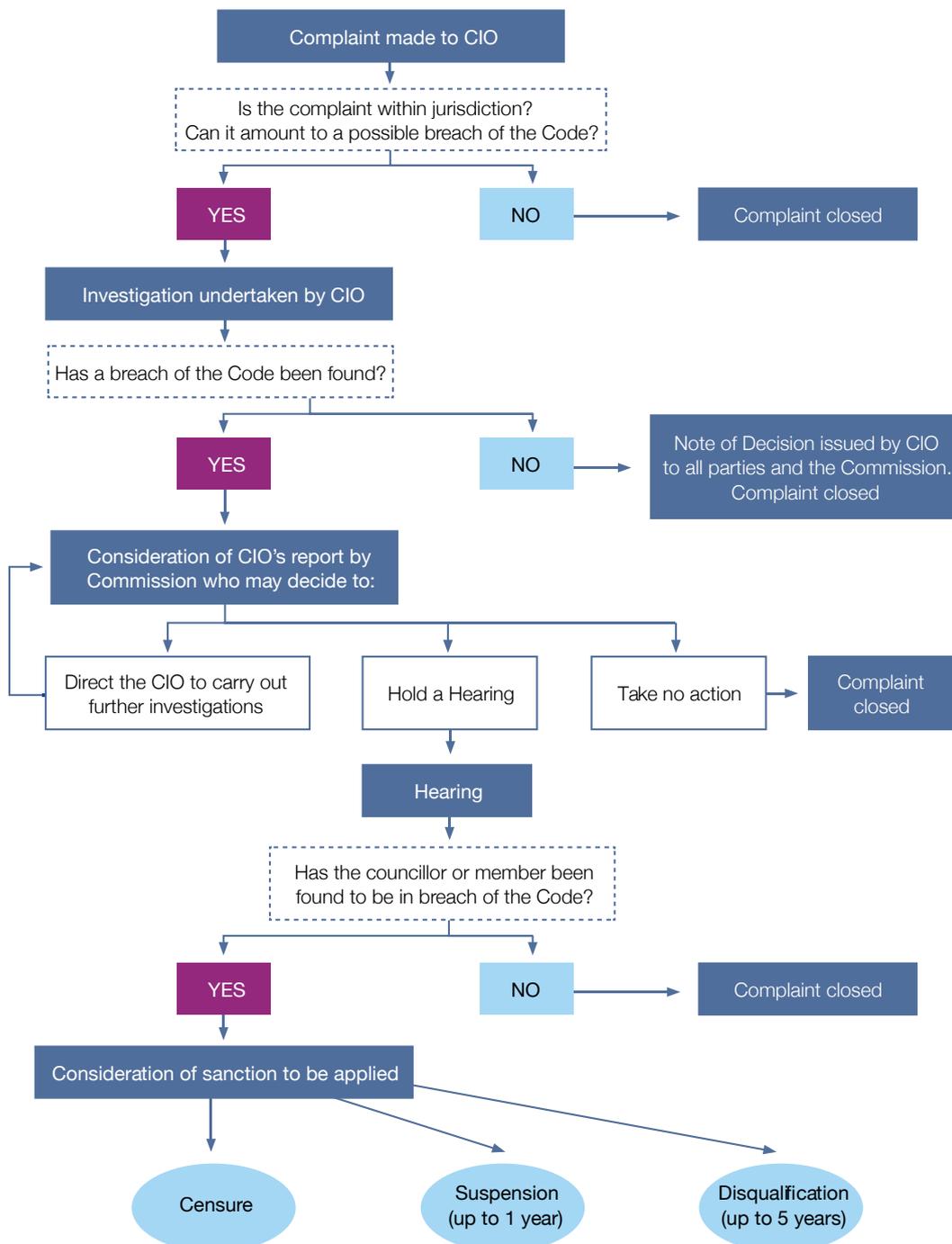
These principles are:

- Duty and Public Service
- Selflessness
- Integrity
- Objectivity
- Accountability and Stewardship
- Openness
- Honesty
- Leadership
- Respect

For a fuller description of each principle, please see the inside front cover of this report.

It is important to recognise that the Standards Commission and the CIO are separate bodies who each act independently to enable the Commission to operate as an impartial tribunal considering complaints investigated by the CIO. Their combined statutory duties under the 2000 Act provide for investigation and adjudication in relation to alleged breaches of the Codes of Conduct. Therefore, to provide the complete picture in relation to the ethical standards framework introduced by the 2000 Act, the Standards Commission and CIO have produced a joint Annual Report.

## How does the complaint process operate?



# 3 Standards Commission for Scotland

## Who are we?



**The Members of the Standards Commission.** From left to right: Jan Polley, Matt Smith, Julie Ward, Ian Gordon (Convener) and Carol Paton.

John Dowson and Okain McLennan were Members of the Standards Commission until their terms of office ended on 17 January 2011. Carol Paton and Julie Ward were appointed as Members of the Commission with effect from 18 January 2011.

Members of the Standards Commission for Scotland are appointed by the Scottish Ministers.

## What do we do?

The Standards Commission's functions as provided for by the 2000 Act are to:

- issue guidance to councils and devolved public bodies:
  - to assist them in promoting high standards of conduct, and
  - on the Standards Commission's relationship with them in carrying out its functions under the 2000 Act.

- receive reports from the CIO on the outcome of his investigations and, if the CIO has concluded that a breach has occurred, determine whether to:
  - direct the CIO to carry out further investigations;
  - hold a Hearing; or
  - take no action.
  
- hold a Hearing to determine whether a councillor or member of a devolved public body has contravened the Councillors' or the Members' Code.

where, following a Hearing, the Panel find that a councillor or member has breached the relevant code, to determine, in accordance with the Act, the sanction to be applied.

## Working with others

The Standards Commission will continue to enforce compliance with the Codes of Conduct where this is necessary. We do, however, consider that the main focus of our work should be towards promoting the ethical standards framework and assisting councils and public bodies to achieve the highest ethical standards. We place particular emphasis on the importance of working with councils, public bodies and their members and officers to raise awareness of, and compliance with, the ethical standards framework.

### **Revised Councillors' Code of Conduct – events and guidance**

The introduction of the revised Councillors' Code of Conduct was the first major change to the

ethical standards framework since its introduction. The Standards Commission recognised the importance of this, both to the councillors governed by the Code and the public who rely on the Code to understand the standards they may expect of their councillors. Therefore, to assist councillors and their advisors in their understanding of the revised Councillors' Code of Conduct, the Standards Commission held a series of regional events to which all councillors were invited. We held the events in Inverness, Ayr, Edinburgh, Glasgow and Aberdeen and, in total, around 170 councillors attended. At each event, we outlined the key changes to the Code, ran workshop sessions to illustrate those changes and offered the delegates the opportunity to ask questions. Each event was attended by the Convener, Commission Members, staff and representatives from the Office of the CIO.

We also took the opportunity to seek feedback at these events about any areas of the Code which may require guidance or clarification and are using this information to assist us to draft guidance on the Code.

We will hold further events in 2011/2012 and issue the guidance to councillors and local authorities.

### **Standards Officers' Conference**

In November 2010 the Standards Commission held a one-day Conference for Standards Officers, the focus of which was the role of the Standards Officer in carrying out their statutory and advisory duties, particularly in light of experience gained during the operation to date of the ethical standards framework in Scotland.

### 3 Standards Commission for Scotland

In addition to running sessions, including workshop and question and answer sessions, we took the opportunity to seek from delegates their views on how the Standards Commission can assist their members to achieve the highest standards of conduct and this information has assisted us when formulating our Strategic Plan 2011/15.

#### **Meeting with the Cabinet Secretary**

In June 2010, the Convener to the Commission, the Secretary to the Commission and the CIO met with the Cabinet Secretary for Finance and Sustainable Growth. Our annual meetings with the Cabinet Secretary provide a very useful forum to discuss the ethical standards framework in Scotland, the Standards Commission's contribution to raising standards and how those standards may be further improved.

#### **Access to Information**

The Standards Commission is committed to being as open and transparent as possible.

The Standards Commission considers its website a key tool to provide information to people with an interest in the ethical standards framework in Scotland. A large amount of information about the work of the Commission can be found on the website at:

[www.standardscommissionscotland.org.uk](http://www.standardscommissionscotland.org.uk).

We are currently reviewing the website to improve its usefulness to our stakeholders and will launch

the new site in 2011/12. In addition, we will develop a communications strategy aimed at improving communications with our stakeholders.

Further information on the work of the Public Standards Commissioner (formerly known as the CIO) can be found on his website at:

[www.publicstandardscommissioner.org.uk](http://www.publicstandardscommissioner.org.uk)

#### **Achieving Efficiency**

The Standards Commission is mindful of the requirements placed on all public bodies to provide good value for money and we aim to make optimum use of all resources. During the year we achieved a saving of £6,626 against our agreed budget.

#### **Performance against targets**

We set seven key performance indicators covering the Standards Commission's performance in respect of Hearings and Administration and are pleased to report that we met six targets and one target was not measurable as no complaints about service were received during the year.

Full details of the Standards Commission's performance against targets can be found in Appendix A.

We are reviewing our targets from 2011/12 onwards and will include details of our new challenging targets in our Strategic Plan 2011/15.

## Complaint reports referred to the Commission and decisions taken

The Standards Commission considers all reports where the CIO concludes that there has been a breach of a Code of Conduct. The reports are considered by the Members of the Commission who may decide to:

- direct the CIO to carry out further investigations;
- hold a Hearing; or
- take no further action.

