

Ethical Standards Commissioner

ANNUAL REPORT

2020/21

Further to section 25(1) of the
Scottish Parliamentary Commissions
and Commissioners etc. Act 2010
as amended

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

OVERVIEW

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

COMMISSIONER'S STATEMENT

At the time of writing this statement I continue to fulfil the role of Acting Ethical Standards Commissioner for Scotland, following my temporary appointment by the Scottish Parliamentary Corporate Body (SPCB) on 20 April 2021. The Commissioner has been on an extended period of leave since early March 2021.

As with all staff in the office, I moved to remote working prior to the beginning of the financial year. This transition was largely successful and the arrangement remains in place, in keeping with Scottish Government guidance.

During the year, our work on public appointments continued, although, as with everything, it was clearly affected by the global pandemic. Public appointment activity was halted by the Scottish Government for a period as officials were redeployed to other, more pressing, duties. We agreed for the provisions of the Code to be varied during this period to allow individuals to continue in their board roles beyond the usual eight-year limit to ensure that boards had a vital measure of continuity. We continued to provide oversight of appointment activity when it resumed in the summer and thereafter, and we recruited and inducted three new Public Appointments Advisers during the year to ensure we had the capacity to fulfil this function effectively. Fifty-eight allocations were made to potential new appointment rounds during the year in comparison with 70 in 2019/20. We also continued to provide guidance and support to all organisations and individuals who contacted us. We did, however, develop a backlog in some administrative tasks at the year end. A number of proactive activities on appointments were nevertheless completed during this period as attested to by our performance against the business plan, which is set out in more detail in our [standalone public appointments report](#) for the year. This included new research on time commitment and remuneration for board members, and a consultation on prospective revisions to the Code of Practice. More might have been achieved but the Commissioner re-assigned staff to support other priorities, unrelated to the appointments work of the office. These included my taking sole responsibility for handling incoming MSP complaints in my previous role as Public Appointments Manager.

In respect of MSP complaint handling, a staff member who had been dedicated to this activity took voluntary severance, in accordance with the Commissioner's restructuring plans, in 2019. The Commissioner engaged an official from the Northern Ireland Assembly to fulfil the role remotely in 2019 on a redeployment agreement, as no other arrangements had been put in place for cover. The Senior Investigating Officer (SIO), who was appointed in June 2019, was due to take this work on and did so when the redeployment ended. The SIO resigned in October 2020. The Commissioner asked me to take on the task as a temporary measure for a three-month period from January 2020. I continue to fulfil that role. MSP complaint volumes rose significantly at the year end. We received 763 complaints this year in comparison with 109 in 2019/20. A significant backlog developed as a consequence. Plans are in place to address this.

Our handling of councillor and devolved public body member complaints was also affected by our reduction in staff capacity and by governance issues outlined below. Our staff complement for investigating these and MSP complaints should have been one SIO and three Investigating Officers (IOs), all full time. The SIO was relatively new in post having been appointed in June 2019. As indicated above, he resigned less than a year and a half later. Three IOs were appointed in October 2019 to replace all the prior post-holders, who left as a result of the first restructuring exercise conducted by the Commissioner. One resigned in June 2020, and another IO was recruited as a replacement in October 2020. That individual resigned shortly after our year end. Of the remaining two IOs in post, one was promoted to the post of SIO in October 2020. Over and above this, two longstanding staff members who fulfilled the role of Investigations Manager in the office left the organisation in October 2020 under severance arrangements put in place by the Commissioner as part of a further restructuring exercise. Complaint volumes remained high during the year, with a notable trend of increasing complaints about breaches of the respect provisions in the Code of Conduct. One hundred and thirty cases, comprising a total of 238 complaints, were received in comparison with 154 and 284 respectively in the previous year. Complaint handling was practically up to date at the end of the year covered by this report but an inevitable backlog has developed since that time as a result of the staffing issues referred to above. Plans are in place to address this.

In terms of adherence to our budget, funding of £1,029,500 was awarded and expenditure was £1,026,000 - £3,500 under budget.

In my capacity as Acting Commissioner, I am obliged to provide a perspective on the performance of the office during the period covered by this report and have done so above. I feel obliged also to reflect on subsequent events, given their relevance to our work in the preceding year.

During the year, the Standards Commission for Scotland felt compelled to issue directions to the Commissioner - action without precedent - with a view to providing assurance to itself and others that the office was acquitting its functions in accordance with its founding legislation. This, combined with high staff turnover and the absence of engagement with an Advisory Audit Board, led to our external auditor undertaking a wider scope audit.

The audit of the accounts for the financial year 2020/21 has now been completed by our external auditors, Deloitte LLP. Under section 22 of the Public Finance and Accountability (Scotland) Act 2000, the auditors have now sent the accounts and their report to the Auditor General. In due course, the Auditor General will make the audited annual report and accounts, and any additional report that the Auditor General may wish to make, available for laying in the Scottish Parliament. I am grateful to Deloitte for undertaking the review and for the opportunity presented to our office to address the issues of concern highlighted in its report.

I preface what follows by stating what seems self-evident to me but which may not be self-evident to others. The success or failure of every organisation relies on its staff. For an organisation to be successful it must value its people and recognise that unless it has staff who are valued and supported to maintain their wellbeing, and who feel happy in and proud of the organisation's work and the way in which the work is done, it will fail. The culture of an organisation has to be aligned to this fundamental principle.

During the course of the year, the organisation continued to lose staff members. Some of this was by design, some not. The net result was the same. The organisation continued to lose capacity, intellectual assets and corporate memory – a concerning trend that is reflected on in more detail later in this report. Through no fault of their own, the staff who remained were not equipped fully to fulfil the office's statutory functions. Further, a culture prevailed in which some staff were obliged to perform duties and complete tasks in ways that they felt were, at best, inappropriate. Eventually, and inevitably, this became apparent to the individuals and organisations that relied on the office to fulfil its functions appropriately. Staff covering all office functions are also carrying excess leave that was built up in an attempt to address the demands placed on them.

The checks and balances that the organisation had in place, alongside those put in place by legislation, proved insufficient to address a deterioration in good governance. The work of the office was clearly affected by both the loss of people and the governance of the office. Some aspects of our work were affected more seriously than others.

The year was also characterised by an approach to engagement with some of our stakeholder organisations that largely limited exchanges to correspondence only.

Since my temporary appointment, I and the dedicated and professional team who have remained have sought to remedy as many of the issues that I refer to above as possible. Actions taken have included:

- ensuring that the directions issued by the Standards Commission were complied with
- meaningful re-engagement with the SPCB and on-going communications with the SPCB and the Parliament's Standards, Procedures and Public Appointments Committee to keep the Parliament updated on our situation and plans
- meaningful and on-going engagement with all stakeholder organisations, including the Standards Commission, the Convention of Scottish Local Authorities (COSLA), the Society of Local Authority Lawyers & Administrators in Scotland (SOLAR) and the Society of Local Authority Chief Executives (SOLACE)
- the production of a revised strategic plan for the next three years, which now incorporates the values that were missing from the previous version and clear statements of intent about how the office will fulfil its statutory obligations in accordance with the expectations of the Parliament, public and stakeholders
- consultation on the same with all staff and with all relevant stakeholder organisations in Scotland
- a new draft biennial business plan covering all office functions and addressing each of the auditor's recommendations
- the reinstatement of Senior Management Team (SMT) meetings in accordance with previous good governance arrangements and re-engagement with our Advisory Audit Board, whose members are drawn from the independent members of the SPCB's AAB
- the recruitment of three new Investigating Officers and a new Corporate Services Officer; the latter is required to supplement the work required of the post left vacant following an internal temporary promotion into my substantive role as Public Appointments Manager, all with SPCB approval, to ensure all office functions are appropriately covered
- the revision of, consultation on and subsequent publication of an extensive range of staff wellbeing policies

Ethical Standards Commissioner

- the securing of a confidential counselling service for all staff who wish to access it
- consultation with all staff on their preferences for remote/office working in the medium to longer term
- a change to the way in which councillor and board member complaints are assessed for admissibility, agreed with the Standards Commission
- the commissioning of an external party to independently investigate a significant stage 2 complaint about us
- the publication of an analysis of responses to prospective revisions to the Code of Practice for appointments and a revised draft Code issued for further consultation to an extensive range of organisations
- the agreement of draft revisions to the Model Members Code of Conduct and the Councillors Code of Conduct with the Standards Commission and the Scottish Government
- the commissioning of legal advice to aid in the handling of a significant number of complex MSP complaints.

I anticipate being able to report on further progress later in the year and record here my thanks to the SPCB for the support that it has provided to the office during my tenure.

I end by expressing my gratitude to the members of the Senior Management Team and to every staff member in the office. They have shown remarkable resilience and commitment to our work during an exceptionally challenging period. I am immensely proud to belong to such a dedicated team of people and grateful for both their positive attitude and their efforts.



Ian Bruce
Acting Ethical Standards Commissioner

29 October 2021

OUR PURPOSE

The Commissioner's primary functions are:

- to investigate complaints about the conduct of Members of the Scottish Parliament (MSPs), local authority councillors and board members of public bodies.
- to regulate and monitor how people are appointed to the boards of public bodies in Scotland, and to promote diversity in that process.

The Commissioner's statutory functions in relation to complaints handling are:

- to investigate complaints alleging contravention of the relevant Code of Conduct by
 - Councillors
 - Members of Public Bodies
 - MSPs and,
- where there has been contravention of the relevant Code, to report
 - in the case of councillors and members of public bodies, to the Standards Commission for Scotland
 - in the case of MSPs, to the Scottish Parliament.
- to investigate complaints about lobbyists who have failed to register or provide certain information to the Scottish Parliament and, where there has been a contravention, to report to the Scottish Parliament.

The statutory functions of the Commissioner in relation to public appointments are:

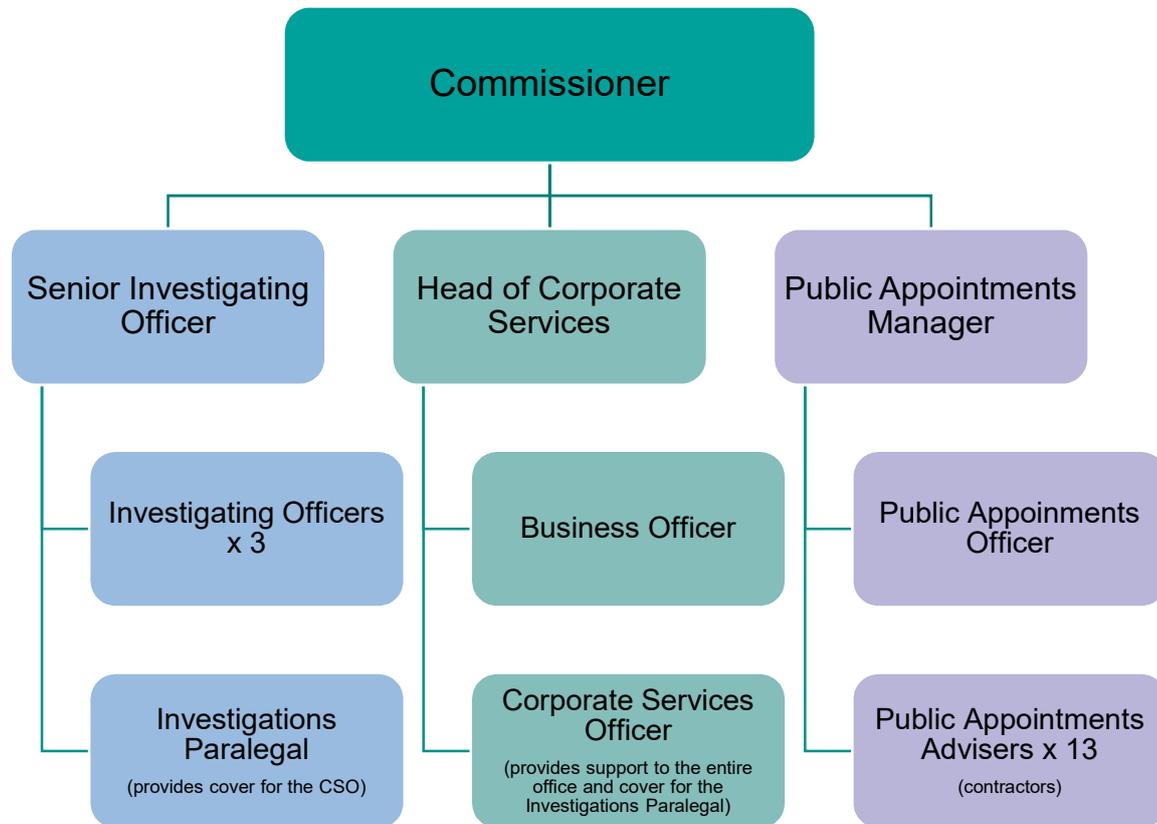
- to prepare, publish and, as necessary, revise a Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code)
- to issue guidance on the Code and to promote compliance with its provisions
- to examine the methods and practices employed by the Scottish Ministers when making appointments
- to report to the Scottish Parliament instances of material non-compliance with the Code of Practice; the Commissioner may direct the Minister to delay making the appointment until Parliament has considered the report, and
- to ensure that, as far as possible, appointments are made fairly and openly and allow everyone, where reasonably practicable, the opportunity to be considered for an appointment.

