

Ethical Standards Commissioner

COMPLAINT ABOUT THE PROCESS USED IN DECLARING
KNOWLEDGE OF PANEL MEMBERS DURING THE
APPOINTMENT PROCESS FOR MEMBERS OF CALEDONIAN
MARITIME ASSETS LIMITED (CMAL)

REPORT ON A COMPLAINT INVESTIGATION

September 2026

SUMMARY

1. Both elements of the complaint are upheld. There has also been non-compliance with the Code, but this is not material in nature. The non-compliance was not material in nature because it didn't affect the outcome and because there was no fundamental breach of the principles of the Code. The reasons for these decisions are outlined in full in the following report.
2. The complainer acted in good faith when he did not declare that he knew a panel member. This is because he did not know them but, instead, knew of them. He had attended the same meetings as her on a few occasions but alongside many others and he did not feel that this constituted "knowing" the panel member.
3. The assessment of the panel member declaration at shortlisting, and the complainer non-declaration of knowledge in his application form, was handled entirely appropriately by the panel chair in establishing that there was no need to consider referral to the Commissioner for advice, nor to consider the non-declaration as a fit and proper person concern.
4. The decision by the panel for the panel member to declare knowledge of the complainer at the beginning of the interview was made with sound intent and motivation. It was done to try and protect the panel and complainer from unfounded accusations that an undeclared relationship had undermined the integrity of the appointment process, given the high profile of the appointment round. The way in which this issue was handled by the panel and communicated to the complainer could have been done differently. As such, this report makes a recommendation for handling when similar circumstances arise in future.
5. Whilst the motivation and intent were sound, it is apparent that panels require guidance to understand the difference between the declarations that require to be made by applicants and panel members under the Code. While panel members are required to declare if they either "know" or "know of" applicants the obligation on applicants is only to declare if they "know" panel members. The declaration that applicants and panel members "know" each other protects the integrity of the process as it ensures that when a close relationship exists, the panel member concerned can recuse themselves from the stages of assessment. The requirement for panel members to declare knowledge of applicants is a mechanism intended to preclude assessment being based on prior knowledge as opposed to on performance during the appointment round. In all cases, such declarations require to be recorded. This is likely to be particularly relevant in high profile appointment rounds.
6. A question or statement was put to the complainer at the beginning of his interview about the non-declaration of knowledge of the panel member. The panel, with clear insight and knowledge of their own motivation and reasoning for asking for this clarity, were comfortable that it was simply a statement to clarify for the appointment round record that there was no close relationship between the two. The complainer, without the knowledge of the motivation and intent, and having provided a different declaration of knowledge than the panel member, was left feeling unsettled about

why the question or statement was asked and whether the difference in opinion was being considered as part of the overall assessment of his capability. This unsettled feeling will have been unlikely to come across to the panel during the interview but concerned him enough that he felt the need to seek further and specific feedback about it.

7. The panel did not actually record in writing anywhere the result of asking such a question or making the statement. In the absence of this record, it will have been harder to defend the process against accusations of impropriety after the appointment round concluded.
8. On asking questions about why the question or statement had been put to him, the complainer was not given the full reason, which was the high profile of the round and the aspiration to protect the panel and the applicant, particularly if successful, from any future accusations of impropriety, at any stage of feedback or through the complaints process. Instead, several different explanations relating to the Code of Practice were proffered – that the panel were still checking on appropriateness of the panel member to assess or that the fit and proper person test might be engaged.
9. The fit and proper person test was brought up as part of early feedback provided to the complainer, and it is recognised that part of this feedback was developed by the Commissioner's representative and received approval from the Commissioner's office. It appears to have been intended to provide assurance to the complainer that the panel had no concerns about his integrity at any point during the process. This feedback was provided in response to his mentioning that he had concerns that his integrity had been questioned. The response to the complainer at stage one of the Scottish Government's complaint handling process also mentions the fit and proper person test and describes it as an appropriate reason why a panel may wish to ask such a question or make a statement. This was not in fact the case on this occasion, as the panel were clear that they had no concerns in this area. The stage one response does not go on to confirm that it was not used for this purpose in the case of the complainer, which may have led to his continued or additional concern.
10. Although the timescales of the complaints process were largely adhered to, it seems that a more accurate and fulsome response could have been provided at an early stage in the process which may have been more effective in assuaging the complainer's concerns.



Ian Bruce

Ethical Standards Commissioner

01 September 2026

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BACKGROUND

The Commissioner for Ethical Standards in Public Life in Scotland, known as the Ethical Standards Commissioner, independently regulates how Scottish Ministers make appointments to the boards of public bodies that are within his remit.

The Commissioner's statutory functions in relation to public appointments are laid out in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 and (in summary) are to:

- prepare, publish and, as necessary, revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code)
- issue guidance on the Code and promote compliance with it
- examine the methods and practices employed by the Scottish Ministers when making appointments
- investigate complaints about how an appointment was made
- report to the Scottish Parliament instances of material non-compliance with the Code; the Commissioner may direct the Minister to delay making the appointment until Parliament has considered the report.

The Commissioner is to exercise these functions with a view to ensuring that appointments are made fairly and openly and allow everyone, where reasonably practicable, the opportunity to be considered for an appointment.

The most recent Code of Practice was introduced in March 2022 and took effect from October 2022. The appointment practices being reported on in this document were conducted under the 2022 Code of Practice.

Appointments are made through a process called an appointment round. Under the 2022 Code, the appointing minister will choose a selection panel to run the appointment round on their behalf with ministerial agreement being sought at the beginning, then at the end of the process when the applicants are recommended to the minister for appointment. The panel chair selected is usually a senior civil servant who has a good understanding of the workings of the public body. The panel chair also has specific responsibilities under the 2022 Code and is effectively representing the appointing minister on the panel. The Code also encourages the minister to consider including an independent panel member. The Code expects that membership of the selection panel will remain the same throughout the appointment round, unless a change of membership is required through ill health or due to an official moving to other responsibilities.

The Commissioner oversees a selection of appointment rounds by assigning a Public Appointments Adviser (PAA). PAAs are independent consultants who contract with the Commissioner and are answerable to him for their professional conduct and competence when overseeing appointment rounds on his behalf. They do not answer to the Scottish Ministers or their directorates, nor to any of the public bodies. The Commissioner decides on the appropriate level of oversight for an appointment based on a range of factors, including the body's budget and its functions. Depending on the level assigned, the PAAs provide no oversight, oversight during planning only or as a full selection panel member throughout the whole appointment round until the panel has reached its conclusions on which candidates to present to the minister as "most able". In appointment rounds conducted under the 2022 Code, PAAs may be assigned for any parts of the process that the Commissioner considers appropriate.

PAA's work to a service level agreement (SLA) with the Commissioner. This SLA requires the PAA to draw instances of potential non-compliance to the attention of the responsible person during an appointment round. This will usually be the chair of the selection panel and/or a senior civil servant. It is anticipated that the responsible person will take steps to ensure that the Code is complied with. Where the responsible person, for whatever reason, is unable or unwilling to address any instance of potential or actual non-compliance highlighted by the PAA, the PAA will:

- set out the relevant facts in writing
- provide this to the responsible person and
- copy the correspondence to the Commissioner.

Whether to take action in response to such a report and the form that any such action might take are matters for the Commissioner.

PAA's also provide the panel with advice and guidance on good practice in recruitment and selection techniques and assist with guidance on how to mitigate unconscious bias throughout the appointment round.

At the conclusion of their involvement in the appointment round, the PAA will also provide a written report to the Commissioner (end of involvement report) on what they have observed during each stage of the round that they have overseen.

THE COMPLAINT

A complaint was received by email on 29th June from a complainer who wished to raise a concern about the way in which prior knowledge of a panel member was handled during the interview process.