In each case where it is alleged by the CIO that a breach of the Code of Conduct has occurred, the Standards Commission’s decision about what action will be taken is notified to the complainant, the person who is being complained about (“the respondent”), the Chief Executive of the local authority or board of which that person is a member and the CIO.

During 2010/11 the CIO referred one complaint where he determined that there had been a breach of the Councillors’ Code of Conduct. Where there have been a number of separate complaints against one person and all the complaints are about the same matter or matters, these complaints will normally be dealt with together as one case. Where a complaint is against more than one person, but relates to the same matter or matters, these will normally be treated as separate cases. The complaint referred by the CIO was dealt with as two cases as it involved two respondents.

Table 1 shows the outcome of the decisions of the Standards Commission following receipt of the CIO’s reports.

**Table 1**

	<b>No of Cases</b>
Breach reports referred to Standards Commission during 1 April 2010 – 31 March 2011	2 <sup>1</sup>
Breach reports outstanding from 1 April 2009 – 31 March 2010	2
Commission decision to take no further action	0
Commission decision to hold a Hearing	2
<b>Hearings held during 2010/11</b>	<b>2</b>
Breach reports carried forward to 2011/12	2

## Hearings conducted by the Standards Commission for Scotland

Table 2 outlines the findings of the Hearing Panels.

**Table 2**

<b>Findings</b>	<b>Number</b>
Finding of breach	2
Finding of no breach	0
<b>Total</b>	<b>2</b>

1 The two cases arose from one complaint. Because the complaint was about two councillors, it was treated as two cases.

### 3 Standards Commission for Scotland

The two cases involved two respondents but, as the complaints were made in respect of related facts, the two cases were heard together at the same Hearing.

Hearings are held in public, unless the Members of the Standards Commission determine that it is in the public interest for a Hearing not to be in public. This Hearing was held in public.

#### Sanction decisions on findings of breach after Hearings

Table 3 outlines the sanction imposed by the Commission.

**Table 3**

Sanction	Number
Censure	2
Suspension – full <sup>1</sup>	0
Suspension – partial <sup>2</sup>	0
Disqualification <sup>3</sup>	0
<b>Total</b>	<b>2</b>

**Notes:**

- 1 Full suspension means that the councillor is suspended for the period determined (which may not exceed 1 year) from attending all meetings of the council, committees and sub-committees and of any other body of which he/she is a representative or nominee of the council.
- 2 Partial suspension means that the councillor is suspended for the period determined (which may not exceed 1 year) from attending one or more, but not all of the following: (i) all meetings of the council; (ii) all meetings of one or more committees or sub-committees of the council; (iii) all meetings of any other body on which the councillor is a representative or nominee of the council.
- 3 Disqualification means that the councillor is disqualified for the period determined (which may not exceed 5 years) from being, or from being nominated for election as, and from being elected, a councillor. It has the effect of vacating that councillor's office.

#### Appeals against the Commission

A councillor or member of a devolved public body who has been found by the Standards Commission to be in breach of the Councillors' or Members' Code or on whom a sanction has been imposed, may appeal to the sheriff principal.

No appeals were lodged during the year.

#### Members' Emoluments

During 2010/11 the annual remuneration of the Convener and Commission Members, which is set by Scottish Ministers, was £10,165 and £5,616 respectively.

The Members of the Standards Commission for Scotland are not eligible to join the Commission's pension scheme and are not entitled to receive compensation for loss of office. The Members are entitled to reclaim travel and subsistence costs at the same rates and under the same regulations that are applied to employees.

## Policy for the payment of Creditors

The Standards Commission for Scotland strives to ensure that creditors' accounts are paid as per the contractual arrangements specified and agreed with individual suppliers. Payments are processed within 30 days of the invoice/claim being received. The exception to achieving this timescale is when an invoice or claim is being contested. Payment for disputed invoices will be made promptly on receipt of a satisfactory response, should the 30 day notification period be exceeded. Suppliers are notified of the Commission's payment policy via a supplementary notice and any comments or issues on this policy should be notified to the Administration Manager.

The Standards Commission's expenditure of £243,894 was met from the programmed budget of the Scottish Government's Finance and Central Services Department.

The Commission achieved a saving of £6,626 against our agreed budget which was transferred into the Chief Investigating Officer's budget. In addition, planned projects partially completed during the year will be finalised in 2011/12 with the cost of that work being met, with Scottish Government's approval, from funding set aside during 2010/11.

### Expenditure Report – Standards Commission for Scotland 2010/11

Item	Standards Commission for Scotland (£)
Office Holder Costs	36,653
Staff Salaries	133,422
Office Holder travel and subsistence	8,178
Staff travel and subsistence	1,927
Misc. Staff Costs & Training	1,868
Hearing Costs	6,316
Office and Premises costs	43,996
External Communications	9,215
Professional & Administration	2,319
<b>Total</b>	<b>243,894</b>

# 4 Office of the Chief Investigating Officer

## Investigation of Complaints: Analysis and Statistics

The Chief Investigating Officer (the “CIO”), assisted by investigating staff, is responsible for investigating and reporting to the Standards Commission (the “Commission”) on cases where councillors or members of devolved public bodies may have contravened the relevant Code of Conduct.

With the coming into effect of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 on 1 April 2011, the functions of the CIO are – along with similar functions relating to MSPs carried out by the Scottish Parliamentary Standards Commissioner – transferred to the

new office of Public Standards Commissioner for Scotland. I am signing this report off for the interests of the CIO.

The CIO was appointed by the Scottish Ministers under section 9 of the Ethical Standards in Public Life etc. (Scotland) Act 2000. He is independent of the Standards Commission for Scotland whose members were separately appointed by the Scottish Ministers.

Investigating Officers (IOs) are responsible to the CIO and work under his direction. There are currently one Senior IO and five IOs, all of whom work on a part-time basis. Four other staff manage all the administration, including case correspondence, in relation to complaints.



Left to right: Standing: David Sillars, Jon Miller, Douglas Winchester, Harris Wells.  
Seated: Iain McLeod, Anne Mahoney, Stuart Allan (CIO)

### Codes of Conduct

The Councillors' Code of Conduct and most of the Members' Codes of Conduct for devolved public bodies came into effect on 1 May 2003. Since then, a number of devolved public bodies have been added and their Codes have been brought into effect more recently.

### New Councillors' Code of Conduct

As stated at page 2, during 2009 the Scottish Government undertook a limited review of the Councillors' Code of Conduct to address two key areas: the implications for the Code of the legislative reform of the Scottish planning system, which came into effect during 2009; and to review those areas of the Code which would benefit from clarification or reconsideration, drawing on experience gained in its application. To assist with this work the Scottish Government set up a review group whose members included the Standards Commission, the CIO and representatives of Scottish local government. A public consultation was then carried out on a revised Code.

Following the consultation, the Scottish Ministers issued a revised Councillors' Code of Conduct which has now been approved by the Scottish Parliament. It came into effect on 21 December 2010.

### Cases which can be investigated

Complaints can only be investigated if:

- they are about councillors or members of public bodies (officers are not covered)
- councillors or members are acting in their official capacity and carrying out their official duties;
- the conduct complained of would be in breach of the relevant Code of Conduct; and
- the alleged misconduct took place after 1 May 2003 (or later if the relevant Code came into effect after then).

All complaints alleging a contravention of any Code of Conduct are referred to the CIO.

It is a matter for the discretion of the CIO to decide whether, when and how to carry out an investigation.

If the CIO decides to investigate a complaint he will ask the councillor or member for their response. He will also ask the council or public body, or any other person who can help, for relevant information. The CIO is required by law to conduct any investigation on a confidential basis so far as it is possible to do so. If, for any reason, he is not able to complete his investigation within 3 months, he will inform the Commission.

When the CIO has completed his investigation he will conclude whether or not there has been a breach of the Code.

## 4 Office of the Chief Investigating Officer

If the CIO concludes there has been no breach of the Code, he will inform all parties and the Commission of the outcome.

If the CIO concludes the Code has been breached, he will submit a report to the Commission. The Commission will then decide whether to direct the CIO to carry out further investigations, hold a Hearing or take no action.

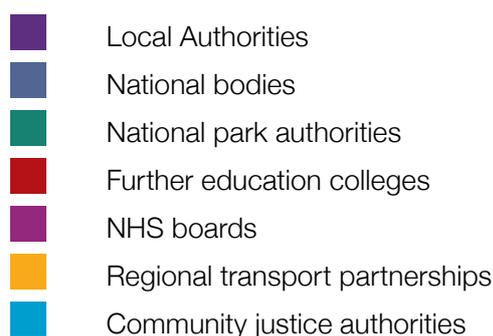
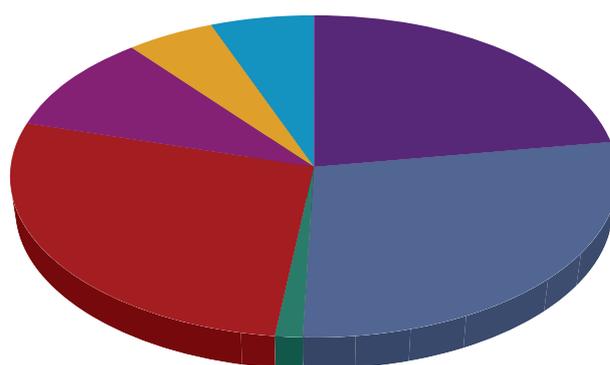
If the Commission holds a Hearing and decides that there has been a contravention of the Code, the Commission can impose a sanction of censure, suspension (for up to 1 year) or disqualification from office (for up to 5 years).