The key items of legislation setting out the Commissioner's functions and responsibilities are as follows:

- [The Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#) (the "2000 Act")
- [The Scottish Parliamentary Standards Commissioner Act 2002](#) (the "2002 Act")
- [The Public Appointments and Public Bodies etc. \(Scotland\) Act 2003](#) (the "2003 Act")
- [The Scottish Parliamentary Commissions and Commissioners etc. Act 2010](#)
- [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013](#) and
- [The Lobbying \(Scotland\) Act 2016](#).

OUR STRUCTURE

Figure 1



The Commissioner is currently on an extended period of leave. The Scottish Parliamentary Corporate Body appointed Ian Bruce, the Public Appointments Manager, as Acting Commissioner and Karen Elder, the Head of Corporate Services as Acting Accountable Officer as of 20 April 2021.

OUR OBJECTIVES

Our strategic objectives during 2020/21 are drawn from the [Strategic Plan 2020-2024](#) and summarised here:

Assuring ethical excellence through delivery of a high-quality complaints handling service

- Develop and implement new investigation procedures to optimise service provision
- Implement risk-based quality assurance monitoring to foster further improvements
- Innovative thinking around legislative and related changes which secure public interest and best value

Evolution and maturity as a regulator, responsive to contextual and scope change

- Help create public body boards that are effective and reflective of society through our regulatory and outreach work, including our Diversity Strategy
- Consider adoption of a traditional regulatory role more fitting to the current environment
- Prioritise evolution of systems fit for handling sexual harassment and bullying complaints

Developing a talented professional team to further drive quality

- Plan for breadth of experience in our team to facilitate succession and cover
- Identify new capabilities required to support continual modernisation and deliver strategy
- Perform training needs analysis and tailor provision to identified development needs

Creating an effective information governance system designed to support our business aims

- Review our risk management procedures to ensure they are fit for purpose
- Ensure that we manage the information we hold in a secure and appropriate manner
- Utilise technological developments to improve our services

Our strategic plan is supported by annual business plans. These detail the actions we will take each year to achieve our strategic objectives. The development of our 2020-21 business plan was suspended between April and September 2020, A business plan covering the period October 2020 to March 2021 was developed.

Both the [Strategic Plan 2020-2024](#) and the [Business Plan for 2020-21](#) are available on our website.

The Acting Ethical Standards Commissioner has consulted on and published a [revised strategic plan covering the period from April 2021 to March 2024](#). A [biennial business plan](#) was produced to meet the objectives in the strategic plan and to address recommendations from our external auditor.

All plans are available at www.ethicalstandards.org.uk.

OUR PERFORMANCE

COMPLAINTS ABOUT CONDUCT

The 2020/21 financial year has been a time of significant challenge and change not just for the office but worldwide. Shortly before the start of the financial year, the pandemic sparked an almost overnight shift to remote working for all of the Commissioner's staff and stakeholders. Stakeholders include all our complainers, local authorities' staff and elected members, devolved bodies' staff and Board members, the Standards Commission for Scotland's staff and members, and all parties who engage with the standards team in the course of an investigation.

As set out in the Commissioner's Statement, other than the effects of the pandemic, this office and in particular the team which handles complaints about conduct (the standards team) have also experienced the following notable challenges:

- a. **High rate of staff turnover and loss of corporate memory** - the high number of vacancies and staff turnover in the standards team has meant increasing loss of capacity to handle day to day workload and a loss of corporate memory on custom and practice relating to complaint handling processes.
- b. **Changes to internal processes** – significant changes to the internal process for assessing complaints took place throughout the year. The changes related primarily to the process used to assess a complaint's admissibility and resulted in a serious complaint about the office which had to be independently investigated.
- c. **Lack of performance management, training & development for staff and key performance indicators** - the changes set out above had the effect of diverting staff resource and capacity away from implementing a structured performance management system, and shifted focus away from training and development. There was minimal communication of key performance indicators to the standards team for the majority of the financial year.
- d. **The Standards Commission for Scotland's Directions** - over the course of the financial year, the Standards Commission took the unprecedented action of issuing statutory directions. These directed the Commissioner to:
 - submit interim reports where an investigation takes more than a three-month period.
 - report the outcome of each investigation undertaken pursuant to s 9 and 12 of the 2000 Act.
 - carry out an investigation into every complaint about a Councillor and Member save in specific circumstances set out in the Direction.

These were intended to provide assurance to the Standards Commission and others that the Commissioner's office was acquitting its functions in accordance with its founding legislation.

Against this background, the number of active complaints and complaints received this year remains high and comparable with the previous financial year. As will be seen from the data shown in this report, 238 complaints (comprising 130 cases) were received during 2020/21, as compared with 284 complaints (comprising 154 cases) received during 2019/20. There were 301 complaints active during 2020/21 as compared to the 319 complaints active during 2019/20.

The average time taken to progress complaints increased to an extent immediately after lockdown measures were introduced while the standards team became acclimatised to working remotely. However, this was very brief and the team was able to maintain a consistent if not slightly higher level of productivity compared to when working in the physical office by completing work on 277 complaints (comprising 157 cases), compared with the 256 complaints (comprising 143 cases) the previous year. Likewise, the number of complaints (and cases) open at 31 March 2021 is lower than the previous year, at 24 complaints (8 cases) being open compared to 63 complaints (35 cases) the previous year. This is a significant achievement, given the shift to remote working and the challenges set out above relating to staff shortage and changes to our internal processes.

The Commissioner's strategic plan has been redrafted as of 31 March 2021. However, until then, the strategic plan for the financial year set out the following objective for the standards team:

Assuring ethical excellence through delivery of a high-quality complaints handling service

- Develop and implement new investigation procedures to optimise service provision
- Implement risk-based quality assurance monitoring to foster further improvements
- Innovative thinking around legislative and related changes which secure public interest and best value.

Actions to achieve this objective were set out in the Commissioner's business plan for 2020/21. Progress is as follows:

- In relation to MSP complaints, standard dismissal letters and a new factsheet was developed by the Public Appointments Manager and in use from October 2020;
- the office was able to provide a response to public consultation on the revised Model Code of Conduct for Members in January 2021;
- management team meetings were held to review staffing complement subsequent to completion of phase 2 restructure;
- work on complaint form re-design was initiated and completed, with the redesigned form being uploading to the office's website in January 2021;
- work on a 'case story book' with a view to publishing case stories on the office's website was initiated (but suspended on the Commissioner's instructions in February 2021 to prioritise other workload);
- as of March 2021 onwards, the office is compliant with all Directions issued from the Standards Commission over the course of the financial year;

- as of March 2021 onwards, meaningful engagement and relationship-building took place with the Standards Commission, COSLA, SOLAR and SOLACE (see Commissioner's Statement above)
- work on upgrading and updating of procedural documentation (such as templates and factsheets) remains ongoing and, as of May 2021, the content covering assessment at the admissibility stage agreed with the Standards Commission.

During the year, progress against the following was limited:

- in relation to MSP complaints, the development of an action plan documenting a suite of arrangements in anticipation of upcoming amending legislation on sexual misconduct and removal of time bar for allegations of such misconduct and,
- in relation to Councillors and Members' complaints, roll-out of external engagement with local authorities and the Standards Commission, finalising the Memorandum of Understanding with various authorities, and initial review of external contracting arrangements.

PUBLIC APPOINTMENTS

The financial year of 2020/21 in regulated public appointments has been affected by the same significant worldwide events as every other area of public and private life. The start of the financial year in April 2020 coincided with the onset of a world-wide pandemic. This saw a sudden and urgent move to remote working for those organisations and individuals for whom it was practicable and achievable. A lock down on the movement of individuals was implemented in order to slow down the spread of a deadly new virus. These measures affected all who are involved in the regulated public appointments process including the Commissioner's staff, the Public Appointment Advisers (PAAs), Scottish Government officials who run the public appointments process on behalf of Ministers, Boards themselves and, of course, prospective applicants.

Initially, there was a temporary "pause" in appointment activity as all involved in the process waited to see what effect the pandemic would have on society. Many of the Scottish Government employees who would normally be involved in the process were transferred temporarily to Covid-19 related duties. This cessation in appointment activity can be seen reflected in the overall numbers of appointment rounds for the year. Fifty-eight allocations of PAAs were made in comparison with 70 in the previous year.

Satisfaction levels on the part of panel and body chairs about the contribution of our PAAs during appointment rounds remained high – the average score was 4.46 this year in comparison with 4.51 in the prior year – with a score of 5 equating to "very satisfied".

The overall numbers of contacts with the office in the form of enquires and reports did not diminish and in fact increased in some cases on previous years; 756 enquiries and/or reports were received and dealt with in comparison with 680 in 2019/20.

This is not surprising; quite a number of requests were submitted to the Commissioner by the Scottish Ministers to extend appointment terms beyond the eight-year limit normally anticipated by the Code. These were agreed by the Commissioner to afford boards vital continuity during a period of significant uncertainty. Two emergency interim appointments were also agreed during the course of the year.

As appointment activity resumed, in order to secure new Chairs and Members with the skills, knowledge and experience required for boards to deal with their hugely changed operational context, we saw a rise in requests for advice on how different parts of the process might best be conducted online. This process was iterative, as new information on good practice in this area was ingathered and distributed to the PAAs.

In respect of performance against our business plan and action plan for appointments, we managed to complete some proactive work that had been planned prior to the pandemic and in spite of the impact that lockdown had. All activities were streamed to reflect what was and was not possible to complete via remote working.

Notable achievements included:

- a comprehensive consultation exercise on prospective revisions to the Code of Practice
- the publication of a report following research into time commitment and remuneration for board members and the potential impact of these on board diversity
- a successful tendering exercise to engage three new PAAs
- the production of new good practice guidance on recruitment and selection, inclusive of conducting the same using ICT, and training for PAAs in this area
- support for the two mentoring schemes run by the Scottish Government during the year, one for prospective body chairs and one for disabled people considering applying for board roles
- a revision to our statutory guidance following the coming into force of provisions of the Gender Representation on Public Board (Scotland) Act 2018.