Following receipt of information held by the complainer and a discussion to clarify the basis of his complaint, a statement of complaint was agreed on 17th July. The statement was as follows:

1. You provided your honest opinion about your knowledge of panel members when applying for a board position on CMAL. When interviewed, you were asked why you did not declare that you knew a panel member (by that panel member), and you felt that the way in which this question was asked was not related to gathering any evidence of your merit for the role, nor were you given any indication that it was asked as part of confirming whether you were a fit and proper person to fulfil the role. You therefore do not believe that it was an appropriate question to ask. You do not believe that this question was asked due to any ill intent by any member of the panel. Rather, from your perspective as the applicant, it was unclear how any declarations or non-declarations of knowledge were intended to be handled under the appointment process. The result of the interaction was that it left you feeling unsettled for the remainder of the interview. As a consequence, an aspect of your interview was conducted in a way which was incompatible with the principles of Respect and also Openness, Transparency and Integrity. You want the Commissioner to investigate whether the process followed was compatible with the principles and provisions of the Code of Practice

2. You disagree with the findings of the Scottish Government's complaint handling at stage 2 and wish to complain that their conclusion was incorrect. This is in relation to A1iv of the Code "the Scottish Ministers will have in place an effective system for handling, and recording details of, all complaints about the appointment process."

DETAILS OF THE INVESTIGATION

In conducting the investigation, the following information was requested from the Scottish Government:

All relevant information that they held related to the complainer's application and all information which was more generally related to the appointment round (such as a copy of the feedback the complainer was provided with, all information used when investigating the complaint at stages 1 and 2 and any notes available from the panel about the question asked of the complainer and why it was asked).

A response was provided on 30th July 2026.

The materials provided by the complainer, the case file of material provided by the Scottish Government and any relevant information from the Commissioner's own files have all been assessed in undertaking the full investigation.

The investigating officer also spoke directly with the panel chair and PAA on the round, to understand their version of events. It was not felt proportionate or necessary to discuss the complaint with other members of the panel.

The assessment was undertaken to determine whether the Code had been complied with. The relevant Code paragraphs are set out in Appendix 1 to this report.

RESULTS OF THE INVESTIGATION

Element 1

In element 1 of the complaint, the complainer was clear that he did not dispute the outcome of the appointment round and did not wish to make any complaint that the outcome could or should have been different. Nor did he have any dispute over the panel member declaring knowledge of him. His complaint was about the process used to determine applicant / panel knowledge of one another, and whether it was appropriate under the Code. His experience was that at the beginning of the interview, he was immediately asked “why did you not declare that you know me?” On reading the Code, he could not understand why this question had been asked, and as it left him feeling unsettled for the remainder of the interview, felt that it had not been done in accordance with the principles of the Code (Respect and Openness, Transparency and Integrity). He emphasised that he did not consider there to have been any ill intent by any member of the panel but felt that it was unclear how any such declarations or non-declarations of knowledge were intended to be handled under the appointments process.

Knowledge of panel members

Knowledge of panel members is covered in the 2022 Code at paragraphs A11 to A13 of the Code and paragraph 4.2 of the Statutory Guidance.

A11 If a member of the selection panel knows, or knows of, one or more of the applicants, they will inform their fellow panel members and explain the nature of the relationship or knowledge.

A12 Applicants will be asked to inform the selection panel chair if they know one or more of the selection panel members.

A13 If the nature of any relationship between a selection panel member and an applicant means it may be inappropriate for the panel member to assess the applicant, the panel chair will consult the Commissioner and agree appropriate action.

4.2 In all cases, panel members must guard against impropriety or the appearance of impropriety. This means that if a panel member has or has had a relationship with an applicant that may be considered close – such as, but not restricted to, being a friend or a business associate – they should always refer the matter to the panel chair who, as appropriate, should consult the Commissioner for a view on whether they should recuse themselves from any and all stages of assessment.

The paragraphs above confirm that the main purpose of asking both applicants and panel members to declare their knowledge of panel members is to attempt to avoid any actual or potential perception of bias in the appointment process. If an applicant declares that they know a panel member, or a panel member declares knowledge of an applicant, it is for the panel chair to consider the nature of the knowledge, and if the nature of the knowledge between panel member and applicant could be considered as a close relationship. Based

on the nature of the knowledge, the panel chair can seek advice from the Commissioner as to whether the panel member should take action, such as potentially recusing themselves from the assessment process, so as to maintain the integrity of the process.

The Code does not require any declarations to be made at interview.

There is a slight variation in the definition of knowledge at paragraphs A11 and A12. Panel members are asked to declare if they *know* or *know of* the applicant. Applicants are only asked to declare if they *know* any of the panel members. This distinction is due to the purpose of these paragraphs in the Code, in considering whether there is any impropriety or possible perception of impropriety with the panel assessing the applicant, and making sure any appropriate action is taken to avoid any potential bias to the best of the panel's ability. For example, it is possible that a panel member may not know an applicant but may know of and think highly of work that they have done. This would not be concerning enough to consider that the panel member should not assess the applicant, but declaration will allow other panel members to assist this panel member in focussing on fair assessment of the applicant during the appointment process and not be distracted by the positive (or negative) views they hold about the applicant's work in other contexts.

Because these paragraphs of the Code are related to the appropriateness of the panel to assess the applicant, when considering these paragraphs alone, it should make no difference as to whether the applicant makes a declaration of knowledge of the panel member or not. The applicant is invited to make a declaration of knowledge so that the appropriateness of the panel to assess them can be explored, not for any assessment of the applicant.

Fit and Proper Person Test

As part of the assessment process under the Code, the minister is also required to conduct a "fit and proper person test". This test is usually conducted by the panel on behalf of the minister and was delegated to the panel in this appointment round.

The fit and proper person test is described at E6 of the Code

E6 The appointing minister will take steps to confirm that the applicant is a fit and proper person for the position to which they are to be appointed. This will require:

- i. verification of relevant information provided by the applicant*
- ii. confirmation that the applicant's conduct to date has been compatible with the public appointment*
- iii. confirmation that the applicant has no inappropriate or unmanageable conflicts of interest incompatible with their appointment*
- iv. determining that the applicant's appointment is not barred by reference to the constitution of the body concerned by way of, for example, criminal offences or other relevant matters*
- v. ensuring that the applicant agrees to apply the Principles of Public Life in Scotland and be bound by the Members' Code of Conduct for the body concerned*
- vi. establishing that the applicant is able to meet the time commitment required.*

This activity may be delegated to selection panels and/or suitably qualified individuals or organisations. No applicant will be ruled out on the basis that they do not meet the fit and proper person test until the facts have been established and they have been given the opportunity to respond to that conclusion (see A14 and A15).

The Principles of Public Life in Scotland referred to at v. are Duty, Selflessness, Integrity, Objectivity, Accountability and Stewardship, Openness, Honesty, Leadership, Respect.

The Paragraphs of the Code referred to in E6 of the Code (A14 and A15) which follow immediately on from the paragraphs about declaration of knowledge of panel members' state:

A14 If at any point from the beginning of a round information about an applicant, relating to whether they may not be a fit and proper person, becomes known to a member or members of the selection panel and that:

- i. calls into question an applicant's suitability for appointment*
- ii. may affect the credibility of the appointment process*
- iii. may affect the credibility of the public body concerned*

they have a responsibility to share this with their colleagues on the selection panel. The panel will consider the potential impact of the information if the applicant were to be appointed.

A15 The consideration of such matters will take place openly and involve transparent investigation to establish the facts. The applicant will be given an opportunity to respond before any final decision on their suitability for appointment is made.