### Who can be complained about?

Table 1 provides general information about the number of local authorities and public bodies whose members can be the subject of a complaint. The number of devolved public bodies varies from time to time.

**Table 1 - Who can be complained about?**

Organisations	Number
Local Authorities	32
Public Bodies	
– national bodies	40
– national park authorities	2
– further education colleges	39
– NHS boards	14
– regional transport partnerships	7
– community justice authorities	8
<b>TOTAL</b>	<b>142</b>



## Complaints received against councillors or members of public bodies

Table 2 shows the number of complaints received by the Office of the CIO during the year, compared with previous years.

The number of complaints received about members of public bodies has always been low, notwithstanding that in public expenditure terms local authorities and public bodies spend similar amounts of public money. This year only 20 complaints were submitted about members of public bodies, compared with 178 about councillors. 12 complaints were outwith jurisdiction.

From the introduction of the Codes of Conduct in 2003, public awareness of ethical standards has grown which led to an initial increase in the number of cases. Councillors and members have developed a greater understanding and have become more aware of the requirement of the Codes and, as expected, there are indications that the levels of cases are starting to plateau.

During 2010/11, 210 complaints\* were received, which were dealt with as, and equated to, 135 cases\*\* compared to the previous year when 200 complaints were received, which were dealt with as, and represented 135 cases.

**Table 2 - Complaints received against councillors or members of public bodies**

Complaints against	2010/11 Number	2009/10 Number	2008/09 Number	2007/08 Number
Councillors	178	190	240	224
Members of devolved public bodies	20	6	3	1
Other (outwith jurisdiction)	12	4	7	9
TOTAL number of complaints*	210	200	250	234
<b>TOTAL number dealt with as cases**</b>	<b>135</b>	<b>135</b>	<b>130</b>	<b>138</b>

\* When a complaint is made against more than 1 councillor, the number of complaints will reflect the number of councillors complained of; for example, a complaint involving 3 councillors would be 3 complaints, as there are potentially 3 separate outcomes.

\*\* A case relates to a number of complaints which have been investigated together as the subject matters of the complaints are the same or related.

## 4 Office of the Chief Investigating Officer

### Complaints by category

Table 3 outlines the various categories of complaints received during the year, compared with previous years. The details given relate to the primary aspect of the complaint as submitted, although a complaint frequently comprises more than one aspect.

The most significant categories relate to alleged breaches of the Key Principles of the Code of Conduct, Misconduct on Individual Applications, Failure to Register or Declare Interests and Disrespect of Councillors and Officials. The key principles provide a context for and underpin the Codes of Conduct and complaints of this nature should also allege a breach of the substantive sections of the appropriate Code. Misconduct on Individual Applications relates, in the main, to planning applications but also covers applications such as licensing and building control. Failure to Register or Declare an Interest involved 37 complaints.

Complaints categorised as Other Complaints and Outwith Jurisdiction accounted for 22% of all complaints. This category covers allegations of misconduct where the misconduct cannot readily be identified as a breach of the appropriate Code of Conduct. This type of conduct covers, for example, private conduct (conduct that is not related to the public duties of the councillor or the member); poor or rude behaviour; lack of service; failure to deal adequately with constituents' interests etc. In all these cases the common element is that there is - to a greater or lesser extent - doubt as to whether the complaint properly amounts to a valid complaint under the Code of Conduct. Frequently, there is an issue of whether the CIO has jurisdiction in relation to these complaints which can only be determined after conducting some initial investigation of the matter.

**Table 3 - Complaints by category**

Description	2010/11 Number	2009/10 Number	2008/09 Number	2007/08 Number
Failure to register an interest	18	8	5	8
Failure to declare an interest	19	19	28	27
Disrespect of employees	12	6	17	8
Disrespect of Councillors/Officials	17	13	18	13
Financial misconduct	6	2	0	5
Breach of confidentiality	3	7	8	3
Misconduct relating to lobbying	2	0	3	3
Misconduct on individual applications	31	68	87	67
Other complaints	35	59	49	51
Breach of the key principles	55	14	28	39
Outwith jurisdiction	12	4	7	10
<b>TOTAL</b>	<b>210</b>	<b>200</b>	<b>250</b>	<b>234</b>

## Origin of complaints

Table 4 shows the origin of complaints received during the year compared with previous years. Following the trend of previous years, 177 (84% of complaints) were from members of the public and 24 (11%) were from councillors about their fellow councillors. In contrast, 1 complaint was

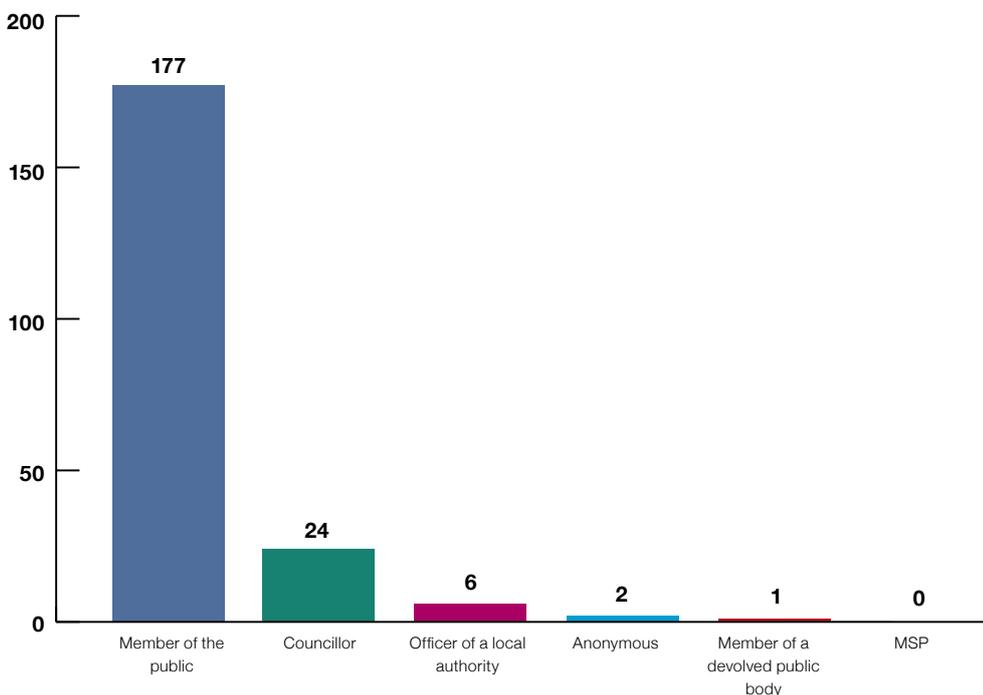
received from a member of a public body against a fellow member.

Two complaints were received anonymously. All complaints have to be made in writing and signed by the complainant. The CIO may decide, only in exceptional circumstances, to relax this requirement.

**Table 4 - Origin of complaints**

Complainant	2010/11 Number	2009/10 Number	2008/09 Number	2007/08 Number
Member of the public	177	161	202	179
Councillor	24	31	37	46
Member of a devolved public body	1	2	1	0
Officer of a local authority	6	3	8	6
MSP	0	2	1	1
Anonymous	2	1	1	2
<b>TOTAL</b>	<b>210</b>	<b>200</b>	<b>250</b>	<b>234</b>

### Origin of complaints in 2010/11



## 4 Office of the Chief Investigating Officer

### Complaints relating to Planning

Table 5 shows that in the past year there were 59 planning related complaints (28% of all complaints). This is a decrease on the year 2009/10 when 82 planning complaints (41% of all complaints) were received.

During 2010/11, 91% of these complaints were from members of the public with a material interest in the planning applications that have been at the

heart of the complaints. These are people who have either been applicants for, or supporters or objectors to, the applications at issue.

In relation to planning issues, the CIO's decisions and the Standards Commission's public hearings and decisions have continued to provide clarification of the relevant provisions of the Councillors' Code. As a result, there has been improved awareness and understanding of these provisions by councillors and the public alike.

**Table 5 - Complaints relating to Planning**

Planning complaints received from	2010/11 Number	2009/10 Number	2008/09 Number	2007/08 Number
Member of the public - with known material interest	55	77	58	70
Member of the public - with no known material interest	0	0	3	0
Councillor	3	4	18	17
Officer of a local authority	0	0	2	0
MSP	0	1	0	0
Anonymous	1	0	0	2
<b>TOTAL</b>	<b>59</b>	<b>82</b>	<b>81</b>	<b>89</b>

### Complaints progressed and dealt with in 2010/11

Table 6 shows how complaints have been progressed and dealt with during the year. The trend is similar to previous years; there were

69 complaints which were still in progress at the end of 2009/10 and a further 210 complaints were received during 2010/11. 277 complaints were dealt with during the year, of which 227 complaints were completed and 50 were still in progress at the end of the year.

**Table 6 - Complaints progressed and dealt with in 2010/11**

Complaints progressed and dealt with	2010/11 Number
Complaints outstanding as at 31 March 2010	69
Complaints received during 2010/11	210
Complaints completed during 2010/11	227
Complaints outstanding as at 31 March 2011	50

## Outcome of complaints completed

Table 7 shows, in relation to completed complaints, what the findings have been during the year compared with previous years. 227 complaints were completed this year and a significant number – 194 complaints – required some form of investigation, which follows a similar trend from previous years.

Following full investigation, 64 complaints (28%) concluded in a finding of no breach of the Code. 1 complaint (0.4%) resulted in a Report being submitted by the CIO to the Standards Commission with a finding that there had been a breach of the Code.

