



## **The Auditor General's Report on the Ethical Standards Commissioner Statement from the Standards Commission for Scotland – 31 January 2023**

Audit Scotland today published a follow-up to the Section 22 report it published, in December 2021, on the Ethical Standards Commissioner (ESC). Both reports can be found at: <https://www.audit-scotland.gov.uk/publications/the-202122-audit-of-the-commissioner-for-ethical-standards-in-public-life-in-scotland>.

Under Section 22 of the Public Finance and Accountability (Scotland) Act 2000, the Auditor General can prepare a report on matters arising from the audit of the accounts of a public body for which the Auditor General is responsible (including the Scottish Government, NHS bodies, colleges and non-departmental public bodies).

In his December 2021 Section 22 report, the Auditor General identified serious concerns about how the ESC was run, which included an absence of openness and transparency and a breakdown in key relationships with stakeholders (including the Standards Commission).

The ESC investigates, among other things, complaints about the conduct of MSPs, local authority councillors, and board members of public bodies. The findings are then reported to the Scottish Parliament (in the case of MSPs) or to the Standards Commission for Scotland (in the case of councillors and board members).

The Standards Commission's role is to encourage high ethical standards in public life, including the promotion and enforcement of the Codes of Conduct. The Standards Commission holds Hearings to adjudicate on cases referred to it to determine whether or not a breach of the relevant Codes of Conduct has occurred, and, if so, the sanction to be applied.

The Standards Commission notes that, in his follow up report, the Auditor General found that while there was still work to be done, the Acting ESC, appointed on 20 April 2020, and his team had made good progress in respect of addressing the concerns raised in the Section 22 report.

Lorna Johnston, Executive Director of the Standards Commission, stated: "the Standards Commission has welcomed the progress made by the Acting Commissioner, Mr Bruce, and his team. The Standards Commission further welcomes the appointment of Mr Bruce as the new Commissioner and looks forward to continuing to work closely with the Commissioner to ensure that the ethical standards framework is underpinned by an effective and trusted complaint handling system."

### **Background**

The ESC and the Standards Commission are separate and distinct parts of Scotland's ethical standards framework. Both offices are governed by the Ethical Standards in Public Life etc. (Scotland) Act 2000 (2000 Act). The Standards Commission has an oversight role in respect of how the ESC undertakes some of their functions and has powers to issue Directions under the 2000 Act. This includes the power to direct the ESC to provide information. As the initial Section 22 reports notes, the Standards

Commission used these powers of direction for the first time in 2020/21, to be able to undertake its oversight role effectively.

Previously, the ESC sent reports to the Standards Commission only in respect of cases where, following investigation, they had concluded a breach of the Code may have occurred. If the ESC considered a breach of the Code had not occurred, the case would be closed.

Amid concerns about how the ESC was interpreting the Codes of Conduct, and in consultation with key stakeholders, the Standards Commission issued a Direction requiring the ESC to report on all investigations; not just on those where, in their view, a breach had occurred.

The Direction ensures there is a clear separation between the investigatory function of the ESC, and adjudicatory functions of the Standards Commission and provides for an independent review of decisions. The Direction means that any disputed evidence or representations on interpreting the Codes can be tested fully at a Standards Commission Hearing, where evidence is taken on oath or affirmation and where the participants and the Panel can question witnesses and respond to submissions made. In addition, the Standards Commission publishes its decisions, meaning councillors, members of devolved public bodies and the public can see how the Codes are interpreted.

The Standards Commission also issued Directions requiring the ESC to provide interim progress reports to it and to the parties involved for investigations on all complaints about councillors and members of devolved public bodies that were older than three months. It also established criteria for the ESC to use when determining the eligibility of complaints about councillors and board members and in deciding which ones should be investigated.

The Standards Commission is pleased to note that the Acting ESC has complied with these Directions since commencing in post on 20 April 2021.

**-ENDS-**

**For further information please contact [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk) or phone 07790389999**

#### **NOTES FOR EDITORS**

1. The [Standards Commission for Scotland](#) is an independent public body, responsible for encouraging high standards of behaviour by councillors and those appointed to boards of devolved public bodies including in education, environment, health, culture, transport, and justice. The role of the Standards Commission is to encourage high ethical standards in public life; promote and enforce the Codes of Conduct; issue guidance to councils and devolved public bodies and adjudicate on alleged breaches of the Codes of Conduct, applying sanctions where a breach is found. Twitter @standardscot and on Facebook at [www.facebook.com/StandardsCommission](https://www.facebook.com/StandardsCommission)
2. The Standards Commission's objectives are outlined in its Strategic Plan 2020-24, which can be found [here](#)
3. The [Codes of Conduct](#) outline the standards of conduct expected of councillors and members of devolved public bodies. In local authorities, there is one Code of Conduct, approved by Scottish Parliament, which applies to all 1227 councillors elected to Scotland's 32 Local Authorities. A Model Code of Conduct is provided for board members of devolved public bodies; it is amended to reflect the functions and characteristics of each body, with the individual Codes being approved by Scottish Ministers. Around 1400 board members of Scotland's public bodies are covered by these Codes.