If a panel member has declared a close personal relationship with an applicant, but the applicant has not declared the relationship, it is possible that a panel may consider that this could possibly call into question their suitability for appointment under the fit and proper person test and wish to explore this with the applicant at an interview, with a view to exploring the principle of Honesty.

Findings

In undertaking this investigation, it was relevant to consider:

What the panel's understanding of the declaration requirement was and why the question asked of the complainer or statement made to him was put to him in the way that it was.

From discussions with the panel chair and PAA, it was clear that the reason for asking this question or making a statement was in no way related to the fit and proper person test, and that the panel had no concerns whatsoever about the complainer's suitability in this regard.

It was therefore relevant to only understand what had occurred in relation to paragraphs A11 to A13 of the Code and paragraph 4.2 of the Statutory Guidance.

From discussions with the panel chair and PAA, it was clear that the panel chair knew the importance of understanding any potential bias or perception of bias which could occur as a result of a panel member knowing an applicant, and why these sections of the Code are in

place. She considered the panel member's declaration of knowledge in this case and did not consider it a relationship that was close enough to require any action to be taken, such as seeking the Commissioner's advice on whether the panel member should consider recusing themselves from the interview stage of assessment.

At the shortlisting stage, the panel discussed the fact that the panel member had knowledge of this applicant and that this had not been similarly declared by the complainer. They did not express any concern about the fact that one had declared and the other had not. The discussion revolved more around the fact that the round was extremely high profile, having already attracted a high level of public and press interest. Because of this, the panel were keen to ensure that everything was as "above board" as possible, and that there should be a short statement made at the beginning of the interview about the panel member and complainers' knowledge of each other so that should any questions be asked at a later stage it was transparently recorded on file. This would have been particularly important, in the view of the panel, should the complainer have been appointed as his identity would then be in the public domain and it is possible that there could be queries or concerns raised about the fact that the panel member knew of him.

There is no requirement in the Code for this to happen, although the motivation of the panel in doing so appears to have been sound, with the aspiration of protecting both the panel and the complainer from any accusation of unfairness or impropriety following conclusion of the appointment round.

It was interesting to note from the discussion with the panel chair that this has also happened on other appointment rounds that she has been involved with, although on those occasions both panel member and applicant had made the declaration at the written stage, and also felt it appropriate to confirm this declaration verbally at the beginning of the interview.

When the interview took place, the question or statement was asked of the complainer at the beginning of the interview. There appears to be some discrepancy between the panel recollection of this and the complainers. The complainer remembers a question along the lines of "why did you not state that you knew me?" and the panel chair and PAA remember it being more of a statement along the lines of "You didn't mention that we know each other, but we have been in meetings together. We should clarify". The exact words which were used will likely never be agreed on but there is no dispute that a question or statement was put to the complainer around the fact that he had not made the declaration.

On discussion with the panel chair and PAA, both confirmed that there was no explanation given to the complainer about why the clarity was sought, other than saying it was to ensure full clarity and transparency. The purpose of clarifying, the panel had agreed at shortlisting, was to ensure transparent declarations had been made for a high profile public body, and to protect all involved from any accusations of impropriety, but this was not shared with the complainer. The panel chair confirmed she felt that had any more detail been provided it would have given the question or statement more significance than was required, when it was only meant as a brief point of clarity.

From the complainer's perspective, however, the question or statement played on his mind during the interview and left him feeling unsettled.

The complainer also pointed out that the letter sent to invite him to interview contained an administrative error and the panel member that had declared knowledge of him was missing from the interview panel in that letter. This was accepted by the Scottish Government and an apology made to him as a consequence in the response to feedback (ref 5) and the Stage 1 complaint response (ref 7).

On discussion with the panel chair and PAA, neither could remember any discussion taking place following the interview about how or whether this aspect should be recorded for the file, as had been agreed at shortlisting as the purpose of asking it. Certainly, the final candidate summary, which is the final record of assessment, does not contain any statement about the declaration. The panel chair clarified that she felt it would not be appropriate to record this information in the candidate summary as it is a final record of assessment and this matter was not assessment, but clarification. As such, there was no written note of the discussion kept anywhere on file.

Element 2

In element 2 of the complaint, the Commissioner investigated how the complainer was treated having raised a formal complaint with the Scottish Government.

The 2022 Code of Practice states that:

A1 Fair, open and merit-based appointments are the responsibility of the Scottish Ministers who will:...

iv. have in place an effective system for handling, and recording details of, all complaints about the appointment process

The Scottish Government complaints procedure is available on their website:

<https://www.gov.scot/publications/public-appointments-guide/pages/complaints-process/>

All exchanges pertaining to the complaint were provided to the Commissioner and were reviewed as part of this investigation.

The complainer initially requested feedback on his application on 22nd March 2026.

A timeline of the exchanges and details of the complaint since that date are provided in Appendix 2.

The complaint procedure timelines were adhered to at Stage 1. Although the complainer had not specifically intimated this as a Stage 1 complaint, it was treated as such and was dealt with within 5 working days of receipt of the complaint.

Stage 2 took 25 days which was 5 working days longer than the procedure states. On a prompt from the complainer, 2 weeks after the Scottish Government investigating officer had held a discussion with him, the Scottish Government investigating officer apologised for the delay and provided the report very shortly thereafter.

The actual procedure for complaint handling was therefore largely followed as outlined, albeit the Stage 2 investigation took slightly longer than it should have.

There are some discrepancies in the complaint handling findings which are worth highlighting:

1. Reason for seeking clarity

As outlined in Element 1 above, there is no Code requirement for a panel member to declare knowledge of a candidate during an interview, nor for the candidate to make any such declaration at that stage.

The Stage 3 investigation ascertained that the panel did so because they felt it was the right thing to do, given the circumstances of the appointment round, due to a high level of public and press interest, and to protect all involved (including the complainer) by ensuring a high level of transparency. This reasoning was not however conveyed to the complainer at the time of interview. Nor was any full description of this reasoning provided to the complainer at any stage of the complaint process. The reason was given as:

- “panel’s awareness and to ensure fairness to all applicants including yourself” (initial feedback response – ref 2)
- “an appropriate clarification for the record and a demonstration of transparency” (further feedback response – ref 5)
- “As your application did not state any prior knowledge of a panel member, in order to meet the requirements of the fit and proper person test and be clear on potential conflict, the question asked... ensures complete transparency and to allow you to respond” (Stage 1 complaint response – ref 7)
- “Panel members have advised that the intention in raising the issue was to ensure completeness and transparency as part of the interview process” (Stage 2 complaint response – ref 9)

Although these responses all give a description of the need for clarification and transparency, at no point did they explain exactly why such clarification and transparency were important, with the exception of the Stage 1 complaint response (ref 7). This response suggests for the first time that the question or statement was made as part of the fit and proper person test and for clarification on potential conflict, rather than the actual reason established during this investigation, which was that the panel wished to protect all involved (including the complainer) by ensuring a high level of transparency, due to the high level of public and press interest. The reasons provided in the Stage 1 response are discussed further in points 2 and 3 below.

The reason for asking the question or making the statement may have been apparent to the panel but not so to the complainer.

2. Panel question or statement to applicant at interview as a continuation of the Code requirement to consider the panel’s suitability to assess

The initial response to the complainer’s feedback (ref 2) references the wording in the Code about panel and applicant declarations as though such a question or statement was a continuation of the Code requirement to consider the panel’s suitability to assess.

“The Code of Practice for Ministerial Appointments requires that all applicants and panel members are asked to declare any knowledge of each other to ensure that there is no actual or perceived conflict of interest which could affect fairness.

In this case the panel member felt that she should declare that she knew you in a professional capacity for the panel’s awareness and to ensure fairness to all applicants including yourself.”