There were 129 complaints (57%) which, after an initial investigation, were subject to no further action. These covered complaints which did not amount to a possible breach of the Code or contained limited substance or merit.

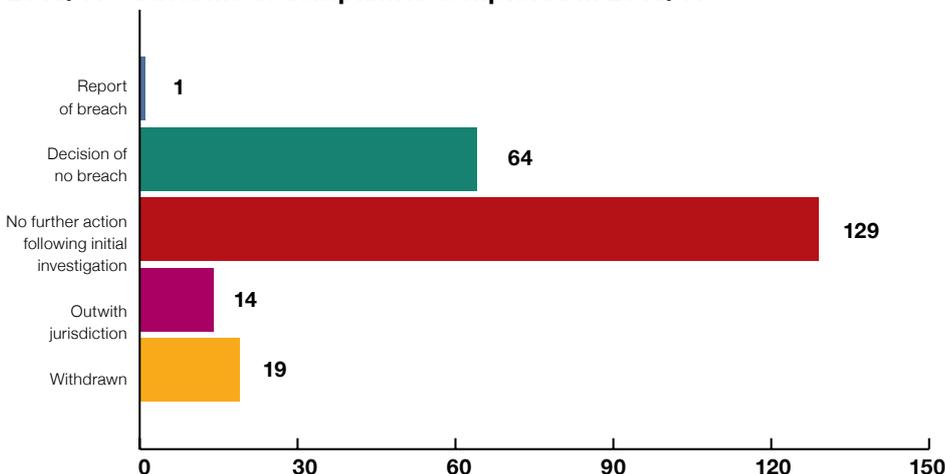
The initial investigation – in all cases – involved the assessment and consideration of the complaint and/or clarifying the complaint, or gathering information from parties involved in the complaint before concluding that the matter should not be pursued further.

14 complaints (6%) were found to be outwith jurisdiction. 19 complaints (8%) were withdrawn.

**Table 7 - Outcome of complaints completed**

Outcome of complaints	2010/11 Number	2009/10 Number	2008/09 Number	2007/08 Number
Report of breach	1	7	9	4
Decision of no breach	64	42	96	97
No further action following initial investigation	129	140	125	110
Outwith jurisdiction	14	6	6	10
Withdrawn	19	3	11	5
TOTAL number of complaints	227	198	247	226
<b>TOTAL number dealt with as cases</b>	<b>150</b>	<b>127</b>	<b>138</b>	<b>124</b>

**2010/11 - Outcome of complaints completed in 2010/11**



## 4 Office of the Chief Investigating Officer

### Breaches of the Code of Conduct

Cases where the CIO has found there to be contraventions of the Code are reported to the Standards Commission and further details of these cases can be found in **Appendix D**.

complaints – were completed within 6 months, and 99.5% of complaints were completed within 9 months.

Further details relating to all performance targets by the Office of the CIO can be found in **Appendix B**.

### Time taken to complete investigations

A significant number – 89% of complaints – were completed within 3 months of the investigation commencing. The vast majority – 96% of

### Expenditure in 2010/11

Expenditure for the Office of the CIO during 2010/11 amounted to £422,645. Details of the expenditure are provided on page 25.



Left to right: Anely Hannah, Stuart Allan (CIO), Ruth Hogg, Brenda McKinney, Helen Hayne

### Review by the Chief Investigating Officer

#### Ethical standards framework

The number of cases this year has, as in previous years, indicated that public awareness of the new ethical standards framework continues to grow and that councillors and members of devolved public bodies have an increasingly clearer understanding of the principles and rules set out in the Codes of Conduct.

#### The year's cases

This year has been the eighth year when the Codes of Conduct have been in operation and a number of points can be made as a result of the cases that have been dealt with during the year.

- There have been 210 complaints this year, compared with 200 last year. The complaints were investigated as 135 cases (which more accurately reflects workload), equalling the 135 cases last year
- Most complaints (178) continue to be against councillors rather than members of devolved public bodies (20)
- Complaints alleging a failure to register or declare an interest have increased this year (37) compared with last year (27).
- Complaints regarding the handling of planning applications remain at a significant level, although there is a decrease from last year (59 this year compared with 82 last year)
- Complaints alleging disrespect to officers or other councillors have increased to 29 this year from 19 last year

- In 28% of complaints full investigations were completed resulting in no breaches of the Codes. After initial investigations, a further 63% of complaints were found either not to amount to a breach or had limited substance or merit. In one case, there was a conclusion there had been a breach of the Code.
- 89% of investigations have taken 3 months or less, 96% have taken 6 months or less and 99.5% were completed within 9 months.

As in previous years, there continues to be positive feedback from local authorities and public bodies on the manner in which complaints have been investigated. It remains paramount that investigations are undertaken in a fair and thorough manner, whilst at the same time ensuring that they are completed as quickly and efficiently as possible. Complaint handling is subject to regular internal scrutiny and review to maintain the performance achieved to date.

#### Performance targets

This year's annual report provides details of the performance by the Office of the CIO against targets (**Appendix B**). Overall the targets relating to the administration and determination of complaints have been achieved well. The targets for time taken to complete investigations – which are considered the most important of the targets – were exceeded.

The Office of the CIO will continue to strive for continuous improvement in the delivery of the service in the interests of achieving efficiency, economy and effectiveness.

## 4 Office of the Chief Investigating Officer

### Current issues

This year there have been a number of issues which merit mention.

The first issue relates to the **number of complaints**.

As already indicated in table 2 above, whilst there has been a modest increase in the number of *complaints* received, there has been a levelling in the actual number of *cases* investigated which provides a more accurate barometer of the level of casework carried out by the office. Councillors and members have continued to develop their understanding of the specific requirements of the Codes of Conduct. It is anticipated that the trend in future years will continue to reflect a levelling off of the number of complaints as understanding of the Codes increases, or indeed may reflect a reduction in complaints.

The second issue relates to **planning applications**.

There has been a significant decrease in the overall numbers of complaints relating to statutory applications, including planning applications this year, from 82 last year to 59 this year, although even the latter number is still too high. In relation to complaints by the public, it is clear that councillors are increasingly aware of the importance of acting – and equally importantly being seen to be acting – properly at all times during the consideration of planning applications.

It remains the case that complainants have a greater – and often unrealistic – expectation of what individual councillors can do for them as

constituents. It will continue to be important to emphasise to the public generally that councillors – when dealing with planning applications – must act in the wider public interest and not in the interests of individual applicants or objectors.

It is equally important for councillors to act properly at all times, in the presence of fellow councillors as well as members of the public, in dealing formally with such applications.

The third issue relates to **registration and declaration of interests**.

Taken together, complaints relating to the registration or declaration of interests are still substantial in number (37 this year) and indeed higher than last year's figures (27). It is significant that in the cases where there were findings of breach (and went to a Hearing by the Standards Commission), these have related to registration or declaration of interests. The relevant provisions in the Codes have been made in order to give practical effect to the key principles of openness, honesty and integrity. It is essential that the public have confidence that decisions taken by councillors and members of public bodies are taken properly, fairly and impartially and in the public interest. The provisions of the Codes which relate to registration and declaration of interests are of key importance and councillors and members must be fully aware of them and ensure they give effect to them at all times.

The new edition of the Councillors' Code of Conduct contains new provisions in relation to registration and declaration of interests and

councils should ensure that advice is readily available to members in relation to these areas. For their part, members are encouraged to seek advice from the appropriate officials in relation to any potential difficulties they might have in relation to either registration or declaration of interests.

### **Case summaries**

Case summaries are included on the Standards Commission's website and during the year there have been a number of cases which might be considered helpful in interpreting and understanding certain aspects and provisions of the Codes. A select number of these cases are set out in **Appendix C**.

### **Review of the Councillors' Code of Conduct**

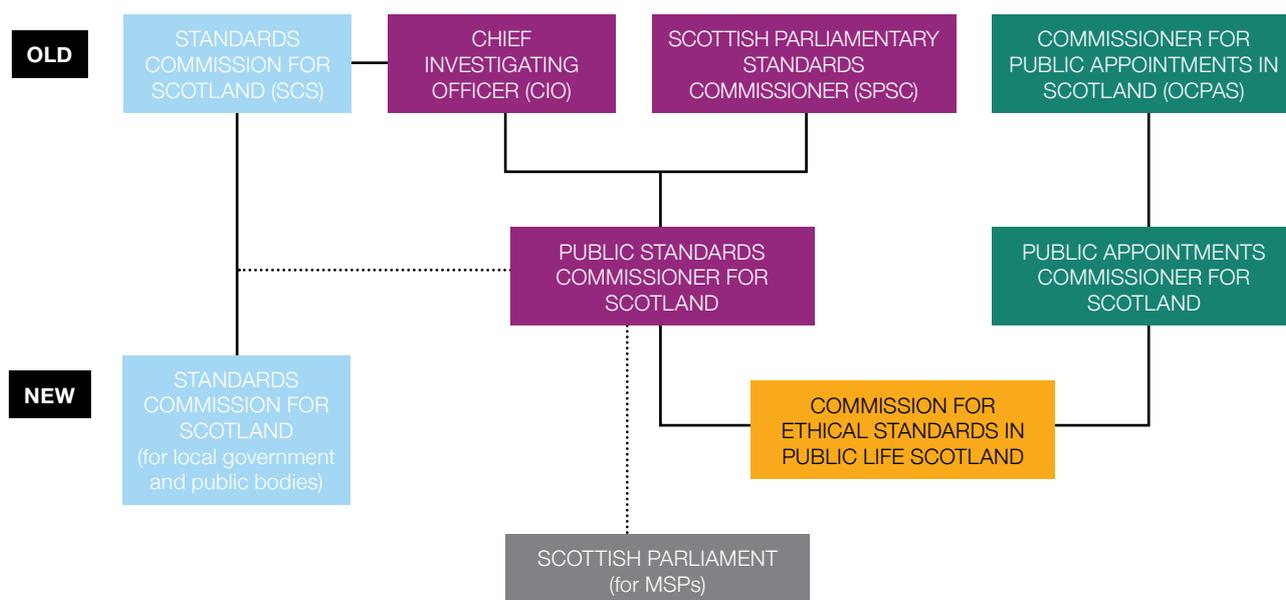
During the year, the Scottish Government published a new edition of the Councillors' Code of Conduct, which came into effect on 21 December 2010. The new Code – which contains new provisions in relation to interests and to planning – is a major contribution in ensuring the ethical standards framework is clear, understandable, proportionate and fit for purpose. It is vital that councils and councillors become fully acquainted with the revised Code as a matter of priority. For my part I have been happy to contribute to the Standards Commission's roadshows that have offered opportunities across the country to elected members and officials to learn about the new Code.