We were not, however, able to complete and publish the analysis of responses to the consultation during the year nor to publish the revised Code in draft. Both the Scottish Parliament and the Scottish Ministers wished to have further input into its development and so further consultation is underway in the 2021/22 reporting year.

A range of other planned activity was also suspended or postponed, such as audit of appointment rounds, due to the prioritisation of other work by the Commissioner. This in turn was attributable to high staff turnover and non-appointments related work being delegated to the Public Appointments Manager. More detail is included in our [standalone public appointments report](#) for the year. We nevertheless continued to acquit our core responsibilities for the provision of oversight and guidance.

In terms of board diversity, the statistics for the 2020/21 year have shown a general improvement overall, although, other than for gender, our boards still do not reflect the public that they serve. Figures for the proportion of women on our boards continue to increase. Figures for BME applicants, appointments and reflection on boards have also improved and this may be as a result of positive action taking place due to the relaunch of the Scottish Government's Race Equality Action Plan in October 2020. It is encouraging to see improvement happening, however limited, across a number of areas. We will encourage learning on the part of the Scottish Government to establish what practices, some of which have been necessitated by the pandemic, have had an impact on these figures, if any.

KEY ISSUES AND RISKS

At the beginning of the period, the Commissioner had identified the following the key risks for the office in 2020/21.

1. **Expansion of our statutory remit to include complaints about historic sexual harassment by MSPs towards their own staff**

The Commissioner considered that further restructuring may be required to address complaints arising under this expansion to our remit. There was potential for considerable operational impact, particularly with the intended removal of the time bar for all MSP complaints. The Scottish Parliamentary Standards (Sexual Harassment and Complaints Process) Act 2021 does not come into force until 21 October 2021. Ensuring there is adequate preparation for the implementation of the Act remains a risk for the organisation in 2021/22. The Acting Commissioner aims to address this through recruitment and training.

2. **Impact of Covid-19**

The Commissioner moved the office to remote working on 16 March 2020. Business continuity plans were implemented and we were able to transition to fully offsite working whilst continuing to fulfil our statutory functions. That was and remains the situation and is likely to be so for some time. We continued to safeguard the connectivity and security of our digital networks during the year, and provided everyone with the resources they need to work from home. Cyber Essentials Plus accreditation in our remote-working environment has been achieved and home health and safety assessments for all staff have been undertaken. The Acting Commissioner's priority in 2021/22 is to identify the most effective method for operating once Covid-19 restrictions are relaxed and to seek staff input and support for any resulting changes.

During the period further risks were identified. These remain key risks for the organisation going into 2021/22.

1. **High staff turnover**

Staff turnover during the year remained high at 60% (2019/20: 70%). There was a significant risk that we would have insufficient capacity and capability to carry out our statutory and ancillary functions. In addition, staff morale was low impacting productivity to an extent and retention in particular. Ongoing restructure contributed to this turnover but natural turnover was also high.

2. **Reputational damage**

During the year the Commissioner's relationships with a range of key external stakeholders had deteriorated.

3. **Override of controls and the system of internal governance**

The system of internal governance and external oversight designed to provide sufficient checks and balances has proven ineffective. It is essential that actions to address this issue, incorporated into strategic and business plans remain supported and ultimately implemented by this office and those external agencies and bodies with responsibility.

4. **Exiting the EU**

The Acting Commissioner has considered the impact of exiting the EU on our operation. Given the size and very specific remit of the Commissioner's office, the impact will be limited.

Since April 2021, the Acting Commissioner has implemented a range of actions to address these issues. In particular, standard risk management practices will be re-introduced in 2021/22.

OUR PERFORMANCE

COMPLAINTS ABOUT CONDUCT

Assuring ethical excellence through delivery of a high-quality complaints handling service

We have undertaken an audit of the statistics presented in this section. Any changes to information previously presented have been indicated. We have included statistics from 2017/18 onwards to identify any emerging trends and to link to previous annual reports, in order to allow a full record of our work to be published and for like for like comparisons to be made with previous years such that our performance can be tracked.

COMPLAINTS ABOUT LOCAL AUTHORITY COUNCILLORS AND BOARD MEMBERS OF PUBLIC BODIES

SUMMARY OF THE YEAR

We investigate complaints about the conduct of local authority councillors and the board members of certain public bodies.

The vast majority of the complaints investigated in the course of 2020/21 concerned the conduct of Councillors, as shown in figure 3.

Amongst these, the largest number of complaints involved allegations of disrespect towards members of the public and Council employees (96 complaints, see figure 4). Several of these involved allegations of disrespect in the form of social media posts or engagement on social media platforms such as Twitter and Facebook. There is a clear trend that allegations of disrespect towards members of the public and Council employees are becoming increasingly frequent for this office, as reflected in the year on year increase since 2017/18. Allegations of bullying and harassment are included in the categorisation of complaints alleging disrespect due to both types of conduct being covered by the same section of the applicable Codes and the pre-set categories available from the new Case Management System introduced in 2019/20.

The second largest number of complaints are classified as 'Other' (89 complaints, see figure 4). This category of complaints covers a broad spectrum of allegations about issues outwith the remit of this office. Examples include enforcement of Covid-19 restrictions or Council matters such as appointment of an individual to a committee. The significantly higher number of complaints classified as 'Other' compared to previous accounting years can be attributed to the introduction of the new case management system in the 2019/20 financial year, where complaints which do not match a pre-set description or containing more than one allegation may be labelled 'Other' in order to be logged. A cohesive system of categorising and recording complaints is under development in a new Investigations Manual which is aimed to be introduced by November 2021.

A total of 15 breach reports were submitted to the Standards Commission for Scotland (the Commission) this year. Of these, a significant portion of the breach reports submitted involved allegations of disrespect towards employees or members of the public and disrespect towards other Councillors (6 reports). The right to freedom of speech guaranteed under Article 10 of the European Convention of Human Rights and the wider latitude recognised by the courts as applying to “political expression” featured in many of these cases. Another significant portion of the breach reports covered failure to declare an interest (5 reports). A small portion of the breach reports covered breach of confidentiality (3 reports), one of which covered the premature release of confidential information relating to a Council’s Covid-19 response on Facebook.

The remaining report concerned the breach of paragraph 1.5 of the Code in addition to a finding of disrespect against a Council employee or member of the public.

HOW MANY COMPLAINTS WERE PROCESSED?

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

Figure 2

| | 2020/21 | | 2019/20 | | 2018/19 Revised | | 2017/18 | |
|---|-----------------|-----------------|------------------|------------------|------------------|------------------|-----------------|-----------------|
| | Complaints | Cases | Complaints | Cases | Complaints | Complaints | Complaints | Cases |
| Open at 1 April | 63 ⁹ | 35 ⁹ | 35 ⁷ | 24 ⁷ | 23 ³ | 19 ³ | 53 ² | 29 ² |
| Received | 238 | 130 | 284 | 154 | 174 ⁴ | 118 ⁵ | 146 | 80 |
| Active during year | 301 | 165 | 319 | 178 | 197 | 137 | 199 | 109 |
| Completed | 277 | 157 | 256 ⁸ | 143 ⁸ | 162 ⁶ | 113 ⁶ | 176 | 90 |
| Open at 31 March | 24 | 8 | 63 ⁹ | 35 ⁹ | 35 ⁷ | 24 ⁷ | 23 ³ | 19 ³ |
| Completed, hearing to follow ¹ | 0 ¹⁰ | 0 ¹⁰ | 1 | 1 | 10 | 4 | 1 | 1 |

1. Previously, the number of complaints and cases recorded as ‘Open at 31 March’, included instances where breach reports had been submitted to the Standards Commission for Scotland, with the hearing to be held in the following year. These are still shown in the ‘Completed’ total but also recorded separately to reflect the ongoing work required.
2. This were shown as 57 in the 2016/17 and 2017/18 annual report and accounts and was corrected to 54 (30 cases) in 2018/19. Following a full audit this has been amended to 53 and 29 respectively. A formula error in a spreadsheet used in 2016/17 caused the initial error.
3. In previous reports, these were shown as 24 and 20 respectively. They are adjusted to 23 and 19 in line with bullet 1 and 2 above.
4. This was recorded as 173 in the 2018/19 annual report and accounts. On reviewing our records, one case had a single complaint recorded against it, when there should have been two. The revised total is 174 complaints.
5. This was recorded as 117 in the 2018/19 annual report and accounts. The correct total is 118. The error was the result of two cases with multiple complaints being recorded incorrectly.
6. In previous reports, these were shown as 152 and 109 respectively. They are adjusted to 162 and 113 in line with bullet 1 above.
7. In previous reports, these were shown as 45 and 28 respectively. They are adjusted to 35 and 24 in line with bullet 1 above.
8. In previous reports, these were shown as 269 and 150 respectively. They are adjusted to 259 and 146 in line with bullet 1 above. They are further adjusted to 256 and 143 as three complaints (three cases) were erroneously recorded as complete in 2019/20.
9. In previous reports, these were shown as 60 and 32 respectively. They are adjusted to 63 and 35 as three complaints (three cases) were erroneously recorded as complete in 2019/20.
10. The Standards Commission’s decisions in two cases heard on 10 September 2020 were quashed on appeal on grounds that the panel should not have proceeded in the absence of the respondent who was self-isolating. Re-scheduled hearings were held on 3 May 2021.

The issues corrected above occurred following the transition from one Commissioner to another in 2019 and from one case management system to another. In preparing this annual report and accounts, a full review and reconciliation has been undertaken. The figures presented above are now correct and comparable with those provided in the years up to 2017/18.