In the follow up response to the complainer’s questions about the feedback (ref 5), the response reinforces the Scottish Government’s position that this was a continuation of the Code requirement:

“Prior to each interview commencing the panel state whether they have any knowledge of any applicant and in this case a panel member, stated she had been in various meetings with you. The panel agreed that this should be stated at the start of the interview to ensure that there was no question or doubt about any such knowledge.”

The wording in response to the Stage 1 complaint (ref 7) also seems to confirm that this was part of the reason for the question or statement being made:

“As your application did not state any prior knowledge of a panel member, in order to meet the requirements of the fit and proper person test and be clear on potential conflict, the question asked... ensures complete transparency and to allow you to respond”

The wording from these emails suggests that the panel were continuing with the consideration of knowledge between panel members and applicants and that, depending on what the declaration involved, there may be further action taken. Given that this was at the start of the interview, it is unclear what action would or could be taken at that late stage, because the purpose of asking about relationships between panel members and applicants is to assess whether a panel member should be recused from the stages of assessment. In any case, the Stage 3 investigation established that it was never the intention to take any action other than to note that panel member and applicant knew each other, so that it was recorded in a fully transparent way, in case of any queries following the appointment round.

It is acknowledged that the wording in the second response (ref 5) was checked and agreed with the Commissioner’s representative (PAA) who had been involved in drafting part of the response, and who had asked for advice on their contribution to it from the Commissioner’s office. The wording that was agreed for the PAA to provide to the Scottish Government for them to use as part of their response is included in Appendix 2 (ref 4).

3. Consideration of the matter as part of the fit and proper person test

The second response to the feedback request (ref 5) references the fit and proper person test. The complainer had asked for “comments from the ethics and standards representative present at the interview” (ref 3) and as such it is acknowledged that the PAA sought assurance from the Commissioner’s office on her input to the feedback being provided, and the PAA’s proposed response to the feedback request was reviewed and approved by the Commissioner’s office (ref 4). This was shared by the PAA with the Scottish Government’s Public Appointments Team to assist in forming a formal response to the feedback request.

The provision of the second response to the feedback request (ref 5) focussed on:

- 1) clarifying the role of the PAA during the interview (which in this appointment round was to ask the fit and proper person test questions),
- 2) clarifying the purpose and context of the request to make such declarations and
- 3) to provide assurance to the complainant that the question / statement was not explored as part of the fit and proper person test.

The complainant stated in his email response to his first feedback request (ref 3) that “In a process for a role where integrity is fundamental, the way this was framed had the effect of calling my integrity into question at the outset of the interview and undermining my confidence at that point.” It seems that the second response to feedback (ref 5) sought to provide assurance that the question or statement had not been asked as a result of any concern the panel held about the integrity of the complainant. The response stated that, if the panel had considered this issue relevant to the fit and proper person test, any additional questions regarding his suitability under the test and in relation to the declaration would have been made clear to him during the interview.

The Stage 1 complaint response (ref 7) references the fit and proper person test stating that:

“As your application did not state any prior knowledge of a panel member, in order to meet the requirements of the Fit and Proper Person test and be clear on potential conflict, the question asked, as you quote “Why did you not declare that you knew me?” is a reasonable question to ask to ensure complete transparency and to allow you to respond.”

Although factually correct as outlined in “Results of the investigation – Element 1” above, as it may in some cases be appropriate for the panel to consider non-declaration of knowledge of a panel member as a fit and proper person test issue, it was never considered by the panel as such in this situation. The wording around this in the Stage 1 complaint response above is problematic as it does not go on to clarify that, although this could be a reasonable question for a panel to ask, it was not the reason for them doing so on this occasion. It is reasonable to assume that the complainant would therefore read this statement as being applicable to his particular circumstance and reinforce his concerns about how and why the question or statement was asked. He states in his response to the Stage 1 complaint (ref 9):

“Throughout earlier correspondence, this was initially described as a declaration made by the panel member for transparency purposes. However, subsequent correspondence has accepted the wording that was actually used during interview. In my view, those two positions are not the same.

I remain unconvinced that this approach was consistent with the principles of fairness, proportionality and ensuring that appointment processes are conducted in a way that is, and is seen to be, fair, as required under the Code of Practice for Ministerial Appointments.

While I acknowledge the assurances provided that this did not affect the appointment outcome, my concern relates to process, standards and the manner in which the issue was handled at the outset of the interview. I found the approach unreasonable and difficult not to interpret as a challenge to my integrity.”

The Stage 2 complaint then involves the complainer raising concern about a potential attack on his integrity with the statement of complaint being agreed as:

“The manner in which you were asked during interview why you had not declared knowledge of a panel member, and whether this represented an inappropriate challenge to your integrity rather than a neutral clarification.”

The findings at Stage 2 (Appendix 3) then veer into the extent of individual judgement on the applicant to make such a declaration, rather than trying to help the complainer understand the reason why such an approach was taken. The Stage 2 report states:

“What should have happened?”

- The relevant process requires both candidates and panel members to declare any knowledge of each other to ensure transparency and fairness, and to identify any actual or perceived conflicts of interest.
- This process relies, to a degree, on individual judgement in determining what constitutes relevant knowledge.
- Any clarification sought during interview should be framed in a way that is neutral, proportionate, and clearly for the purpose of transparency, avoiding any perception that a candidate’s integrity is being questioned.”

This section of the Stage 2 report is factually incorrect as the process, if only looking at paragraphs A11 to A13, does not require an applicant to make a declaration. They are invited to do so in order to allow the panel chair to consider whether a panel member should not be involved in assessment, due to a close relationship, and there is no Code requirement to clarify any relationship at interview.

As described under “Results of the Investigation - Element 1” above, there are occasions where it might be appropriate to question an applicant about a non-declaration of knowledge of a panel member under the fit and proper person test, but the Stage 3 investigation has established that it was never considered for this applicant and that there were never any questions about his suitability in regard to the fit and proper person test.

ANALYSIS AND CONCLUSIONS

Analysis of Element 1

The circumstances of this complaint appear to represent the first time that anyone involved with the process has identified a mismatch between a panel member's declaration of knowledge of an applicant, and an applicant's declaration (or non-declaration) of knowledge of a panel member. As such, this complaint investigation is extremely helpful in providing learning for all involved for the future where any such similar occurrence may arise.

From the findings of the investigation, it seems that the following occurred:

The complainer applied for the role and did not consider it necessary to declare his knowledge of one of the panel members.

The panel member declared knowledge of the complainer during the shortlisting meeting and the panel discussed this.

The panel chair has a specific responsibility to consider any declarations of knowledge between panel members and applicants, and to refer the matter to the Commissioner for a view if they have any concern about the appropriateness of the panel member to assess the applicant. The panel chair considered the declaration of the panel member appropriately on this occasion and deemed that the relationship between the panel member and the complainer did not warrant referral to the Commissioner.

The panel noted that the complainer had not made any declaration of knowledge of the panel member on their application form and noted that this was unusual but recognised that it is the applicant's prerogative to choose whether to make such a declaration or not. The panel understood this non-declaration to be an oversight and did not consider that it warranted discussion with the complainer as a fit and proper person issue.

There were some discussions during stages of complaint about levels of "applicant judgement" on making such declarations. However, this would not be relevant unless the non-declaration was serious enough that the panel wished to consider it as a fit and proper person issue, which they did not in this case. Therefore, it is only relevant in relation to paragraphs A11 to A13 of the Code, which are entirely focused on whether any of the panel have a relationship with the applicant that should be considered in order to avoid perceived or actual impropriety.