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

The Scottish Parliamentary Commissions and Commissioners etc. Act 2010 was passed in July 2010. Amongst other measures, the Act has merged the offices of the Chief Investigating Officer and the Scottish Parliamentary Standards Commissioner into a new office of the Public Standards Commissioner for Scotland. That office, together with the office of the Public Appointments Commissioner for Scotland, became the Commission for Ethical Standards in Public Life in Scotland. The merger came into effect on 1 April 2011.

## 4 Office of the Chief Investigating Officer

The following diagram illustrates the changes relating to the ethical standards framework.



### Best Value and Continuous Improvement

The Public Standards Office and the Public Appointments Office have worked assiduously during the past year to prepare for the new framework as a result of which the new Commission for Ethical Standards in Public Life is fully prepared and fully fit for purpose.

Our task now will be to build on this foundation to ensure we make a continuing improvement to ethical standards in public life in Scotland. There will undoubtedly be pressures on public expenditure in the foreseeable future and we will do all that we can as effectively and efficiently as possible and within the constraints of the public expenditure programme.

### Appreciation to Staff

Finally, I would once again like to extend my appreciation to all the staff in the Office of the CIO who have made such a valuable contribution to our common objective of achieving high standards in public office in Scotland. I remain as ever indebted to them for their dedication, hard work and good humour, particularly during the merger into the new Office for Public Standards!

*D. Stuart Allan*

D Stuart Allan  
Public Standards Commissioner for Scotland

## Expenditure Report – Chief Investigating Office 2010/11

Item	Office of Chief Investigating Officer (£)
Salaries and Fees	346,487
Travel and Subsistence	19,370
Misc. Staff Costs	564
Hearing Costs	0
Office and Premises Costs	54,480
External Communications	100
Professional and Administration	1,644
<b>Total</b>	<b>422,645</b>

The Chief Investigating Officer's expenditure of £422,645 was met from the programmed budget of the Scottish Government's Finance and Central Services Department together with funding transferred from the Standards Commission budget.

# 5 Appendices

## Appendix A Standards Commission for Scotland

### Performance against Key Performance Indicators

Performance Objective	Target	Achieved	Performance Against Target
<b>Hearings</b>			
To notify respondents of the decision of the Commission whether to hold a Hearing within 30 days of receiving the CIO's report indicating his view that a breach had occurred.	97%	100%	✓
To list cases for Hearing to commence within 12 weeks of the date of the Commission's decision to hold a Hearing.	100%	100%	✓
To issue the written decision, with reasons, within 15 days of the conclusion of a Hearing.	97%	100%	✓
<b>Administration</b>			
To provide substantive responses to correspondence within 20 days of receipt. <sup>1</sup>	94%	94%	✓
To provide substantive responses to requests for information under the Freedom of Information (Scotland) Act 2002 within 20 days of receipt.	100%	100%	✓
To provide substantive responses to complaints within 15 days of receipt.	97%	N/A	N/A <sup>2</sup>
To pay invoices within 30 days of receipt.	97%	100%	✓

1 Correspondence includes all letter, fax and e-mail communications with external organisations, other than arising from a contract for goods or services, requests for information under the Freedom of Information (Scotland) Act 2002, complaints about service or notes of decision from the CIO.

2 The target in relation to the time limit for dealing with responses to complaints is shown as N/A as during this year no complaints were received about the Commission's service.

## Appendix B

### CIO: Performance against targets during 2010/11

The key development objectives are set out in the CIO's Business Plan 2010/11 and relate to:

- ***the enforcement and promotion of ethical standards; and***
- ***achieving best value.***

In relation to complaints dealt with in 2010/11 the Business Plan committed the CIO to the following aims:

- ***to provide an efficient investigative ethical standards regime in respect of (a) local government and (b) devolved public bodies;***
- ***to ensure completion of high quality reports following investigation;***
- ***to contribute to public and stakeholders' understanding of high ethical standards;***
- ***to contribute to a review and re-appraisal of the Ethical Standards Act and the Codes of Conduct.***

The related targets and achievements are set out below.

## Initial communication

**Table 1 - Initial communication**

Target	Actual	Details
95%	100%	Communication <u>within</u> 10 working days of receipt of complaint

Table 1 provides details of the CIO's target in relation to the initial communication with the complainant, the criteria used to measure that target and the actual performance achieved.

**Target:** 95% of complainants will receive an initial communication within 10 working days of receipt of complaint.

**Criteria:** The number of working days from the date a new complaint is received to the date an acknowledgement is dispatched.

**Performance:** The performance of 100% of communication within 10 working days has exceeded the 95% target.

## Appendix B

### Initial assessment

**Table 2 - Initial assessment**

Target	Actual	Details
50%	92%	Initial assessment <u>within</u> 20 working days of receipt of complaint
85%	100%	Initial assessment <u>within</u> a further 20 working days

Table 2 provides details of the CIO's target in relation to the initial assessment of the complaint, the criteria used to measure that target and the actual performance achieved.

**Target:** 50% of complaints will have an initial assessment within 20 working days of receipt and a further 35% within a further 20 working days.

**Criteria:** The number of working days, from the date a new complaint is received to the date the first substantive letter (providing a response on progress to the complainant or requesting additional information) is dispatched.

**Performance:** A significant number – 92% of complaints (exceeding the target of 50%) – were initially assessed within 20 working days of the receipt of the complaint and 100% (exceeding the accumulative target of 85%) within a further 20 working days.

### Notification of investigations exceeding 3 months

**Table 3 - Notification of investigations exceeding 3 months**

Target	Actual	Details
90%	96%	Notification <u>within</u> 10 working days of the expiry of the 3 months period

Table 3 provides details of the CIO's target in relation to investigations exceeding 3 months, the criteria used to measure that target and the actual performance achieved.

**Target:** If investigations are to take longer than 3 months from the date on which it began, 90% of respondents will be informed of this within 10 working days of the expiry of that period.

**Criteria:** The number of working days, from the date of the 3 month deadline to the date a letter is dispatched, informing of a delay in the investigation.

**Performance:** 96% of written notifications were forwarded within 10 working days. This was an area closely monitored by management to make every effort to improve last year's performance of 79%.

## Advised of Decision

**Table 4 - Advised of Decision**

Target	Actual	Details
97%	100%	Advised within 5 working days of the CIO's final decision

Table 4 provides details of the CIO's target in relation to advising relevant parties of the investigation decision, the criteria used to measure that target and the actual performance achieved.

On limited occasions a respondent may not be informed of the complaint as a full formal complaint has not been received and, in some instances, an allegation has not been made against a specific respondent.

**Target:** 97% of respondents will be advised of the outcome of investigations, with reasons, within 5 working days of completion.

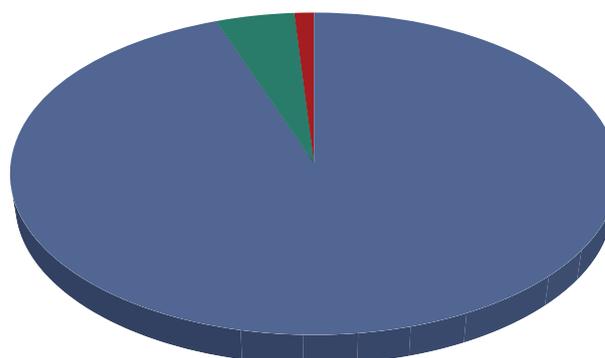
**Criteria:** The number of working days taken, from the date the investigation is completed to the date a letter is dispatched, informing of the decision.

**Performance:** 100% of all relevant parties were advised of the decision within 5 working days (exceeding the target of 97%).

## Time taken to complete investigations

**Table 5 - Time taken to complete investigations**

Target	Actual	Details
40%	89%	Completion <u>within</u> 3 months or less
75%	96%	Completion <u>within</u> 6 months or less
95%	99.5%	Completion <u>within</u> 9 months or less



- Completion within 3 months or less
- Completion within 6 months or less
- Completion within 9 months or less

Table 5 provides details of the CIO's target in relation to the length of time it has taken to complete the investigations within 2010/11, the criteria used to measure that target and the actual performance achieved.

**Target:** Investigations will be completed within the following timescales: 3 months or less - 40% of investigations; 6 months or less - 75% of investigations; 9 months or less - 95% of investigations.

## Appendix B

**Criteria:** The number of calendar months taken, from the date the investigation commenced to the date the investigation is completed.