Figure 3

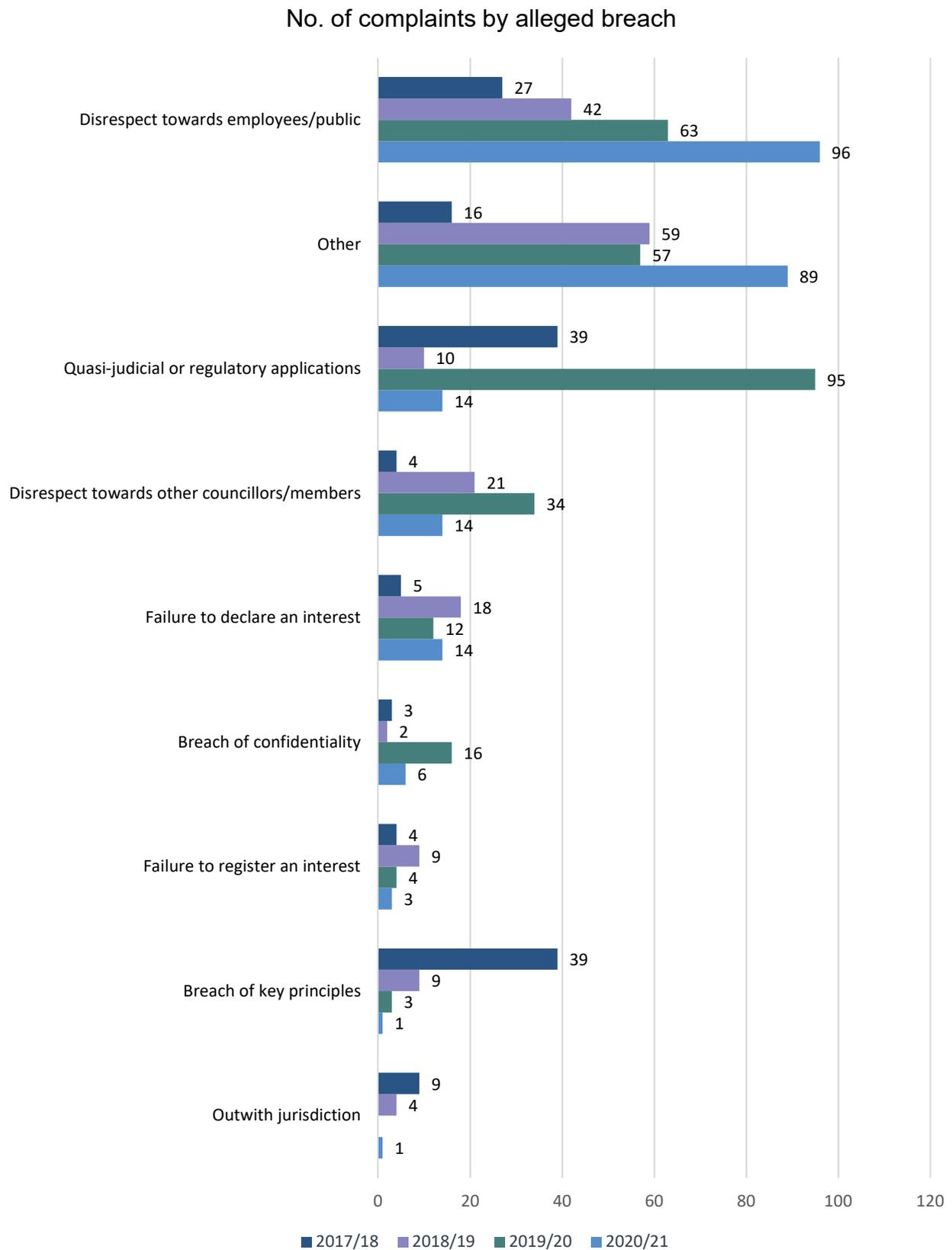
| Complaints received | 2020/21 | | 2019/20 | | 2018/19 | | 2017/18 | |
|----------------------|------------|------------|------------|------------|------------|------------|------------|-----------|
| | Complaints | Cases | Complaints | Cases | Complaints | Cases | Complaints | Cases |
| Councillors | 225 | 121 | 273 | 145 | 155 | 102 | 134 | 69 |
| Board members | 13 | 9 | 10 | 8 | 6 | 6 | 3 | 3 |
| Outwith jurisdiction | 0 | 0 | 1 | 1 | 13 | 10 | 9 | 8 |
| Totals | 238 | 130 | 284 | 154 | 174 | 118 | 146 | 80 |

The table above shows the number of complaints we receive about Councillors and Board members. The number of complaints about Councillors (225 complaints covering 121 cases) remains significantly higher than complaints about Board members (13 complaints covering 9 cases), which is consistent with the trend of previous years.

The number of complaints received about individuals who are outwith the jurisdiction of this office (i.e. not about a Councillor or Board member covered by the applicable Codes) has decreased significantly since 2018/19. A possible explanation for this is a change in how such complaints were categorised and logged to the Case Management System (CMS). The Commissioner revised procedures so that complaints likely to be 'outwith jurisdiction' were not logged on the CMS. As of March 2021, procedures reverted so that all complaints received are logged to ensure consistency and like-for-like comparisons with previous years.

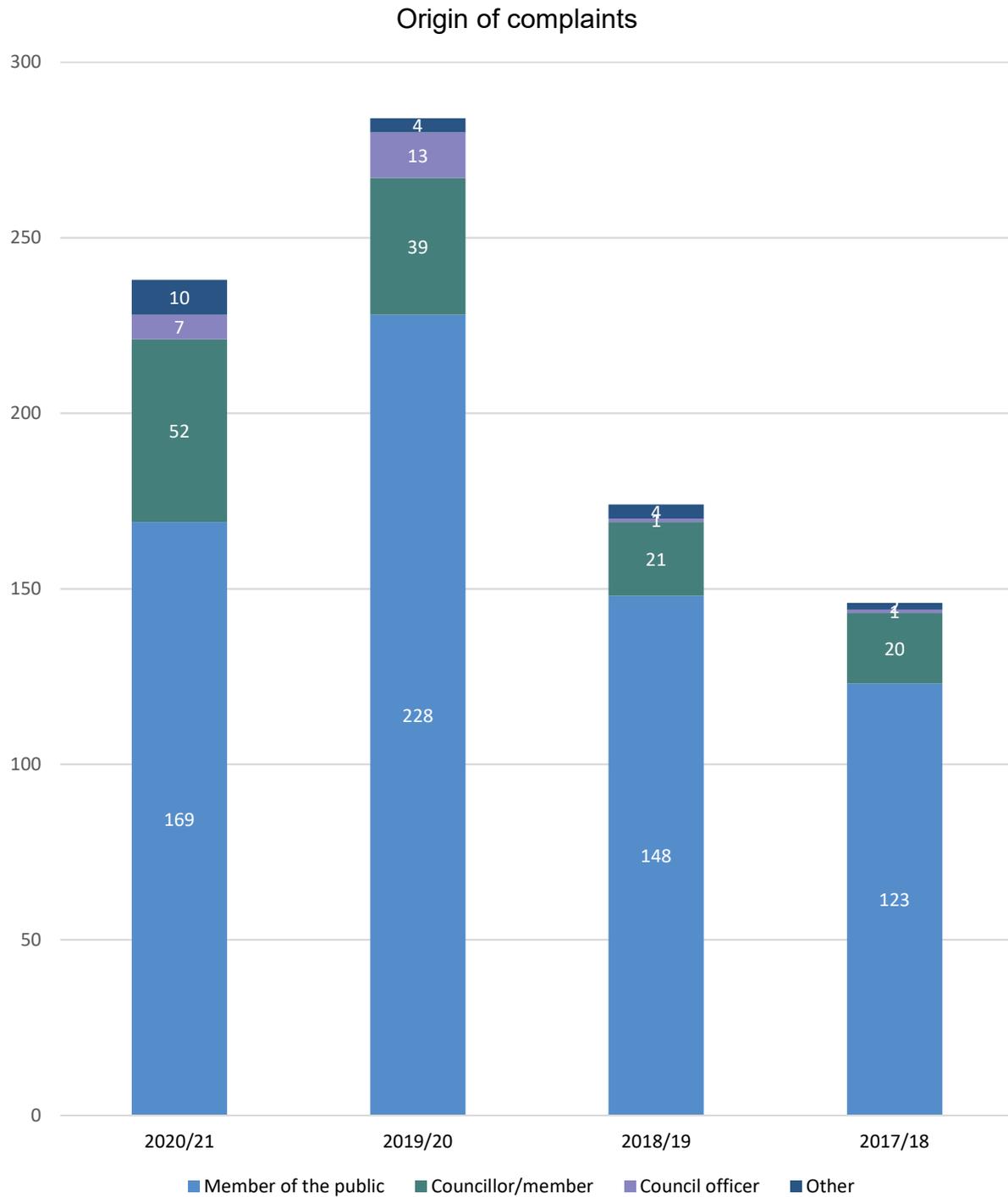
WHAT WERE THE COMPLAINTS ABOUT?

Figure 4



WHO MADE THE COMPLAINTS?

Figure 5



Following a full review of our statistics as described above, we have adjusted the breakdown for 2019/20.

WHAT WAS THE OUTCOME OF THE COMPLAINTS?

Two hundred and seventy-seven complaints were completed this year, comprising 157 cases.

- A full investigation was carried out in respect of 49 complaints (18%) – 24 cases (15%)
 - 39 complaints (14%) – 17 cases (11% of all cases) resulted in a report being submitted by the Commissioner to the Standards Commission with a finding that there had been a breach of the Code.
 - Following investigation, 10 complaints (4%) which were investigated as 7 cases (4%), were concluded with a finding of no breach of the Code.
- There were 227 complaints (82%) – 132 cases (84%) which, after initial investigation, were subject to no further action. The initial investigation involved the assessment and consideration of the complaint by gathering information from parties involved in the complaint or from the relevant council or public body. These complaints were found not to amount to a possible breach of the Code because of limited substance or merit. Following a recommendation from our auditors, and further to concerns raised by the Standards Commission for Scotland about complaints not being properly investigated, we will commission a review of decisions made in 2020/21.
- No complaints/cases were found to be outwith jurisdiction.
- 1 complaint – 1 case was withdrawn.

Figure 6

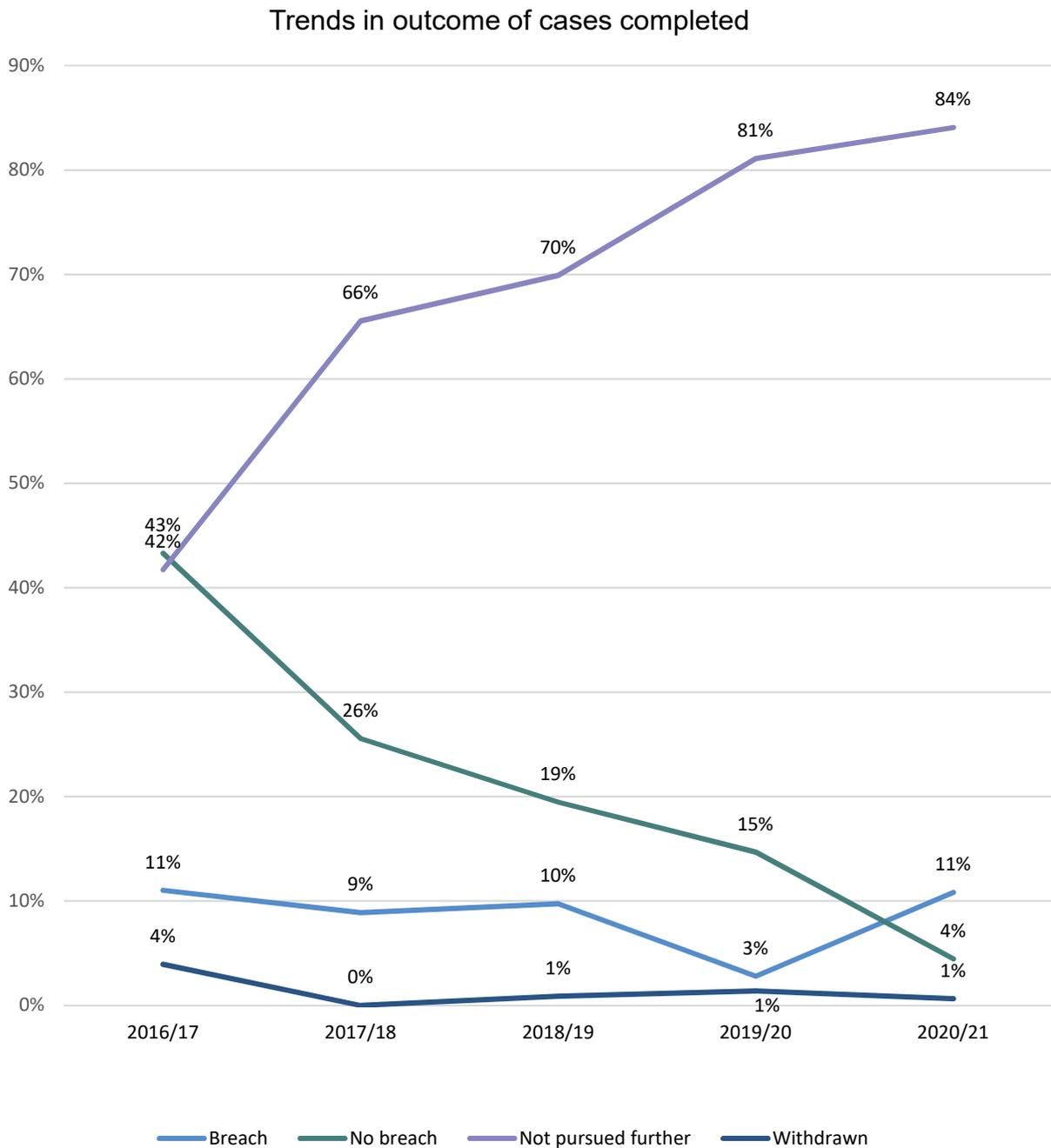
| Outcome | 2020/21 | | 2019/20 | | 2018/19 | | 2017/18 | |
|----------------------|------------|------------|------------------|------------------|------------|-----------------|------------|-----------|
| | Complaints | Cases | Complaints | Cases | Complaints | Cases | Complaints | Cases |
| Breach | 39 | 17 | 8 | 4 | 17 | 11 ³ | 12 | 8 |
| No breach | 10 | 7 | 32 ¹ | 21 ¹ | 31 | 22 ³ | 43 | 23 |
| Not pursued further | 227 | 132 | 214 ² | 116 ² | 110 | 79 ³ | 114 | 52 |
| Outwith jurisdiction | - | - | - | - | - | - | 7 | 7 |
| Withdrawn | 1 | 1 | 2 | 2 | 4 | 1 | - | - |
| Total cases | 277 | 157 | 256 | 143 | 162 | 113 | 176 | 90 |

1. This was recorded as 21 complaints and 13 cases in the 2019/20 annual report and accounts. After an audit of our records this is amended here.