When discussing this matter, the panel were cognisant of the very high levels of public interest, including press interest, in the work of the body and in the appointments process to the board. There had been a request made to the Commissioner early in the appointment round for a PAA to join the panel for the full process, in order to provide assurance that it was being conducted fairly for example. Due to this high level of interest and the mismatch in applicant and panel declarations, the panel agreed during the shortlisting meeting that it would be important to mention at the beginning of the interview that the panel member and complainer knew of each other. This would be clarification for the record, so that if anyone

asked at a later stage (particularly if the complainer had been successful and his name made public) there was full transparency that the panel member and complainer had known of each other and in what capacity. The decision to ask the question or make the statement was recorded in the shortlisting notes but was not formally recorded following the interview.

The panel chair confirmed that this is not the only appointment round that she has been involved with where such a declaration has been made at the beginning of the interview. However, on any previous incidences of this that she was aware of, the declarations at interview aligned with previous written declarations from both panel member and applicant, which was different to this case where the applicant had not made such a declaration.

There is no requirement under the Code of Practice for any such declaration to be made at the beginning of an interview. However, the panel's motivation and intent for doing so were sound, with the aspiration to ensure that there was full transparency should there be any scrutiny following the appointment round.

There was a potential practical issue in taking this course of action that the panel do not appear to have considered which is that if, when making declarations at the beginning of an interview in this way, the applicant (when the panel do not know why they did not make a declaration and may have missed that question on the application form) might declare that they know the panel member in a far closer way than the panel member had stated. Given that the question or statement was to be made at the beginning of the interview, it is difficult to understand what action could be taken at that point in time. This was not an issue in this case as the complainer confirmed briefly that he did in fact know of the panel member but did not consider that he knew her, which was not a close relationship or concerning for the panel member to be involved in assessment.

At the beginning of the interview, there was a question or statement put to the complainer about his non-declaration of knowledge of the panel member. The complainer remembers this to be a more accusatory question, while the panel chair and PAA both remember it more as a gentle statement of fact and clarification. It is unlikely that there will be agreement on the exact words used but there is no dispute that a question or statement on this topic was put to the complainer at the beginning of the interview.

The PAA and the panel chair both confirmed that there was no additional explanation provided to the applicant when the statement was made, only that it was simply put to the complainer, by the panel member who had declared knowledge, as something along the lines of "You didn't mention that we know each other, but we have been in meetings together. We should clarify". The panel chair confirmed that she felt that giving further explanation at that time might have made the situation more significant than was necessary, as it was simply seeking a clarification on the mismatch in declarations.

The panel chair felt that the complainer seemed unperturbed by the question or statement at the time and the conversation quickly moved on.

The complainer stated that he had felt unsettled by the question or statement throughout the interview.

It seems reasonable that the complainer might appear unperturbed as he would want to give of his best at the interview but might also feel unsettled at the same time.

It should also be noted that, had guidance been sought from the Commissioner's office in advance of the interview about the anomaly of the declarations, given the intent and motivation of the panel in asking the question or making the statement, the advice from the Commissioner would likely have been that it was appropriate to ask the question of the applicant, provided that it was clear and transparent to the applicant what the purpose of asking the question was.

At the end of the interview when the panel were conducting their final assessment of applicants, neither the panel chair nor PAA can recollect any discussion about the declaration of knowledge of the panel member and the panel chair confirmed, rightly, that this was because the question or statement had not been used as part of the assessment. The candidate summary which is the final assessment of each candidate similarly does not contain any information about this.

However, if the purpose of making such declarations at the beginning of an interview was to ensure full transparency for the record in case of any future queries or scrutiny of the appointment made, then it seems reasonable that there should have been some way to ensure that the exchange about declaration was captured on written record. Reliance on only a verbal record of such declarations would have limited value if such future accusations of impropriety were to occur.

Analysis of Element 2

As set out under analysis of Element 1, it seems reasonable that the complainer should feel unsettled by the interaction during the interview about the declaration (or non-declaration) of knowledge of a panel member and it is understandable that he sought clarity.

Our investigation identified a number of discrepancies were uncovered about the explanations that he was given.

When the complainer progressed his question on the issue, the second response to feedback he received (ref 5) included a description of the fit and proper person test which seems to have been intended to reassure the complainer that at no stage in the process was his integrity called into question by the panel, as the complainer had raised this as a concern (ref 3). The response to the Stage 1 complaint (ref 7) also makes reference to the fit and proper person test as a reason why it would be appropriate for a panel to ask such a question. This could be factually correct as it could, on occasion, be appropriate for a panel to ask such a question in relation to the fit and proper person test, but it was not their reason for doing so in this case. The Stage 1 response does not clarify this. It is not surprising that, rather than being assured, the complainer became even more concerned about what had happened, and why and how this question or statement was being used.

It is of course impossible to know precisely how the complainer might have felt following the initial request for feedback including the questions about this particular issue if it had been handled differently although it is clear from his complaint that he was concerned about it. Although the complainer was provided with assurance that this question or statement was not used as part of his assessment of suitability in the early feedback, it seems that if, in addition, a full explanation about why it was felt that there was a need for transparency (the high profile of the round and the aspiration to protect the panel and the applicant, particularly if successful, from any future accusations of impropriety), along with a request to the Commissioner for guidance on how any such discrepancies between declarations of knowledge of panel members be handled by panels in the future, then there may not have been reason for the complainer to feel the need to progress this as a complaint.

When the complaint was considered at stage 2, and although there were some aspects of the response which were factually incorrect, the stage 2 complaint report reached similar conclusions to this one. It found that there was some learning which could be taken from the way in which declarations had been handled and that further guidance would be helpful. The complaint at stage 2 was not, however upheld. This was largely because the initial statement of complaint was based on the complainer's concern about the question being asked of him at interview and his view that it related to his integrity. This report has also concluded that a question about the complainer's integrity was not the reason for the panel's conduct at interview. If the statement of complaint at stage 2 had been articulated in the same way as the complaint considered at stage 3, it may have been upheld and may not have required escalation to our office as a consequence.

The Commissioner has concluded, on the basis of the findings and analysis, that:

- i. The complainer acted in good faith when he did not declare that he knew a panel member. This is because he did not know them but, instead, knew of them. He had attended the same meetings as her on a few occasions but alongside many others and he did not feel that this constituted "knowing" the panel member.
- ii. The assessment of the panel member declaration at shortlisting, and the complainer non-declaration of knowledge in his application form, was handled entirely appropriately by the panel chair in establishing that there was no need to consider referral to the Commissioner for advice, nor to consider the non-declaration as a fit and proper person concern.
- iii. The decision by the panel for the panel member to declare knowledge of the complainer at the beginning of the interview was made with sound intent and motivation. It was done to try and protect the panel and complainer from unfounded accusations that an undeclared relationship had undermined the integrity of the appointment process, given the high profile of the appointment round. The way in which this issue was handled by the panel and communicated to the complainer could have been done differently. As such, this report makes a recommendation for handling when similar circumstances arise in future.
- iv. Whilst the motivation and intent were sound, it is apparent that panels require guidance to understand the difference between the declarations that require to be

made by applicants and panel members under the Code. While panel members are required to declare if they either “know” or “know of” applicants the obligation on applicants is only to declare if they “know” panel members. The declaration that applicants and panel members “know” each other protects the integrity of the process as it ensures that when a close relationship exists, the panel member concerned can recuse themselves from the stages of assessment. The requirement for panel members to declare knowledge of applicants is a mechanism intended to preclude assessment being based on prior knowledge as opposed to on performance during the appointment round. In all cases, such declarations require to be recorded. This is likely to be particularly relevant in high profile appointment rounds.