**Performance:** A significant number – 89% of complaints – were completed within 3 months of the investigation commencing and the vast majority – 96% of complaints – were completed within 6 months. The completion targets have been exceeded in 2010/11. The CIO is committed to completing investigations as quickly as possible, notwithstanding that thorough consideration requires to be undertaken.

### Time taken to present each web summary decision on the website

**Table 6 - Time taken to present each web summary decision on the web-site**

Target	Actual	Details
90%	100%	Case summaries reported <u>within</u> 20 working days of the investigation being completed.

Table 6 provides details of the CIO target in relation to the length of time taken to present each web summary decision on to the web-site, the criteria used to measure that target and the actual performance achieved. Web summaries are in the public domain and are produced when a complaint has involved an investigation or when a decision on a complaint would be of interest to the public.

**Target:** 90% of summaries of the investigation decision to be included on the web-site within 20 working days of the investigation being completed.

**Criteria:** The number of working days taken, from the date the investigation is completed to the date a web summary is provided to the CIO/ Commission's web provider.

**Performance:** 100% of web summaries were posted on the web-site within 20 working days which exceeded the target (90%). It continues to be important to the CIO, for public interest and education purposes, to ensure case summaries are put into the public domain as quickly as possible.

## Appendix C

### Cases of interest - Non-breach cases

Full summaries of these cases can be found at [www.publicstandardscommissioner.org.uk](http://www.publicstandardscommissioner.org.uk)

#### 1. LA/DG/948 – Dumfries and Galloway Council

Nature of allegation: It was alleged that the respondent had breached the key principles of Honesty, Leadership and Respect set out in section 2 of the Code and the provisions in paragraph 3.14 on Conduct in the Chamber or in Committee.

The respondent provided material relating to another councillor for publication on a satirical website. He sent it by e-mail and did so in his private capacity, albeit the content referred to a political opponent. The text of his e-mail implied a political motive and contained references to ‘black ops’ as well as an inference of bias against women which were considered to be unsavoury and inappropriate for a senior councillor to whom others, both elected members and the public, would look for leadership and example. The respondent had sent his e-mail from his private account in his private or party political capacity, and not in the course of his Council duties. In the circumstances, and in light of an assurance that the issue had not been raised in Council and that the respondent did not utilise his Council e-mail address in the transmission of the material, the conduct complained of did not fall within the scope of the Code. Accordingly the respondent had not breached the code.

The Chief Investigating Officer observed that in relation to their use of e-mail, websites and weblogs, councillors should exercise careful judgement in the content and tone of material. The proper and ethical use of the internet, and in particular social networking sites, is of considerable importance and inappropriate content risks bringing the office of councillor, and the Council itself, into disrepute.

#### 2. LA/H/1051/1052/1054 and 1056 – Highland Council

Nature of allegation: It was alleged that the respondent had breached the guidance set out in section 1; the key principles of Objectivity, and Accountability and Stewardship contained in section 2; the provisions on General Conduct in section 3 and on Taking Decisions on Individual Applications in section 7. Reference was also made to the Protocol for Relations between Councillors and Employees set out in Annex C to the Code.

The complainants alleged that during a meeting of the Inverness, Nairn, Badenoch and Strathspey Planning Applications Committee, the respondent made a remark that was disrespectful to the Chair, elected members, Council employees and members of the public present at the meeting. It was also alleged that the remark impacted adversely on the consideration of the relevant planning application.

In addressing the meeting as a local member, the respondent referred to the racial origin or religious faith of members of the public who had indicated support for an application. The comment

## Appendix C

was restricted to a single remark and was not repeated or elaborated upon. Following the Chair's intervention, an apology was tendered. The Chief Investigating Officer considered that the respondent's implied reference to the motivation of all those who supported the application was speculative and diverted from the factually-based comment to be expected of an elected member. The respondent's comment came to wider public attention through the webcast of the meeting and drew adverse media publicity which potentially embarrassed the member and the Council.

The principles of Objectivity, and Accountability and Stewardship apply primarily when councillors are required to make decisions. In this case, the respondent was not acting in a decision making capacity. As the principles alone are not in themselves rules, they cannot be taken in isolation as substantive breaches of the Code. No breach of sections 3 or 7 or of Annex C, was established and accordingly the respondent had not breached the Code of Conduct.

### **3. LA/C/923 – Clackmannanshire Council**

Nature of allegation: It was alleged that the respondent had breached the key principles of Openness and Leadership in section 2 of the Code.

The complainant was concerned that the Council had breached European procurement law in regard to the operation and management of a local leisure facility. An independent company managed the facility and received an annual sum from the Council for doing so. This meant the company was effectively a subsidiary of the

Council, and such an arrangement was not in accordance with the European Procurement Directive and the Public Contract (Scotland) Regulations 2006. The complainant alleged that the respondent, who was the Council Leader, reached an agreement with the former Chief Executive concealing this and failed to bring the matter before the Council for consideration, in breach of the key principles of Openness and Leadership.

The investigation established that a firm of consultants was asked to look into the contract for the leisure facility and they reported to a meeting of the Leisure Strategy Working Group. The Council Leader, the complainant and other councillors were thereby provided with information that the Council was in breach of the EU Procurement Directive. The situation was raised at subsequent group meetings and a report was to be made to the Council at a later date, but this did not happen. The reasons for this were not firmly established; however it appeared that the former Chief Executive had decided to exercise his delegated authority to seek competitive tenders.

In reviewing what occurred, there was no evidence that the respondent was party to any agreement which involved concealing from members of the Council that there was a breach of European procurement law. Nor was there was a failure of duty on her part to bring the matter before the Council for consideration. Accordingly no breach of the Code of Conduct had occurred.

#### 4. LA/Mi/958 – Midlothian Council

Nature of allegation: It was alleged that the respondent had breached the key principles of Accountability and Stewardship, Openness, Honesty, Leadership and Respect in section 2 of the Code.

The complainant held the position of Chair of the Community Council. He said that during a telephone conversation the respondent had accused him of abusing his position. He alleged that the respondent was highly abusive towards him and threatened to look for information with which to discredit him. The incident occurred after a newspaper had published a list of snagging defects at a new primary school which had been drawn up by the Community Council. The complainant felt that he was doing his job as Chair of the Community Council in dealing with concerns raised by the public about the new primary school.

The respondent confirmed that there was a heated telephone conversation between himself and the complainant, but denied that he was abusive or that he swore at the complainant. He said he felt that the complainant's action in circulating an e-mail with the list of snagging defects had led to negative publicity about the recently built school.

It was important to bear in mind that the complainant had been carrying out his official functions as Chair of the local Community Council and that any improper or intimidatory actions by the respondent would indeed be questionable conduct. In this case, the investigation could not

establish what was said during the telephone call and therefore no breach of the Code of Conduct was found. The issue which lay at the heart of the complaint was the wellbeing of the local school, and it was unfortunate that the situation had developed out of a matter which was of mutual community interest.

#### 5. LA/E/929 – City of Edinburgh Council

Nature of allegation: It was alleged that the respondent had breached paragraphs 5.13, 5.16, 5.17 and 5.18 of the Code relating to Declarations of Interests.

It was the complainant's view that the respondent had a personal and declarable interest in the award of Council contracts for care and support services because her son was employed by one of the organisations which had previously provided care services to the Council and had tendered unsuccessfully to continue to provide such services.

When the proposals came before a meeting of the Finance and Resources Committee the respondent did not declare an interest and participated in the voting. At a subsequent Council meeting, the respondent declared a non-financial interest but voted in support of an amendment which, among other things, proposed the postponement of the award of contracts to the preferred bidders. The key issue in relation to the complaint was whether, at the time the matter was before the Committee and the Council, it was clear to the respondent that her son was going to be financially affected by the proposals.

## Appendix C

The respondent's initial focus and concern was on the wider impact of the proposals on the Council's care clients, rather than on their impact on any one provider. It would have been unreasonable to conclude that, when the item was discussed by the Finance and Resources Committee, the respondent realised that she might have a declarable interest. The respondent had therefore not breached paragraphs 5.13 or 5.16 of the Code. By the time of the Council meeting the respondent recognised that she had an interest in the item relating to the Council's care arrangements. She considered that she had a non-financial interest, and declared a non-financial interest as a member of a charitable organisation supporting care services and as her son was a mental health support worker, but she participated in the vote.

It did not necessarily follow that the Council's proposals for re-ordering its care delivery would have had a financial impact on the respondent's son. The respondent's interest in the matter, arising from her son's position, was in the nature of an indirect financial interest, rather than, as she perceived, a non-financial interest. Having regard to the fact that her son was financially independent of her and no longer resided in the parental home, and to the absence of a direct link between the proposals and their financial impact on her son, while it would have been prudent for the respondent to have declared an interest, there was insufficient evidence to conclude that, by participating in the vote at the Council meeting, she had breached the Code.

### **6. LA/G/1026 – Glasgow City Council**

Nature of allegation: It was alleged that the respondent had breached paragraph 3.17 of the Code relating to Use of Council Facilities.

It was alleged that the Glasgow City Council Labour Group had an agreement with the Council whereby party political material could be reproduced at less than full cost and the Council mail services used for party political purposes.

Section 2(1) of the Local Government Act 1986 Act provides that a local authority shall not publish any material which, in whole or in part, appears to be designed to affect support for a political party. In addition, paragraph 3.17 of the Code of Conduct limits the use of Council facilities by councillors to matters relating to the carrying out of their Council duties.