2. This was recorded as 228 complaints and 127 cases in the 2019/20 annual report and accounts. After an audit of our records this is amended here.

3. In the 2018/19 annual report and accounts only cases were noted. These were recorded as 8 breaches, 23 no breaches and 78 'not pursued further'. After an audit of our records, they are amended here.

Figure 7



There has been a steady increase in cases that are ‘not pursued further’ and a correlating steady decline in the number of ‘no breach’ cases since 2017/18. A detailed explanation for this trend as shown from 2016/17 to 2018/19 cannot be provided due to loss of corporate memory from significant staff turnover beginning in 2018/19 onwards although it is likely attributable to a change to the way in which incoming complaints were initially assessed. Additionally, it may be that an increasingly thorough assessment stage process (particularly from August 2020 onwards) where complaints which cannot be substantiated or are without merit are not accepted for investigation has meant the number of non-breach findings would decrease significantly as only complaints which can be substantiated or which have merit were accepted for investigation.

The decline of breach reports to 3% in 2019/20 and subsequent increase to 11% in 2020/21 can be attributed to the backlog of cases which accrued over the course of 2019/20 (explained further below) and for which work concluded in 2020/21.

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

Figure 8

| 2020/21 | Breach | No breach | Not pursued further | Outwith jurisdiction | With-drawn | Totals |
|--|-----------|-----------|---------------------|----------------------|------------|------------|
| Introduction/Key Principles | | | 3 | | | 3 |
| Outwith 12 months | | | 4 | | | 4 |
| Personal conduct/not acting as Councillor | | | 13 | | | 13 |
| Insufficient/no evidence to support allegation | | 7 | 84 | | | 91 |
| Code not engaged/no misconduct | | | 11 | | | 11 |
| Not about a Councillor or Member | | | | | | 0 |
| Breach | 17 | | | | | 17 |
| Not in the public interest | | | 6 | | | 6 |
| Other | | | 11 | | 1 | 12 |
| 2020/21 Totals | 17 | 7 | 132 | 0 | 1 | 157 |
| 2019/20 Totals | 4 | 21 | 116 | 0 | 2 | 143 |

WERE THERE ANY INTERIM REPORTS ISSUED?

Pursuant to s21 of the 2000 Act, the Commissioner may issue an interim report to the Standards Commission setting out that (i) the further conduct of an investigation is likely to be prejudiced if a suspension is not imposed or that (ii) it would be in the public interest to impose a suspension on a councillor or member of the devolved public body, prior to the completion of a full investigation. Alternatively, the Standards Commission may also direct the Commissioner to submit an interim report on an investigation being conducted by the Commissioner. On receiving the interim report, the Standards Commission may impose a sanction of suspending the councillor or member of a devolved public body where the Commission is satisfied of (i) or (ii) above.

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

The Commissioner issued no interim reports in 2020/21 (2019/20: four).

WERE THERE ANY HEARINGS?

The Commissioner reports any findings that the relevant Code of Conduct has been breached to the Standards Commission. They may hold a hearing and impose a sanction, direct the Commissioner to conduct further investigation or do neither. The following table provides further information about hearings held during 2020/21.

Figure 9

| Complaint number | Council / Public Body | Nature of Complaint | Hearing date | Hearing decision | Sanction imposed |
|--|---------------------------|--------------------------------------|--------------|------------------|------------------|
| Report submitted in 2019/20; hearing held in 2020/21 | | | | | |
| LA/Fi/2268 | Fife Council | Other | 24/08/2020 | No breach | N/A |
| Report submitted and hearing held in 2020/21 | | | | | |
| LA/AC/3199 | Aberdeen City Council | Other | 20/11/2020 | Breach | Suspension |
| LA/AC/2276 | Aberdeen City Council | Breach of confidentiality | 22/10/2020 | Breach | Censure |
| LA/ER/3271 | East Renfrewshire Council | Disrespect towards other Councillors | 13/11/2020 | Breach | Suspension |
| LA/Fi/3075 | Fife Council | Disrespect towards employees/public | 23/11/2020 | Breach | Suspension |
| LA/Fi/3039 | Fife Council | Disrespect towards employees/public | 23/11/2020 | Breach | Suspension |
| LA/Fi/3125 | Fife Council | Failure to declare an interest | 09/11/2020 | Breach | Censure |
| LA/Fi/3278 | Fife Council | Breach of confidentiality | 16/12/2020 | Breach | Suspension |
| LA/H/3003 | Highland Council | Failure to declare an interest | 08/07/2020 | Breach | Censure |
| LA/Mo/3132 | Moray Council | Failure to declare an interest | 12/10/2020 | Breach | Censure |
| LA/OI/3265 | Orkney Islands Council | Breach of confidentiality | 18/01/2021 | Breach | Suspension |

| | | | | | |
|--|-----------------------------|--------------------------------------|------------|----------------------------|------------------|
| LA/R/3262 | Renfrewshire Council | Disrespect towards other Councillors | 10/09/2020 | Decision quashed on appeal | |
| LA/R/2257 | Renfrewshire Council | Disrespect towards other Councillors | 10/09/2020 | Decision quashed on appeal | |
| LA/SI/3305 | Shetland Islands Council | Failure to register an interest | 17/12/2020 | Breach | Censure |
| LA/SL/2252 | South Lanarkshire Council | Failure to declare an interest | 23/07/2020 | Breach | Censure |
| LA/WD/3016 | West Dunbartonshire Council | Disrespect towards employees/public | 14/09/2020 | Breach | Suspension |
| Report submitted 2020/21 and hearing scheduled for 2021/22 | | | | | |
| LA/R/3262 | Renfrewshire Council | Disrespect towards other Councillors | 03/05/2021 | Breach | Disqualification |
| LA/R/2257 | Renfrewshire Council | Disrespect towards other Councillors | 03/05/2021 | Breach | Disqualification |

The Standards Commission did not direct the Commissioner to carry out any further investigations during the year.

The significant increase in the number of breach reports and hearings reflects the backlog of cases which accumulated between April and October 2019. A backlog was created initially due to there being no Senior Investigating Officer in post, followed by the Commissioner's decision to suspend work on new investigations during the restructure. Investigations recommenced as a matter of priority in October 2019.

COMPLAINT TRENDS

When we receive several complaints about the same or closely related issues, we investigate them as a single case. We report the number of cases as this better reflects our actual workload. In 2020/21, we received 130 cases and completed 157. Some prior year figures have been adjusted as outlined under Figure 2 above.

Figure 10

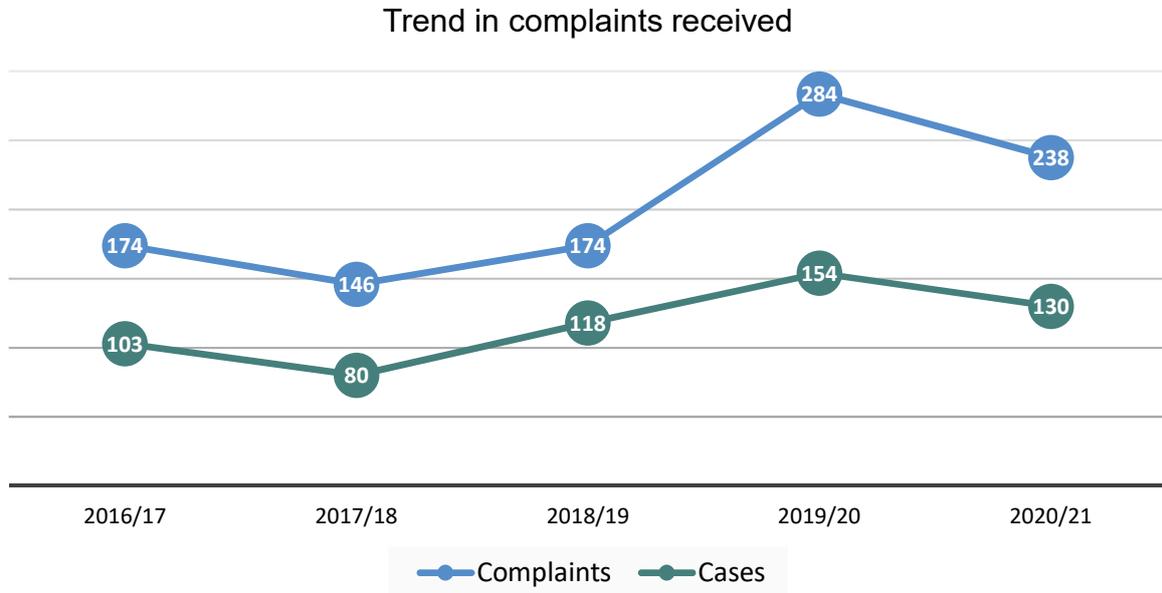
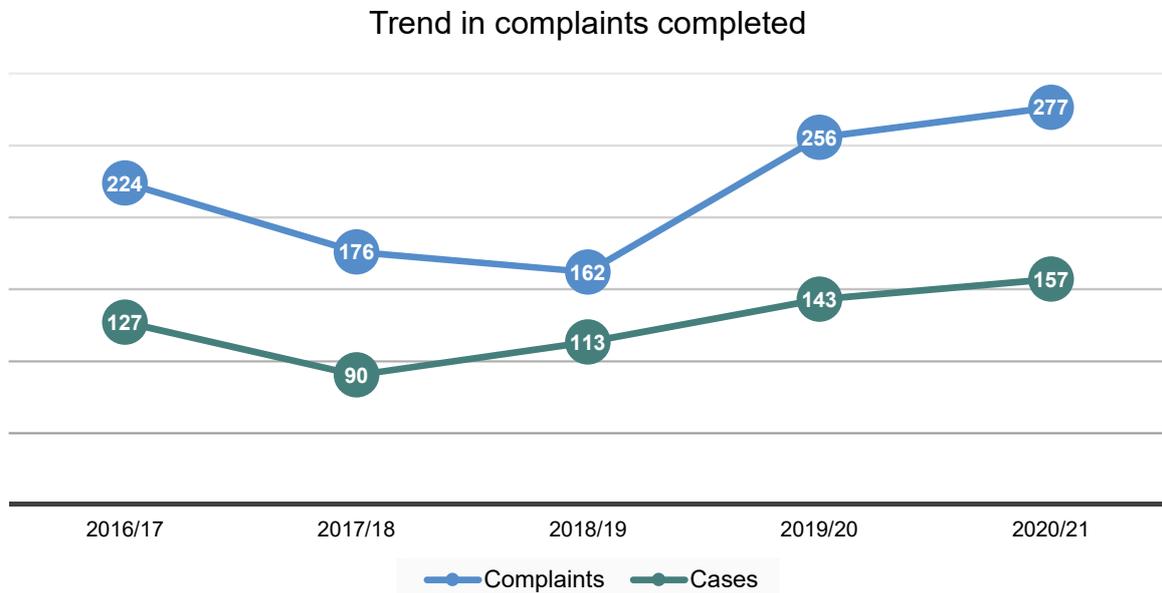


Figure 11



COMPLAINTS ABOUT MSPS

We investigate complaints about the conduct of MSPs.