- v. A question or statement was put to the complainer at the beginning of his interview about the non-declaration of knowledge of the panel member. The panel, with clear insight and knowledge of their own motivation and reasoning for asking for this clarity, were comfortable that it was simply a statement to clarify for the appointment round record that there was no close relationship between the two. The complainer, without the knowledge of the motivation and intent, and having provided a different declaration of knowledge than the panel member, was left feeling unsettled about why the question or statement was asked and whether the difference in opinion was being considered as part of the overall assessment of his capability. This unsettled feeling will have been unlikely to come across to the panel during the interview but concerned him enough that he felt the need to seek further and specific feedback about it.
- vi. The panel did not actually record in writing anywhere the result of asking such a question or making the statement. In the absence of this record, it will have been harder to defend the process against accusations of impropriety after the appointment round concluded.
- vii. On asking questions about why the question or statement had been put to him, the complainer was not given the full reason, which was the high profile of the round and the aspiration to protect the panel and the applicant, particularly if successful, from any future accusations of impropriety, at any stage of feedback or through the complaints process. Instead, several different explanations relating to the Code of Practice were proffered – that the panel were still checking on appropriateness of the panel member to assess or that the fit and proper person test might be engaged.
- viii. The fit and proper person test was brought up as part of early feedback provided to the complainer, and it is recognised that part of this feedback was developed by the Commissioner’s representative and received approval from the Commissioner’s office. It appears to have been intended to provide assurance to the complainer that the panel had no concerns about his integrity at any point during the process. This feedback was provided in response to his mentioning that he had concerns that his integrity had been questioned. The response to the complainer at stage one of the Scottish Government’s complaint handling process also mentions the fit and proper person test and describes it as an appropriate reason why a panel may wish to ask such a question or make a statement. This was not in fact the case on this occasion,

as the panel were clear that they had no concerns in this area. The stage one response does not go on to confirm that it was not used for this purpose in the case of the complainer, which may have led to his continued or additional concern.

- ix. Although the timescales of the complaints process were largely adhered to, it seems that a more accurate and fulsome response could have been provided at an early stage in the process which may have been more effective in assuaging the complainer's concerns.

Conclusions

Element one of the complaint is upheld. This is because the complainer was not provided with the full explanation for why the question or statement was put to him. Although clarification of the difference in knowledge declared between panel member and applicant was not required by the Code, this was done with the best of intentions by the panel. However, in not making the reasons for doing so fully clear to the complainer, he was left feeling unsettled by it and concerned that the difference in opinion might be used as part of the assessment. This was further exacerbated by the feedback and complaints handling which added concern, rather than providing clarity. This goes against the principle of respect for applicants and also integrity of the process (openness, transparency and integrity principle). There has been non-compliance with the Code, but this is not material in nature. For non-compliance to be material in nature, it would either have to have affected the overall outcome of the appointment round or have fundamentally breached one of the principles, neither of which was relevant here.

Element two is also upheld. This is because the complaints process is expected to consider the concerns of the complainer and provide a full explanation intended to resolve such concerns. In this case it seems that, at no stage was the complainer given the full and true explanation as to why the question or statement was asked. This being that the appointment round was for a high-profile appointment with high levels of public and press interest and that the intention was to protect all involved from any future unfounded accusations of impropriety by ensuring full transparency. As well as failing to describe this reasoning in detail, some aspects of the Code such as the fit and proper person test were highlighted as pertinent, which wasn't the case. This was not relevant to the complainer's circumstances on this occasion but may have appeared to be so from (particularly) the response to the Stage 1 complaint and may have exacerbated his concerns, rather than addressing them. This does not represent an effective complaint handling system. There has been non-compliance with the Code, but this is not material in nature. For non-compliance to be material in nature, it would either have to have affected the overall outcome of the appointment round or have fundamentally breached one of the principles, neither of which was relevant here.

RECOMMENDATIONS AND ACTION WHICH WILL BE TAKEN BY THE COMMISSIONER

On the basis of the Stage 3 investigation report, the Commissioner recommends that in any instance where there is a mismatch between the declaration of knowledge of a panel member and an applicant who has been shortlisted for interview, that the details of this mismatch be outlined to the candidate in the invitation to interview. This will allow them to clarify how or if they know or know the panel member in advance of interview and what that knowledge consists of. If the result of this clarification means that the panel chair will need to give further consideration to the appropriateness of the panel member being involved in assessment of the applicant, it will allow the time to do this. If a simple clarification is required, this can be resolved in advance of the interview and in writing so that there is a record available of the exchange. This is in line with A1iii of the Code of Practice which states:

“A1 Fair, open and merit-based appointments are the responsibility of the Scottish Ministers who will:...

iii. ensure a record is made of key decisions and actions taken during every appointment round. The record will be sufficient to demonstrate that decisions are appropriate.”

There may still be occasions where an exchange might be required at interview. For example, if either the applicant or panel member is adamant that they know the other, but there is a case of mistaken identity. In such circumstances, a note of the exchange should be kept on record, separately to the assessment of the applicant, and the applicant should be assured of the purpose of the clarification and that it is not being used in any way for assessment.

Likewise, there is still the potential that the panel would want to question someone about a non-declaration as part of the fit and proper person test. They are able to do so as long as the applicant knows the reasons for them doing so. The extent and content of this questioning should be assisted by any information provided in advance of interview, from including the question in the letter to interview to requesting clarification on the mismatch of declarations.

The Commissioner will issue guidance to provide clarity on paragraphs A1 and A11 to A13 of the Code as soon as practicable.

The Commissioner will also use this complaint investigation as learning for his representatives about the purpose of declarations and how these should be handled, so that PAAs are better able to support panel decisions in this area.

RELEVANT PRINCIPLES AND PARAGRAPHS OF THE 2022 CODE

Openness, Transparency and Integrity – The appointments process must be open, fair and impartial. The integrity of the process must be transparent and earn the trust and have the confidence of the public.

Respect – Applicants and ultimately the people appointed to boards are integral to the good governance of Scotland’s public bodies. Applicants will be accorded the respect that they are due for their interest and their efforts and appointees for their contribution to public life.

A1 Fair, open and merit-based appointments are the responsibility of the Scottish Ministers who will:...

- iv. ensure a record is made of key decisions and actions taken during every appointment round. The record will be sufficient to demonstrate that decisions are appropriate.
- iv. have in place an effective system for handling, and recording details of, all complaints about the appointment process.

OVERVIEW AND TIMELINE OF KEY EVENTS

Ref no.	Date	Event
1	22 March 2026	Complainer requests feedback, part of which includes: “At the start of the interview, I was asked why I had not declared that I knew a member of the panel. As noted at the time, I did not consider that I knew the panel member in question and therefore did not believe a declaration was required. My understanding of the guidance is that “knowing” someone relates to a level of relationship or interaction that could reasonably be perceived to affect impartiality, rather than simply being present in the same meetings or having general professional awareness. On that basis, I did not consider that threshold to have been met. Given that this matter was raised at the outset, I would appreciate understanding: - how this was viewed by the panel, and whether it formed any part of the assessment; - whether any consideration was given to this from the panel’s perspective; - how such situations are expected to be handled where there may be differing interpretations of what constitutes “knowing” someone. My aim in raising this is to understand the process and ensure I have interpreted the guidance correctly.”
2	7 April 2026	Feedback provided stating: “Regarding your queries around knowledge of a member of the panel I would like to assure you that the panel understood and accepted your interpretation of what constitutes such knowledge and this did not affect the interview assessment. The Code of Practice for Ministerial Appointments requires that all applicants and panel members are asked to declare any knowledge of each other to ensure that there is no actual or perceived conflict of interest which could affect fairness. In this case the panel member felt that she should declare that she knew you in a professional capacity for the panel’s awareness and to ensure fairness to all applicants including yourself. As you know there was also a representative of the Ethical Standards Commissioner on the panel and her role is to ensure that the Code of Practice is applied to all parts of the process, which I hope provides additional assurance.”