The Council's Monitoring Officer took the view that the arrangement with the Labour Group did not breach any statutory provision and pointed out that the cost of dealing with return mail was marginal and reimbursed by the Labour Group. With regard to the use of the City Chambers as a "return" address for party political responses, he did not consider it unreasonable for councillors, who were elected on a party political ticket, to publish that address as a point of contact.

The Council had produced guidelines on the use of such facilities and the arrangement between the Council and the Labour Group appeared to be at variance with this guidance. By operating such an arrangement – whether involving a charge or not - the Council was assisting the Labour Group

to publish material which the Council itself is not lawfully entitled to publish in terms of section 2(3) of the 1986 Act. Similarly, paragraph 3.17 of the Code makes no exception for the provision of services in respect of which a charge is levied. In addition, the Code of Recommended Practice on Local Authority Publicity issued under section 4(1) of the 1986 Act specifically advocates care when publicity is issued immediately prior to an election.

The Council was ill-advised to provide these facilities; however, based on assurances that Council facilities had not been used in the production or distribution of leaflets, it was concluded that there had been no breach of the Code in relation to this aspect of the complaint. Having regard to the long-standing nature of the arrangements, together with the fact that the respondents would have understood them to have had the approval of the Council and the Council's Legal Department, it was considered unreasonable to regard the respondents' use of Council facilities, as described, as a breach of the Code.

It was recommended that the Council should review its policy regarding the use of Council facilities and, in particular, the arrangement between the Council and the Labour Group.

### **7. Complaint no. LA/Mo/1058 – Moray Council**

Nature of allegation: It was alleged that the respondents had breached the key principle of Respect in section 2 of the Code. The complaint also fell to be considered in relation to paragraphs 3.2 and 3.4 of General Conduct and paragraphs 2 and 20 of Annex C to the Code.

It was alleged the respondents made general statements in the press to the effect that they had been subjected to sexist behaviour by some members and officers of Moray Council and as a result had failed to respect other councillors and Council employees.

The respondents accepted that the comments attributed to them in the press were accurate. Consequently, there was no dispute that the respondents engaged in public criticism of the Council alleging the existence of a sexist culture. The respondents did not, however, identify individual councillors or officers by name or otherwise. They had maintained this position despite requests by the Chief Executive to identify specific incidents so that the matter could be investigated.

It was regrettable that the respondents had not raised their concerns formally with the Chief Executive but instead elected to make comments to the press. Their action could have been open to the perception that their objective was to expose the Council to public criticism rather than to ensure that their concerns were investigated. In concluding that the respondents' conduct had not constituted a breach of the Code, two key factors were relevant. Firstly, the respondents had not publicly named any individual councillor or officer. Secondly, their refusal to respond to the Chief Executive's request to have them formally investigated, had undermined the respondents' credibility and the impact of their allegations. The general right to freedom of expression under Article 10 of the European Convention of Human Rights (ECHR) was also a factor.

## Appendix C

Although no breach had occurred it was recommended that where an elected member considered that there were serious shortcomings in the culture of his or her Council, or in the conduct of its members or officers, they should report these to the Chief Executive.

### **8. Complaint no. FEC/NH/1025 – North Highland College**

Nature of allegation: It was alleged that the respondent had breached the provisions of the Members' Code of Conduct for North Highland College contained in section 4 Registration of Interests and section 5 Declaration of Interests.

The respondent is a member of the Board of Management of North Highland College. He had made no entry on his Register of Interests declaring his membership of a trade union or membership of any local groups. He had made one Register declaration relative to a contract and had made a second non-specific Register declaration regarding payment of a professional fee.

The Members' Code did not specify any absolute or blanket requirement to register membership of a trade union or a club or society. The restricted circumstances in which registration arose were when the membership(s) "may be significant to, of relevance to, or bear upon the work and operation of the Board". The test to be applied in considering the need for registration and declaration was whether "a member of the public acting reasonably" might think that an interest could affect the member's responsibilities or actions.

It was concluded that there was no breach of the Code. Ordinary membership of the EIS as a secondary school teacher retired from full time employment did not have the degree of significance or relevance to the work and operation of the College Board that required registration of that interest. The respondent had never held trade union office and had a wholly different category of membership from that section of the EIS dealing with the distinct and separate interests of College Lecturers. Neither did the respondent's memberships of local groups attain the level of significance or relevance to engage that registration requirement.

There was no evidence that the contract which the respondent had with the College was ever an agenda business item for the Board or that any other contract was involved. The registration made, although brief, was sufficient to meet the respondent's Code obligation. The Code did not require the contract value to be specified so the second fee registration was unnecessary.

The duty to register or declare any interests was the personal and individual responsibility of the Board member concerned. Whilst he or she might seek advice from the College Secretary or other senior officers of the College, or their own advisers, the final decision remained solely with him or her. In the light of these being personal duties, it was not the role or function of the Board, any Committee of the Board or any other Board Member(s) to require, pursue or seek the making of registrations or declarations of interest by Board Member colleagues.

### 9. Complaint no. LA/S/943 – Stirling Council

Nature of allegation: It was alleged that the respondent had breached section 5 Declaration of Interests and section 7 Dealing with Planning Applications

The complainant said that the respondent intervened in a planning application and made representations to officers and to members of the Council's Planning Panel. The complaint was that, despite having received a Neighbourhood Notification in respect of a planning application for a new College Campus on part of a Development Area, the respondent had asked planning officers to refer the application to the Council's Planning Panel. Further, that the respondent had attended the meeting of the Planning Panel and had participated and intervened in the debate, such that he had influenced the decision making process.

The complaint raised an important issue that highlighted the complications and tensions which could arise between strategic planning considerations and "site specific" applications. The starting point was that it was in the public interest that the local spectrum of political representation should be enabled, as far as possible, to participate in debate on general strategy and policy determination. The Code does not seek to prohibit this, (with the exception of some individual interest declarations).

The respondent was not a member of the Planning Panel charged with the responsibility of taking decisions on individual planning applications. The issue concerning the respondent (which he had properly sought to raise democratically)

was that the Council had previously approved an overarching Masterplan for the whole of the Development Area which had been rendered obsolete. He proposed that policy consideration should urgently be given to a new overall plan to be approved by councillors in view of the importance of the Development Area to Stirling. The outcome of the respondent's attendance was that all the appointed Planning Panel members present (including the complainant) agreed that the strategic issues regarding the Development Area needed to be addressed and the Panel instructed officers to prepare a new Masterplan.

The respondent had acted appropriately throughout in an open and transparent manner regarding his position and sought to air, publicly, proper planning strategy issues with councillor colleagues by means of the decision making mechanism open to him at that point. His conduct merited no criticism and he had not breached the Code.

### 10. Complaint no. LA/AC/1022 – Aberdeen City Council

Nature of allegation: It was alleged that the respondent, the Lord Provost of Aberdeen, had contravened sections 3 and 4 of the Code in relation to the registration of Gifts and Hospitality and the Registration of Interests.

The complainant alleged that the respondent had failed to:

- (1) record hospitality received by him, and
- (2) properly up-date and notify changes of circumstances in his registered non-financial interests.

## Appendix C

These failures, it was claimed, were significant in the context of controversial decisions made by Aberdeen City Council to proceed with a proposal to redevelop Union Terrace Gardens. The complaint narrated that in the face of public opposition, the Council voted to support a proposal devised and promoted by the Chairman of the Wood Group, to create a civic square over Union Terrace Gardens in Aberdeen (known as the City Square Project).

The complainant was unhappy about the supportive but inappropriate intervention (as he saw it) made by the respondent on behalf of the company Chairman at a full Council meeting. The complainant made reference to the attendance by the respondent at an oil industry dinner hosted by the Energy Institute during which the Chairman was presented with an award in recognition of his services to the petroleum industry. It was claimed that the Lord Provost's attendance at this event should have been recorded in his Register of Interests in a prompt and timely manner.

The respondent was also Vice-President of the Grampian Houston Association which, it was claimed, has close links with the oil industry, including the Wood Group in connection with which the Lord Provost travelled to Houston to attend an oil industry conference. As part of that visit he attended a breakfast seminar partly sponsored by the Wood Group. The respondent attended this event a matter of days before a key decision on the future of the City Square Project was taken by the Council. The company Chairman was vocal in his desire for the Council to support the City Square Project.

It was suggested by the complainant that the respondent's role in the GHA should have been disclosed in the register of interests.

There was no evidence to suggest that the respondent is a close friend or close associate of the company Chairman. It was inevitable given the role that each plays in their community that they will find themselves at the same civic, business and social gatherings. Neither was there any inference of undue influence on the part of the company Chairman to be drawn from the respondent's statement delivered prior to consideration of the item before the Council concerning the future of Union Terrace Gardens. It is no part of the Code to monitor or censor debate on a significant matter of public interest.

In connection with the Energy Institute dinner the respondent played no role in the selection of the company chairman as a recipient of the award and it was the sort of event to which the respondent is regularly invited in his role as Lord Provost. His attendance did not represent a breach of the Code.

The respondent's attendance at, and participation in, the Offshore Technology Conference was fully debated at, and approved at their meeting on 1 September 2009 by the Enterprise, Planning and Infrastructure Committee of the Council.

Despite the non-breach findings, it was recommended that the Lord Provost undertake an urgent review of his wider interests, taking advice from the Monitoring Officer, to ensure that his register of interests was updated as necessary.

### **11. Complaint no. LA/E/1034 – City of Edinburgh Council**

Nature of allegation: It was alleged that the respondent had breached paragraphs 7.2 and 7.10 of the Code relating to Dealing with Planning Applications.