HOW MANY COMPLAINTS WERE PROCESSED?

Figure 12

| | | 2020/21 | | 2019/20 | | 2018/19 | | 2017/18 | |
|---------------------------|---------|------------|-----------|------------|-----------|------------|-----------|------------|-----------|
| | | Complaints | Cases | Complaints | Cases | Complaints | Cases | Complaints | Cases |
| Open at 1 April | Stage 1 | | | 6 | 5 | 1 | 1 | | |
| | Stage 2 | 1 | 1 | | | 2 | 2 | 4 | 3 |
| Received | | 763 | 54 | 109 | 39 | 23 | 22 | 28 | 24 |
| Active during year | | 764 | 55 | 115 | 44 | 26 | 25 | 32 | 27 |
| Completed | | 61 | 40 | 114 | 43 | 20 | 20 | 29 | 24 |
| Open at 31 March | Stage 1 | 702 | 14 | | | 6 | 5 | 1 | 1 |
| | Stage 2 | 1 | 1 | 1 | 1 | | | 2 | 2 |

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

No complaints were withdrawn during the year (2019/20: Nil).

WHAT WERE THE COMPLAINTS ABOUT?

Figure 13

| | 2020/21 | 2019/20 | 2018/19 | 2017/18 |
|---|------------|------------|-----------|-----------|
| Allowances and expenses/Use of Parliamentary facilities | | | 1 | 4 |
| Breach of confidentiality | 584 | 1 | | 2 |
| Engagement and liaison with constituents | | 3 | 1 | 8 |
| General conduct | | 9 | 9 | 9 |
| Other | 145 | 89 | 1 | 1 |
| Registration/declaration of interests | 3 | 5 | 11 | 4 |
| Treatment of other MSPs/staff | 31 | 2 | | |
| Totals | 763 | 109 | 23 | 28 |

Towards the end of 2020/21 the Commissioner received over 730 complaints relating to a similar issue. The majority of these complaints have been grouped together and will be processed in 2021/22. It is anticipated that concluding these investigations will require considerable resources.

The rapid increase in complaint volumes in the past two years have been driven by single issues attracting a large volume of complaints. In 2019/20, we received 63 complaints about a single MSP's manner of engaging with constituents. The complaints received towards the end of 2020/21 all related to a series of linked courses of conduct.

WHAT WAS THE OUTCOME OF THE COMPLAINTS?

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

Figure 14

| Reasons for inadmissibility | 2020/21 | 2019/20 | 2018/19 | 2017/18 |
|---|----------------------|-----------------|-----------|-----------------------|
| Dismissed under the first statutory test – the complaint was not ‘relevant’ – for example, it did not concern conduct of an MSP? | 56 | 41 ³ | 9 | 15 |
| Dismissed under the third statutory test – was the complaint of enough substance to justify further investigation – that is, was there sufficient evidence? | - | 1 ³ | 1 | - |
| Complaints “outwith” jurisdiction were referred to | | | | |
| Presiding Officer | 1 | 67 | 2 | 6 |
| First Minister | - | 3 | - | 2 |
| Scottish Parliamentary Corporate Body | 3 | - | 2 | 2 ¹ |
| Standards Procedures and Public Appointments Committee | - | 1 | 1 | - |
| Inadmissible | 60 | 113 | 15 | 25¹ |
| Admissible | 2⁴ | 1 | 5 | 4² |
| Totals | 62 | 114 | 20 | 29² |

1. This was originally shown as 3 in the 2017/18 annual report and accounts giving a total of 26 inadmissible complaints. Following a review of our records this has been amended to 2 and 25 respectively.

2. This was originally shown as 2 in the 2017/18 report giving a total of 28 complaints assessed. Following a review of our records this has been amended to 4 and 29 respectively. All four complaints were assessed as admissible in 2016/17 with the Stage 2 investigation being carried out in 2017/18.

3. These were originally shown as 40 and 2 in the 2019 /20 report giving a total of 113 complaints assessed. Following a review of our records these have been amended to 41 and 1 respectively.

4. One of the two complaints was assessed as admissible in 2019/20 with the Stage 2 investigation being carried out in 2020/21.

Where a complaint is ‘admissible’ we investigate and report our findings to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament. There was one such report in 2020/21 (2019/20: two). The remaining admissible case was under investigation as at 31 March 2021.

Figure 15

| Case Ref. | Nature of Complaint | Commissioner's Conclusion | Committee date | Committee decision | Sanction imposed by the Scottish Parliament |
|-------------------|---|---------------------------------------|----------------|--------------------|---|
| 3142 (2019/20) | Part 1 – Failure to register an interest Part 2 - Failure to declare an interest | Part 1 – No Breach Part 2 – Breach | 24-Sep-20 | Agreed | No sanction |

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

TIMESCALES

Stage 1 (Assessment of admissibility)

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

Stage 2 (Further investigation)

The Commissioner is also required to report to the Committee, to the MSP complained about, and to the complainer, if Stage 2 takes longer than six months. Two complaints (two cases) proceeded to Stage 2 in 2020/21. One was completed within the six-month time limit and one was still in progress at the end of the reporting year.

COMPLAINT TRENDS

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

Figure 16

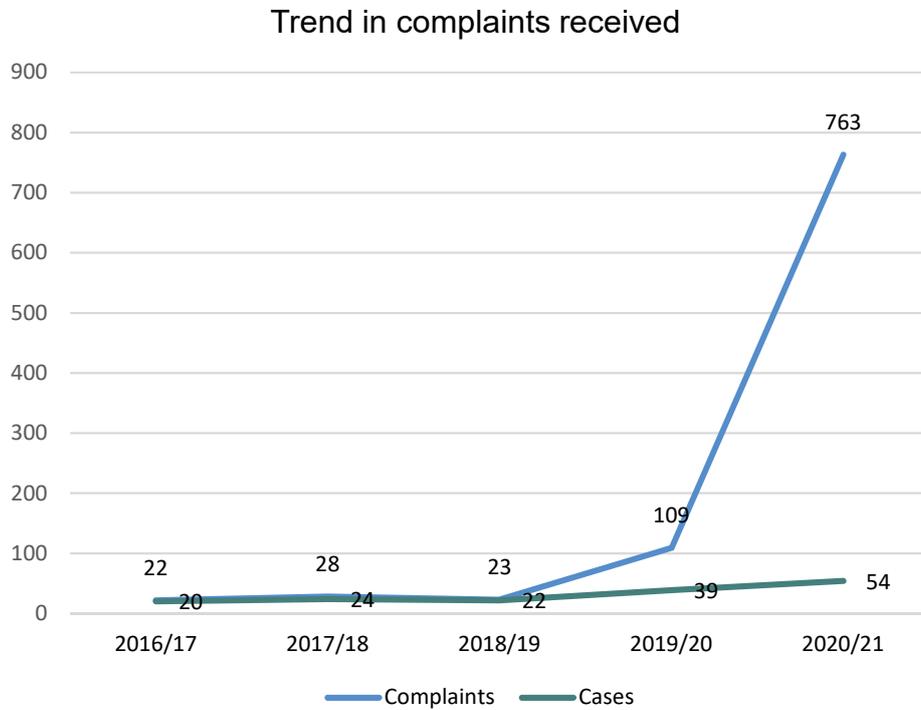
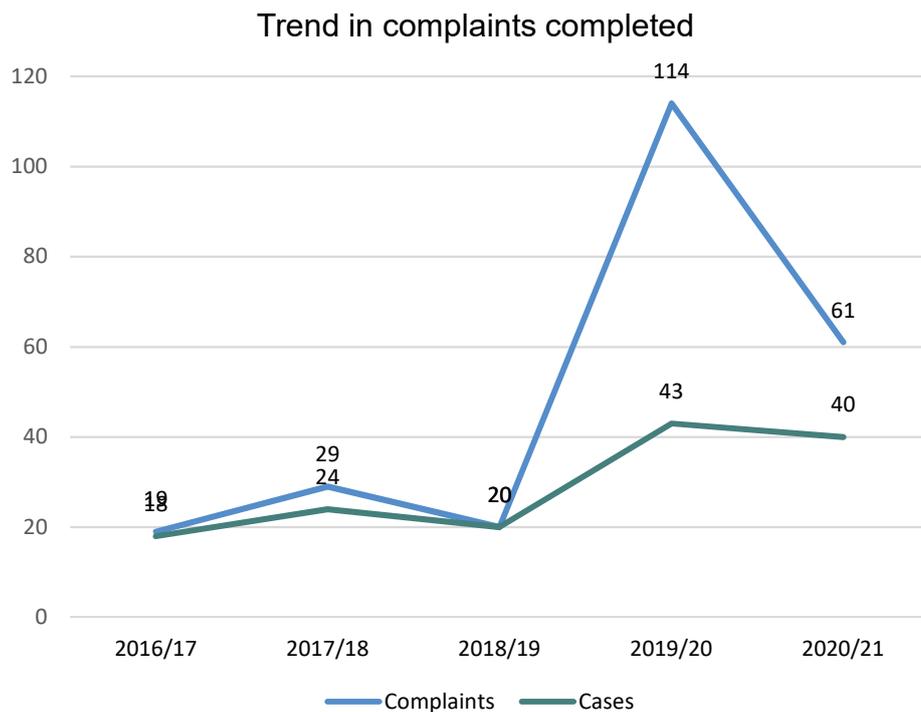


Figure 17



COMPLAINTS ABOUT LOBBYISTS

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

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

WERE THERE ANY COMPLAINTS ABOUT LOBBYING?

During the year we received no complaints regarding failure to register lobbying activity appropriately (2019/20: one complaint).

PUBLIC APPOINTMENTS

Evolution and maturity as a regulator, responsive to contextual and scope change

SUMMARY OF THE YEAR

The regulation of public appointments in the financial year 2020/21 was affected in an unprecedented and unanticipated way. The entire world was affected by the impact of the Covid-19 pandemic and its aftermath. In March 2020 the Commissioner's team moved to remote working exclusively. A number of general "in principle" variations to the requirements of the Code were requested by the Scottish Government as likely to be needed. These included requests to extend chair and member terms of appointment beyond the eight-year maximum normally allowed for by the Code. This took cognisance of the fact that appointment activity was likely to be delayed and it would therefore take longer to get new appointees in place. The Commissioner also allowed for greater flexibility in relation to changes to panel membership as there was a potential for people to become unwell or otherwise unavailable and unable as a consequence to fulfil their obligations under the Code. Eventually, there was a cessation in the majority of appointment activity pending the outcome of measures put in place to deal with the pandemic. Most of the Scottish Government Public Appointments Team were temporarily assigned to duties required to help deal with Covid-19 response work at this time.