Ref no.	Date	Event
3	9 April 2026	The complainer queried this response with the following wording: “I do, however, want to raise a further point regarding the declaration issue raised at the outset of the interview. While I note your confirmation that the panel accepted my interpretation and that this did not affect the assessment, I found the way this was raised to be concerning. Being asked at the beginning of the interview why I had not declared that I knew a panel member gave me a clear impression that I had failed to disclose something I should have, which I found both unexpected and unsettling. In a process for a role where integrity is fundamental, the way this was framed had the effect of calling my integrity into question at the outset of the interview and undermining my confidence at that point. Your response refers to the panel member considering that she knew me in a professional capacity. That distinction was not made when the question was put to me. And it concerns me that your response has now framed it in that context. As asked, it came across as a direct challenge rather than a neutral clarification. I would also be grateful for clarification as to whether this point had been identified or discussed from the panel’s perspective prior to the interview, or whether it arose at the time. I appreciate the importance of declarations and fairness. However, in the context of the Code of Practice — particularly the principles of fairness, proportionality and the need for processes to be seen to be fair — I remain concerned that the way this issue was raised at the outset of the interview was not proportionate to the circumstances. Given the senior nature of the appointment and the standards expected of such panels, I would have expected this matter to have been handled more appropriately, with clearer distinction and consideration given to the impact of how it was raised. I would be grateful for your comments on these points. And also some comments from the ethics and standards representative present at the interview.”
4	17 th April 2026	The following wording was agreed by the Commissioner’s office that the PAA could provide to the Scottish Government as input to the feedback for the complainer (redacted to replace names with titles such as “the Complainer” or “the panel member”): “The panel agreed that part of the Public Appointments Advisor’s (PAA’s) role on this particular appointment round, as a panel member,

Ref no.	Date	Event
		would be to ask questions during interview relating to the fit and proper person test. The PAA was allocated to the panel by the Ethical Standards Commissioner for Scotland and is entirely independent from the Scottish Government. The test is conducted for all applicants for regulated public appointments in Scotland. The Complainer will no doubt recall the dialogue on the fit and proper person test during his interview and the references to it and to the principles of public life in the applicant information pack. Prior to each interview commencing the panel state whether they have any knowledge of any applicant and in this case a panel member stated she had been in various meetings with this candidate. The panel agreed that this should be stated at the start of the interview to ensure that there was no question or doubt about any such knowledge should the candidate be selected. The PAA regarded the dialogue on this matter between the candidate and the panel member as an appropriate clarification for the record and a demonstration of transparency. If a panel member has or has had a relationship with an applicant that may be considered close – such as, but not restricted to, being a friend or a business associate – they should always refer the matter to the panel chair who, as appropriate, should consult the Commissioner for a view on whether they should recuse themselves from any and all stages of assessment. Neither the PAA nor the panel felt that this was required on this occasion, given that there did not appear to be a close relationship. If there were any concerns about a candidate's suitability under the fit and proper person test the panel would have discussed this with the candidate at the time, offering them an opportunity to respond. If concerns remained these would be recorded at the conclusion of the interview. The fact that there is no issue recorded with this element of the selection process demonstrates that the panel did not question this candidate's integrity or suitability under the fit and proper person test and did not take the matter into account in coming to its decision.
5	22 nd April 2026	A further clarification response was provided: “The PAA was allocated to the panel by the Ethical Standards Commissioner for Scotland and is entirely independent from the Scottish Government. The panel agreed that part of the Public Appointments Advisor’s (PAA’s) role on this particular appointment round, as a panel member, would be to ask questions during interview relating to the fit and proper person test. The test is conducted for all applicants for regulated public appointments in Scotland. You will no doubt recall the dialogue on the fit and proper person test during your interview and the references to it and to the principles of public life in the applicant information pack.

Ref no.	Date	Event
		Prior to each interview commencing the panel state whether they have any knowledge of any applicant and in this case a panel member, stated she had been in various meetings with you. The panel agreed that this should be stated at the start of the interview to ensure that there was no question or doubt about any such knowledge. The PAA regarded the dialogue on this matter between you and the panel member as an appropriate clarification for the record and a demonstration of transparency. If a panel member has or has had a relationship with an applicant that may be considered close – such as, but not restricted to, being a friend or a business associate – they should always refer the matter to the panel chair who, as appropriate, should consult the Commissioner for a view on whether they should recuse themselves from any and all stages of assessment. Neither the PAA nor the panel felt that this was required on this occasion, given that there did not appear to be a close relationship. If there were any concerns about your suitability under the fit and proper person test the panel would have discussed this with you at the time, offering you an opportunity to respond. If concerns remained these would have been recorded at the conclusion of the interview. The fact that there is no issue recorded with this element of the selection process demonstrates that the panel did not question your integrity or suitability under the fit and proper person test and did not take the matter into account in coming to its decision. Further to the comments above I would also like to apologise that the panel member's name was omitted from the interview invitation. Her name was in the applicant information pack, together with the other panel members, and applicants were asked to declare whether they know any members of the panel as part of the online application. As mentioned above panel members are also expected to declare any prior association with candidates, which the panel member did. I'm afraid I cannot comment on your perception of how the question was asked at your interview but I can assure you that it would never be the intention of any panel members to make someone feel uncomfortable."
6	6 May 2026	The complainer queried this further response with the following wording: "Having considered the explanation provided, I do not feel it accurately reflects what occurred during the interview. You have indicated that the panel member declared that she had been in meetings with me and that this was raised at the outset for transparency. However, this is not how the matter was presented. I was asked directly: "Why did you not declare that you knew me?" There was

Ref no.	Date	Event
		no declaration made to me; the matter was framed as a challenge to my position. This distinction is fundamental. A declaration by a panel member for transparency is entirely appropriate. However, challenging a candidate in a way that implies a failure to disclose is a materially different approach. I consider that the way this was handled at the outset of the interview was unreasonable. In the context of the Code of Practice for Ministerial Appointments — particularly the requirements to ensure that all applicants are treated fairly and consistently, that actions taken are proportionate, and that the process is conducted in a way that is, and is seen to be, fair — I do not see how this approach aligns with expected standards. In particular, I would expect that where a panel member has identified prior contact, this would be managed in a way that avoids placing a candidate in a position where their integrity may reasonably be perceived as being called into question. Unless it can be demonstrated that this approach is consistent with the Code of Practice or relevant guidance, I am of the view that proper process was not followed in this instance. While I note your assurance that this did not affect the outcome, my concern relates to the process itself rather than the decision reached.”
7	13 May 2026	The Head of the SG Public Appointments Team reviewed the email exchange and confirmed agreement with the response given. Although not explicitly stating that this was being treated as a stage 1 complaint, it was apparent that it was being treated as such as reference is made to the complainer being able to have the issue investigated at stage 2 and information provided on how to do this. The wording from this communication was: “I have considered this matter and although it is unfortunate that a panel members name was omitted from the interview invitation, but knowledge of panel members should be declared prior to this stage. The names of all panel members were included in the applicant information pack, and applicants are asked to declare if they know any members of the selection panel as part of the online application. The selection panel will also declare if they know any applicants. This allows us to consider any potential conflict. As your application did not state any prior knowledge of a panel member, in order to meet the requirements of the fit and proper person

Ref no.	Date	Event
		test and be clear on potential conflict, the question asked, as you quote “Why did you not declare that you knew me?” is a reasonable question to ask to ensure complete transparency and to allow you to respond. It is an appropriate clarification for the record as has been confirmed with the Public Appointment Advisor assigned by the Ethical Standards Commissioner.”
8	13 May 2026	The complainer acknowledged receipt and confirmed that he would consider whether he wished the complaint to be considered at stage 2.
9	19 May 2026	The complainer requested for the complaint to be considered at stage 2. He confirmed the reason and complaint as follows: “I remain dissatisfied that my concerns regarding the handling of a declaration issue during interview have not been properly addressed. My complaint relates to process and conduct during the interview itself rather than the appointment outcome. I did not make a declaration regarding knowledge of any panel member because I genuinely did not believe I knew any member of the panel, including the panel member who subsequently questioned me during interview. My understanding was that declarations are made individually by both applicants and panel members based on their own interpretation of what constitutes relevant knowledge or association under the Ministerial Code and Code of Practice. I consider that to be an important principle, particularly where individuals may reasonably interpret limited or incidental professional contact differently. My concern is that the process appears to have moved beyond a panel member making a declaration for transparency purposes, to me instead being directly challenged as to why I had not declared that I knew the panel member. The wording used during interview was: “Why did you not declare that you knew me?” I consider this materially different from a panel member simply declaring prior professional contact. A declaration is a neutral statement made by an individual regarding their own position or prior knowledge. What occurred during interview was not presented to me in that way. Instead, the wording used placed focus on my conduct and implied that I had failed to disclose something I should have disclosed.