The complainant alleged that an objection by the respondent to a planning application which she had lodged with the Council was based on incomplete information, was not impartial and failed to deal with her application fairly.

Paragraph 7.10 of the Code applies to councillors who “propose to take part in the consideration of planning applications.” The respondent was not a member of the Planning Committee and, in any event, the application was determined not by the Planning Committee but by the Head of Planning under delegated powers. The provisions contained in paragraph 7.10 were not, therefore, relevant to the case and the complaint did not fall to be considered under this paragraph.

In raising issues about the conditions contained in the missives of neighbouring properties, the respondent was merely conveying concerns raised with him by those neighbours. As a local elected member for the ward he was entitled to do so, and he acted in good faith. To have taken the view that the respondent should have been able to distinguish between legal issues and relevant planning considerations would have been unreasonable. That responsibility fell to planning officers and was properly discharged by them in their determination of the application. Having regard to all of these matters the respondent did not act unfairly in

relation to the complainant’s application and did not breach paragraph 7.2 of the Code.

### **12. Complaint no. LA/R/947 – Renfrewshire Council**

Nature of allegation: It was alleged that the respondent had breached the key principles of Honesty, Leadership and Respect set out in section 2 of the Code and the provisions of paragraph 5.15 (Making a Declaration).

It was alleged that at a meeting of the Council’s Community and Family Care Board, the respondent had failed to make a full declaration of interest in respect of an item of business before the meeting. The item in question was the Renfrewshire Playing Field Strategy.

This was another complaint which highlighted the tensions between decisions on strategic planning policy and “site specific” matters. In this instance the respondent had previously declared interests in respect of a playing field adjacent to his property. Initially, the business before the Board had been “site specific” but later the site had been included amongst many facilities which the Council proposed to incorporate in a Council-wide Playing Field Strategy.

Members should always proceed with caution and carefully consider whether or not they have a personal interest which might be affected by a proposed general policy/strategy. The need for declaration might exist if the policy would result in material changes affecting the personal interests of a councillor. In this case, the fact that site specific issues had required previous declarations

## Appendix C

did not, however, perpetuate a need for declaration each time a site was mentioned in a wider context. The respondent had followed the Standards Commission's advice and erred on the side of caution and the need for a declaration when the Playing Field Strategy was being considered could have been stated to be "border-line".

It was also alleged that the respondent was involved in the preparation of an amendment which had been submitted as the Labour Group's position on the Playing Field Strategy agenda item. The Code did not extend to regulating the decision making arrangements of political groups (with the important exception of dealing with the involvement of Council employees); but given his intended declaration, it was unwise of the respondent to have been involved in the drafting of the amendment. However, in the particular circumstances of this complaint, the respondent participated in group deliberations on general strategic matters (not site specific), and so the respondent's conduct did not amount to a breach of the Code.

It was commendable that Council had a standing agenda item at the beginning of each Council and Board meeting on Declaration of Interests. The practice of including a brief explanation of the individual nature of the interest, was recommended to the Council.

## Appendix D

### Standards Commission for Scotland

#### Hearings

During the year, the Commission held one Hearing involving two cases. A summary is set out below and the full written decision can be accessed at [www.standardscommissionscotland.org.uk/notification\\_of\\_decision.html](http://www.standardscommissionscotland.org.uk/notification_of_decision.html).

#### LA/SI/852 – Shetland Islands Council

#### Complaint

The complainant alleged that the two respondents had breached sections 4 and 5 of the Councillors' Code of Conduct. The CIO reported to the Commission his conclusion that each respondent had breached paragraph 5.7 and 5.16 of the Councillors' Code of Conduct.

#### Decision

The Hearing Panel concluded that, at a meeting of the Shetland Islands Council Development Committee, each respondent failed to declare a financial interest which arose because of their respective shareholdings in Shetland Livestock Marketing Group Ltd.

Each respondent was, therefore, in breach of paragraphs 5.7 and 5.16 of the Councillors' Code of Conduct.

#### Sanction

The Hearing Panel considered that the non-declaration of a financial interest, and failure to withdraw from related decision-making is a serious matter which undermines public trust, confidence and respect in local government. The Panel, however, considered that the respondents' conduct was not wilful, deliberate and dishonest, but rather negligent. Each respondent was censured for his actions.

## SECTION 5: DECLARATION OF INTERESTS

### Your Financial Interests

5.7 The financial interests which you may have to declare are not confined to those which are registerable. You may, for example, in the course of employment or self-employment, be engaged in providing professional advice to a person whose interests are a component of a matter to be dealt with by a Council Committee.

### Effect of Declaration

5.16 Declaring a financial interest has the effect of prohibiting any participation in discussion and voting. You should leave the meeting room until discussion of the item of business is concluded.

*(Extract from the Councillors' Code of Conduct)*

# 6 At a Glance - Key Figures 2006 – 2011

## Chief Investigating Officer

### 6.1 Complaints received by CIO

Complaint Against	2010/11	2009/10	2008/09	2007/08	2006/07
Councillors	178	<b>190</b>	240	224	276
Members of Devolved Public Bodies	20	<b>6</b>	3	1	2
Other (outwith jurisdiction)	12	<b>4</b>	7	9	6
<b>Total number of complaints<sup>1</sup></b>	210	200	250	234	284
<b>Total number of cases<sup>2</sup></b>	135	135	130	138	130

### 6.2 Complaints dealt with by CIO

CIO Outcome	2010/11	2009/10	2008/09	2007/08	2006/07
Report of breach ( <i>Commission decision - referred to Hearing</i> )	0	<b>2</b>	<b>9</b>	2	5
Report of breach ( <i>Commission decision - no further action</i> )	0	<b>1</b>	<b>0</b>	2	0
Report of breach ( <i>Awaiting Commission's decision</i> )	1 <sup>3</sup>	<b>4</b>			
Sub-Total (breach outcomes)	1	7	9	4	5
Decision of no breach	64	<b>42</b>	<b>96</b>	97	146
Decision of no further action (following an initial investigation)	129	<b>140</b>	<b>125</b>	110	84
Sub-Total (no breach outcomes)	193	182	221	207	230
Outwith jurisdiction	14	<b>6</b>	<b>6</b>	10	12
Withdrawn	19	<b>3</b>	<b>11</b>	5	16
Sub-Total (other outcomes)	33	9	17	15	28
<b>Total number of complaints<sup>2</sup></b>	227	198	247	226	263
<b>Total number of cases<sup>3</sup></b>	150	127	138	124	129

#### Notes

- 1 When a complaint is made against more than one councillor, the number of complaints will reflect the number of councillors complained of; for example, a complaint involving 3 councillors would be three complaints, as there are potentially three separate outcomes.
- 2 A case relates to a number of complaints which have been investigated together as the subject matters of the complaints are the same or related.
- 3 This excludes four complaints of breach in 2009/10 where the Commission's decision is awaited.

## Standards Commission for Scotland

### 6.3 Hearings by the Standards Commission

Finding	2010/11	2009/10	2008/09	2007/08	2006/07
Finding of breach	2	2	4	1	6
Finding of no breach	0	0	0	0	0
<b>Total<sup>1</sup></b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>6</b>

### 6.4 Sanctions applied

Sanction	2010/11	2009/10	2008/09	2007/08	2006/07
Censure	2	2	0	1	1
Suspension	0	0	3	0	5
Disqualification	0	0	1	0	0
<b>Total<sup>1</sup></b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>1</b>	<b>6</b>

#### Notes

- 1 Where complaints are received relating to the same incident but against more than one councillor, these will be treated as separate cases for the purposes of tables 6.3 and 6.4.

# Standards Commission for Scotland

## **CONTACTS, LINKS AND PRESS ENQUIRIES**

There are two separate and distinct Offices: the Standards Commission for Scotland and the Public Standards Commissioner for Scotland. Please use the information provided on the following pages to assist you in directing your enquiry to the appropriate Office.

If you would like to know more details about the work of the Standards Commission for Scotland or have any other enquiry which is **not** about a complaint against a councillor or member of a devolved public body, please contact:

*To 25 October 2011*

**Ms Janet Nixon**  
**Secretary to the Commission**  
**The Standards Commission for Scotland**  
**23 Walker Street**  
**EDINBURGH EH3 7HX**

**Tel: 0131 260 5368**

**Fax: 0131 220 5941**

**Email: [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk)**

*From 26 October 2011*

**Ms Janet Nixon**  
**Secretary to the Commission**  
**Scottish Parliament**  
**Holyrood**  
**EDINBURGH EH99 1SP**

**Tel: tbc**

**Fax: tbc**

**Email: [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk)**

# Public Standards Commissioner

If you would like to make a complaint against a councillor or a member of a devolved public body, you may use the printable Complaint Form provided on the **“Make a complaint”** section of the Public Standards Commissioner’s website **[www.publicstandardscommissioner.org.uk](http://www.publicstandardscommissioner.org.uk)**, or contact the Public Standards Commissioner’s office to have a copy sent out. For general information about the investigation process, advice about making a complaint or any other enquiries relating to complaints, please contact:

**Mr D Stuart Allan, Public Standards Commissioner for Scotland\***  
**Commission for Ethical Standards in Public Life in Scotland**  
**39 Drumsheugh Gardens, EDINBURGH EH3 7SW**

**Tel: 0300 011 0550**

**Fax: 0131 220 5419**

**Email: [investigations@ethicalstandards.org.uk](mailto:investigations@ethicalstandards.org.uk)**

*\* From 1 April 2011 the functions previously exercised by the Chief Investigating Officer are delivered by the Public Standards Commissioner*