Updates from the Scottish Government and some term extension requests (which are provided in more detail later in this report) were received in April, May and August 2020. The Commissioner was keen to support the Scottish Ministers where possible during this time by agreeing to extensions and also made an offer that Public Appointment Advisers (PAAs) who were experienced in governance might help with board cover on an emergency interim basis if it was required.

The Commissioner also wrote to the Permanent Secretary and the responsible Cabinet Secretary to seek assurances about the extent to which the resumption of activity would take account of the new operational context facing all public bodies. Progress in this area was incremental and inconsistent.

In the midst of the early cessation of appointment activity, the Gender Representation on Public Boards (Scotland) Act 2018 came into force. This had been anticipated and new statutory guidance on application of the Code, which took account of the Act's provisions, was published at the end of May 2020.

In the second half of 2020, the Commissioner launched a consultation on prospective revisions to the current Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The 2019/20 annual report had highlighted that there was a need to review the current Code which had last been updated in 2013. The consultation was open from August 2020 until early November 2020. A range of responses was received to this, including one from the Scottish Government on behalf of the Scottish Ministers. This response gave the Commissioner some cause for concern with a proportion of the content suggesting that the Code should be 'principles based' and suggesting that current

regulation is inflexible and prescriptive. Subsequent discussions between the Acting Commissioner and Scottish Government officials have suggested that a suitable resolution can be achieved.

Early 2021 saw the publication of reports on two pieces of research that the Commissioner had conducted. One was the annual report of applicant views on the appointments process. In line with the Commissioner's interest in the issue, this had researched applicants' responses to questions about aspects of the appointments process split by household income and by sector worked (or most recently worked) in. The other report was on the results of a survey of current board chairs and members seeking their views on various aspects of their role. This included how closely they felt the time commitment that they committed to when applying matched the reality once in post. We also sought their views on the remuneration that they receive, how they feel about expenses that they are able to claim and what they knew of the Commissioner's role. It was apparent that the realities of taking on a board role differed from what is publicised in applicant information packs. Both of these reports are available on the website and will feature in further discussions with the Standards, Procedures and Public Appointments Committee, which expressed interest in the findings, and the Scottish Government.

During the course of the year, the Public Appointments Manager was required by the Commissioner to handle all incoming MSP complaints, which had originally been a temporary arrangement for three months from the start of 2020, and to provide advice and support in relation to a range of other of the Commissioner's statutory functions. As a consequence, a proportion of the activity planned for appointments remained incomplete at the year end. More detail is included in our [standalone public appointments report](#) for the year.

IMPROVING DIVERSITY ON THE BOARDS OF PUBLIC BODIES

We have a statutory duty to use our powers with a view to ensuring that appointments are made fairly and openly and that as far as possible everyone has an opportunity to be considered. As part of our work in this area, the Commissioner agreed targets with the Scottish Ministers in the strategy document “Diversity Delivers”, intended to encourage applications from as wide a range of people as possible. The strategy also included a range of recommendations, agreed with the Scottish Government at the time, intended to improve on the diversity of Scotland’s boards. Progress against the recommendations is available on our website: <https://www.ethicalstandards.org.uk/promoting-diversity>.

The following tables and graphs show the extent to which Scotland’s board members at the end of 2020 reflect the population of the country as a whole and how it has changed over time.

CURRENT DEMOGRAPHIC PROFILE OF SCOTLAND’S BOARDS

Figure 18

| Target Group | Change in board membership profile | Profile of board members† at the end of 2020 | Profile of board members† at the end of 2019 | Scottish Population (2011 Census) |
|-----------------------------|------------------------------------|--|--|-----------------------------------|
| Female | +1.7% | 51.7% | 50.0% | 51.5% |
| Disabled | +0.2% | 7.4% | 7.2% | 19.6% |
| Black and minority ethnic†† | +0.8% | 3.6% | 2.8% | 4.0% |
| Aged 49 and under | -0.2% | 17.7% | 17.9% | 54.3%* |
| Lesbian, gay and bisexual | -0.2% | 4.9% | 5.1% | 6.0%** |

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

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

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

** Estimated based on information from Stonewall Scotland website

HOW THE DEMOGRAPHIC PROFILE OF SCOTLAND'S BOARDS IS CHANGING

Figure 19

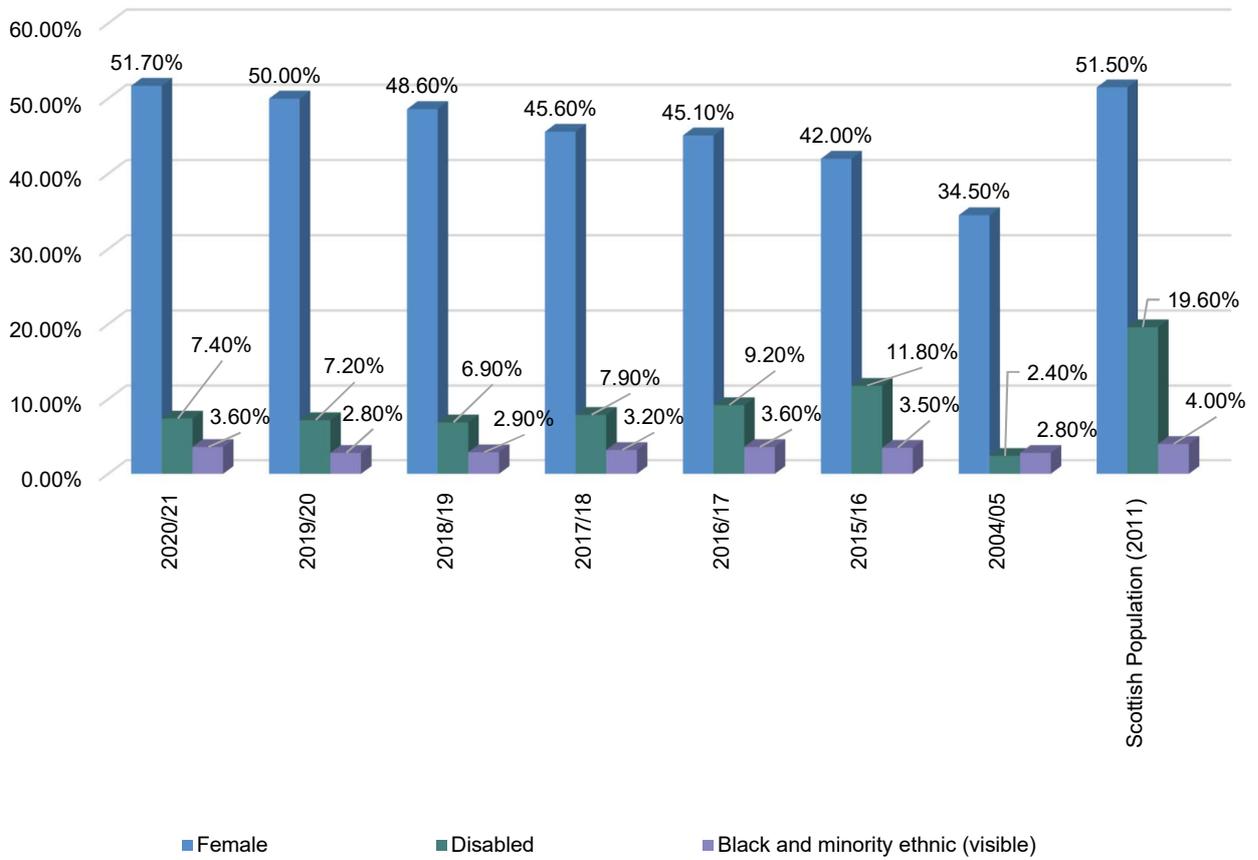
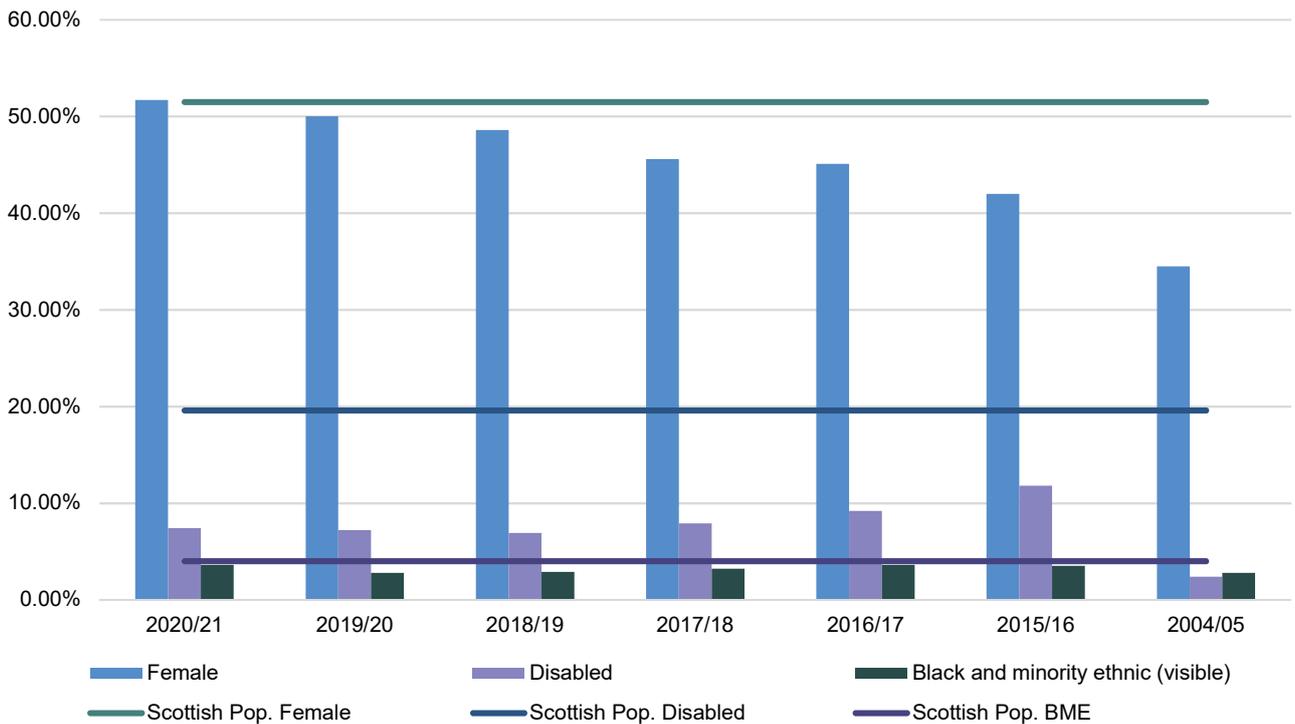


Figure 20



The Commissioner has not set a target for reflection by protected characteristics on boards. It is however recognised that this baseline must be tracked in order to assess whether the measures put in place to meet Diversity Delivers targets are making a difference to board demographics. This in turn will determine whether the targets continue to be required and set at current levels.

Female board membership has increased year on year since 2015/16 and has now exceeded the 50% target set by the Scottish Ministers in 2015. There is still under-reflection in respect of all other characteristics for which targets have been set in comparison with the demographics of the population. It is, however, encouraging to see a number of small increases across some of these characteristics in 2020/21.