Ref no.	Date	Event
		In my view, there is a clear distinction between: • a panel member transparently declaring prior contact; and • a candidate being challenged in a manner that carries an implication of wrongdoing or lack of openness. Those are fundamentally different things in both tone and effect, particularly at the outset of an interview for a role where integrity forms part of the assessment process. Throughout earlier correspondence, this was initially described as a declaration made by the panel member for transparency purposes. However, subsequent correspondence has accepted the wording that was actually used during interview. In my view, those two positions are not the same. I remain unconvinced that this approach was consistent with the principles of fairness, proportionality and ensuring that appointment processes are conducted in a way that is, and is seen to be, fair, as required under the Code of Practice for Ministerial Appointments. While I acknowledge the assurances provided that this did not affect the appointment outcome, my concern relates to process, standards and the manner in which the issue was handled at the outset of the interview. I found the approach unreasonable and difficult not to interpret as a challenge to my integrity. In terms of outcome, I am seeking an independent review of whether the approach taken was appropriate and consistent with the Code of Practice and associated guidance, together with consideration as to whether lessons can be learned regarding how such matters are handled in future appointment processes."
10	23 June 2026	The complainer is provided with the stage 2 investigation complaint. A redacted version of the full complaint report is included at Appendix 3.
11	23 June 2026	The complainer responds to the stage 2 investigation complaint to confirm that he remains unclear about certain aspects of the report: "Having reflected on your findings, I remain unclear on one important aspect and would be grateful for clarification. My complaint was escalated to Stage 2 because I did not believe the Stage 1 response had addressed the substance of my concern. The earlier responses largely characterised the issue as a declaration made by a panel member for transparency purposes. My concern, however, has always been that I was asked:

Ref no.	Date	Event
		"Why did you not declare that you knew me?" and that this was materially different from a panel member simply making their own declaration. I note that your Stage 2 response acknowledges that declarations rely, to a degree, on individual judgement, that reasonable people may reach different conclusions as to what constitutes relevant knowledge, and that I experienced the question as a challenge rather than a neutral clarification. Given those findings, I remain unclear as to why my judgement became the subject of questioning. If declarations are matters of individual judgement, and if differing but reasonable interpretations are possible, why was I asked to justify my decision not to make a declaration rather than the panel member simply making her own declaration and the matter being recorded? I am also unclear as to how this conclusion aligns with our earlier discussion, during which I understood there to be recognition that there was a distinction between a panel member making a declaration and a candidate being challenged as to why they had not made one. I would therefore be grateful if you could clarify: 1. Whether you consider there to be a material distinction between a panel member making a declaration and a candidate being asked why they did not make one. 2. If declarations rely on individual judgement, why my judgement was challenged when the investigation accepts that different interpretations may reasonably exist. 3. How the conclusions reached in the written response reconcile with the acknowledgement that the question came across as a challenge rather than a neutral clarification. These points remain at the heart of my complaint and I do not believe they have yet been fully addressed."
12	24 June 2026	The Scottish Government official confirms that the complaints procedure at stage 2 is concluded and refers the complainer to stage 3 at the Ethical standards Commissioner's office.

REDACTED VERSION OF STAGE 2 COMPLAINT REPORT

Your complaint about a question asked during your interview for a Member position to the Caledonian Maritime Assets Limited Board

Following your correspondence of 19 May 2026, in which you requested that your complaint be escalated to Stage 2 of our complaints handling procedure, I am writing to provide a response to your complaint.

It is my role as the complaint handler to establish whether the Scottish Government has acted appropriately by following the relevant policies and procedures, and to identify whether there is any evidence of maladministration or service failure.

The complaint you agreed with me and that I have investigated is:

- The manner in which you were asked during interview why you had not declared knowledge of a panel member, and whether this represented an inappropriate challenge to your integrity rather than a neutral clarification.

Background

- You attended an interview for a public appointment where, at the outset, a panel member raised prior professional contact with you.
- You were asked why you had not declared that you knew the panel member.
- You have stated that you did not consider that you “knew” the panel member in a way that required declaration and that this is a matter of personal judgement.
- You have raised concern that the way the question was asked felt like a challenge to your integrity rather than a neutral clarification.
- You escalated your complaint to Stage 2 following dissatisfaction with the Stage 1 response.

Investigation

In carrying out my investigation:

- I reviewed your correspondence and the records relating to the interview process.
- I considered the relevant guidance and expectations regarding declarations and conflicts of interest within public appointments.
- I sought the views of panel members to clarify how the issue was approached during the interview.

Complaint 1: Handling of the declaration question at interview What happened?

- Panel members have advised that the intention in raising the issue was to ensure completeness and transparency as part of the interview process.
- They have indicated that they do not recall the question being framed in a way intended to imply criticism of your conduct or to suggest wrongdoing.
- You have consistently stated that the question, as experienced, felt like a direct challenge to your integrity and implied a failure on your part to disclose relevant information.

- You have also highlighted that, in your view, declarations of this nature involve an element of personal judgement, particularly where prior contact is limited or incidental.

What should have happened?

- The relevant process requires both candidates and panel members to declare any knowledge of each other to ensure transparency and fairness, and to identify any actual or perceived conflicts of interest.
- This process relies, to a degree, on individual judgement in determining what constitutes relevant knowledge.
- Any clarification sought during interview should be framed in a way that is neutral, proportionate, and clearly for the purpose of transparency, avoiding any perception that a candidate's integrity is being questioned.

Conclusion

I am satisfied that:

- The intention of the panel was to ensure transparency and completeness of the record; and
- There is no evidence that the panel intended to challenge your integrity or that this issue had any bearing on the outcome of your interview.

However, I recognise the distinction you have drawn. Declarations of knowledge are, to a degree, a matter of individual judgement, and different individuals may reasonably interpret what constitutes "knowing" someone in different ways. I also acknowledge your experience of how the question was asked. I apologise that it came across as a challenge rather than a neutral clarification. It is not the intention of appointment panels to give the impression that a candidate's integrity is being questioned, and I am sorry that your experience was otherwise.

Your complaint highlights that where there is scope for differing interpretations, a lack of clarity in how guidance is applied or how questions are framed can lead to candidates perceiving that their integrity is being questioned, even where that is not the intention.

As a result, I have identified the following areas for improvement:

- Strengthening guidance to make clear that declarations rely on the candidate's own judgement.
- Acknowledging that there may be differing but reasonable interpretations of what constitutes relevant knowledge.
- Providing clearer guidance on how such issues should be handled at interview, ensuring questions are framed as neutral clarifications.

Outcome: Not upheld, with learning identified.