In 2018, the Commissioner requested, for the first time, the breakdown between chairs and members with a view to monitoring and tracking the extent to which public body chairs are reflective of society. At the end of 2020 the cohort of board chairs was made up of just over 39% women and nearly 12% of people declaring a disability. These breakdowns are provided in more detail in our [standalone report for public appointments](#). That report also includes figures for board chairs and members disaggregated by household income and sector worked or most recently worked in. Around 70% of our current board chairs and members (as at 31 December 2020) earn above the median income in Scotland.

Around half of both public body chair and members either work or mostly recently worked in the public sector. According to the Scottish Government publication “Public sector employment in Scotland: statistics for fourth quarter 2020” around 21.8% of the Scottish population work in the public sector. The data also shows that individuals from a public sector background are more likely than those from a private sector background to apply and that they are more successful when they do so.

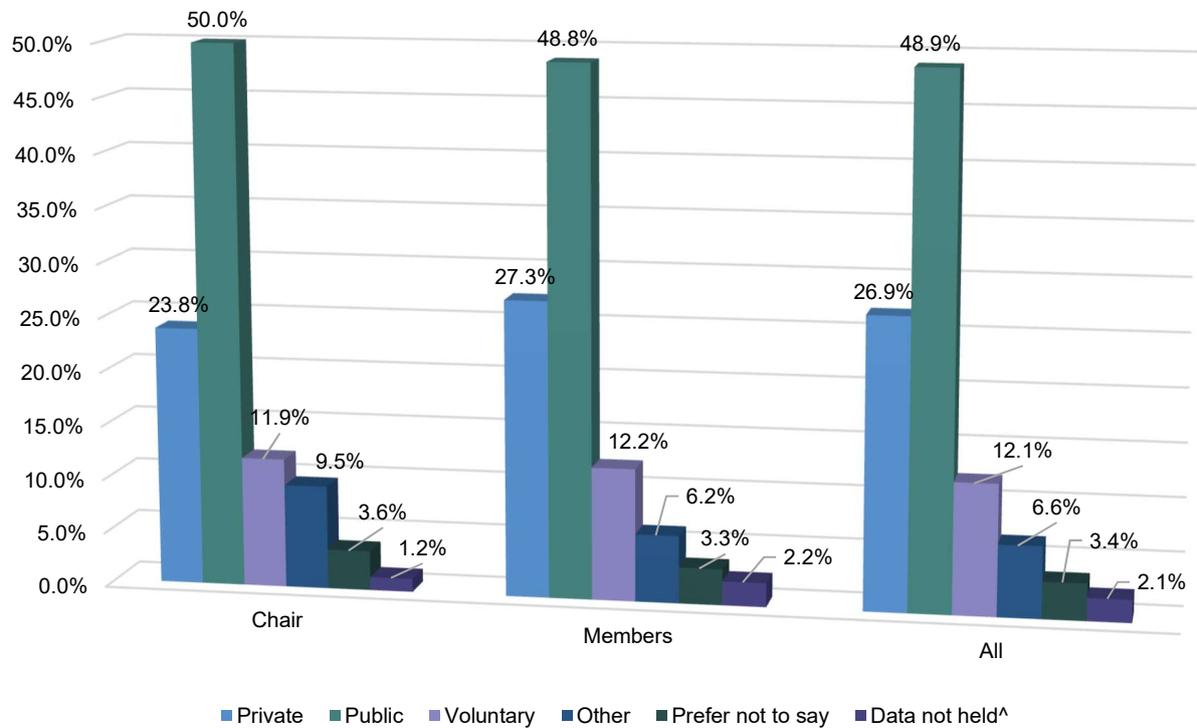
HOUSEHOLD INCOME OF BOARD CHAIRS AND MEMBERS AS AT 31 DECEMBER 2021

Figure 21



SECTOR WORKED (OR MOST RECENTLY WORKED) IN

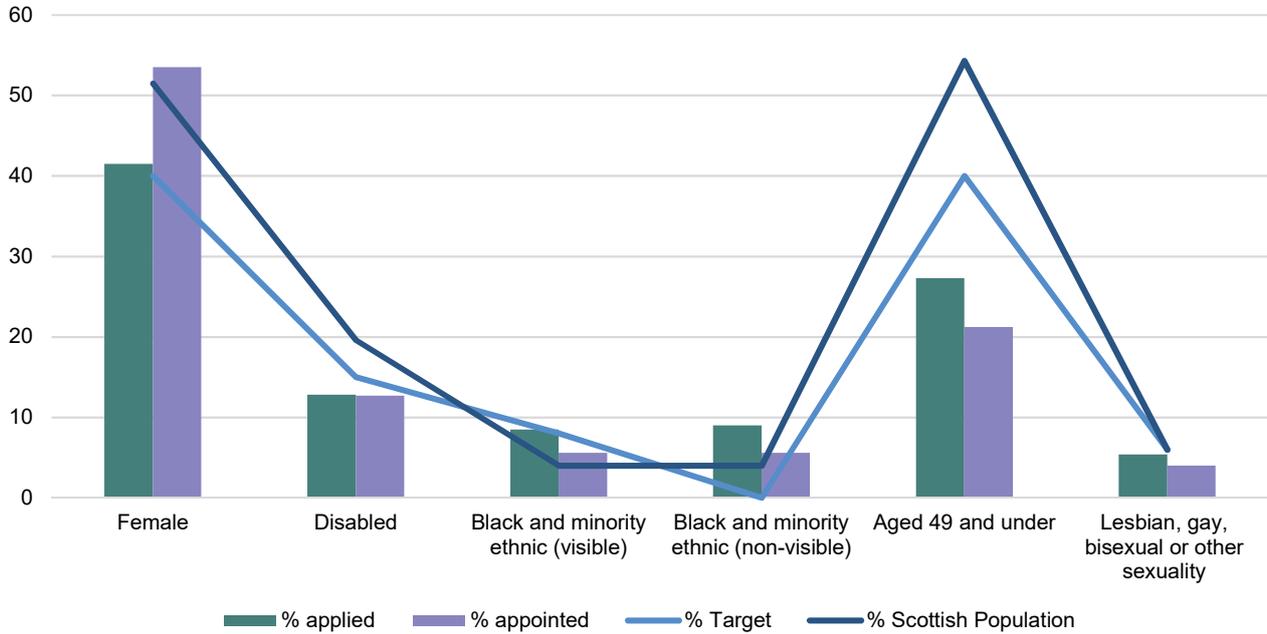
Figure 22



PERFORMANCE AGAINST DIVERSITY DELIVERS TARGETS 2020

The following chart shows the percentage of applications and appointments in 2020 by each target group as set out in Diversity Delivers.

Figure 23



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

APPLICATIONS AND APPOINTMENTS BY TARGET GROUP

Figure 24

| Target Group | Target | 2020 | | | 2019 | | 2018 | | 2017 | | Scottish Population* |
|---|--------|------|------|------|------|------|------|------|------|---------|----------------------|
| | ● | ● | ● | ● | ● | ● | ● | ● | ● | | |
| | % | % | % | % | % | % | % | % | % | | |
| Female | 40.0 | 41.4 | 53.5 | 42.9 | 48.1 | 42.8 | 52.4 | 39.5 | 52.8 | 51.5 | |
| Disabled | 15.0 | 12.8 | 12.7 | 12.9 | 11.9 | 9.4 | 7.1 | 11.0 | 6.5 | 19.6 | |
| Black and minority ethnic (visible)** | 8.0 | 8.5 | 5.6 | 8.7 | 5.9 | 6.3 | 3.6 | 7.0 | ^ | 4.0 | |
| Black and minority ethnic (non-visible) | N/A | 8.9 | 5.6 | 6.3 | 5.9 | 5.2 | 3.6 | 4.9 | ^ | 4.0 | |
| Aged 49 and under | 40.0 | 28.2 | 21.2 | 30.8 | 27.4 | 28.2 | 22.6 | 27.1 | 29.6 | 54.3*** | |
| Lesbian, gay, bisexual or other sexuality | 6.0 | 5.4 | 5.6 | 4.9 | 3.7 | 4.3 | 7.1 | 4.6 | 4.6 | 6.0**** | |

Key: Applications ● Appointed ●

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

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

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

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

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

It is apparent from these figures that women are the only standalone group over the past four years who were more likely to be successful when they applied (although it is acknowledged that, in 2020, BME applications exceeded the target, people declaring LGB status were relatively successful when applying and people declaring a disability have seen some increase in both applications and appointments in the last 2 years).

The Scottish Government also provides application and appointment data to the Commissioner disaggregated by Director General (DG) area to aid in identifying those that are meeting or exceeding the targets and so that the sharing of their good practice can be encouraged. The Commissioner requested, for the first time this year, the data also disaggregated by household income and sector worked (or most recently worked in).

There appears to have been some encouraging progress by some DGs in some areas. More information is included in our [standalone public appointments report](#) for the year.

PERFORMANCE AGAINST OUR BUSINESS PLAN

The Commissioner's public appointments objective is set out in the strategic plan for 2020 to 2024. At 31st March 2020 (it has since been re-written) it was:

Evolution and maturity as a regulator, responsive to contextual and scope change

- Help create public body boards that are effective and reflective of society through our regulatory and outreach work, including our Diversity Strategy
- Consider adoption of a traditional regulatory role more fitting to the current environment
- Prioritise evolution of systems fit for handling sexual harassment and bullying complaints

The Commissioner's business plan for 2020/21 was not published until April 2021 but included actions intended to contribute to the achievement of this objective. Specific activities were set out under the following headings:

- Revise the Code and Guidance on Ministerial Appointments to Public Bodies in Scotland
- Increase transparency in the public appointments process by adoption of a traditional regulatory role
- Help create public body boards that are effective and reflective of society through regulation and support of ministerial plans to implement the diversity strategy
- Developing a talented professional team to further drive quality
- Creating an effective information governance system designed to support our business aims

Progress against the business plan is summarised in the following table:

Figure 25

| Public Appointments | | Milestones | Achieved |
|--|--|--|----------------------|
| A1 | Develop a revised Code of Practice for Public Appointments | i. Consult Scottish Ministers, Scottish Parliament and key stakeholders on broad proposals by Dec-20. ii. Produce revised draft by Feb-21. iii Publish in May-21 | i ✓ ii ✗ iii ✗ |
| A2 | Tender for new Public Appointments Advisers | Tender over Sep-20 /Oct- 20. New SLAs issued in Dec-20 | ✓ |
| A3 | Survey board members on time commitment and remuneration – report on results | Run survey from Jul-20 to Oct-20. Published results in Feb-21 | ✓ |
| A4 | Engage with the Scottish Parliament’s subject committee about appointments practices with a view to making improvements. Take committee views into account in the development of the Code and guidance (see A1). | May-20 to Oct-20 - Done | ✓ |
| A5 | Revise the applicant survey to take account of applicant views in prior year. Publish the results of all applicant surveys run in year in a single report. | Draft published slightly behind schedule on 20/01/21. | ✓ |
| A6 | Revise and publish further good practice advice on Code compliance and recruitment and selection and provide further training for Public Appointments Advisers to inform advice and oversight. | Published guidance by Sep-20. Online training in Jul-20, Oct- 20 and Dec-20. | ✓ |
| A7 | Support the Scottish Government’s mentoring schemes for chairs of the future and for disabled people shadowing current board members. | | ✓ |
| ✓ Achieved ● Partially achieved ✗ Not achieved | | | |

Additional, more detailed information on progress against the business plan and action plan is included in the [standalone public appointments annual report](#).

MONITORING AND REPORTING

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

The Commissioner’s remit extended to 717 posts on the boards of 99 public bodies at the year end. In the case of a proportion of these bodies, such as regional colleges, only the chair appointments are regulated. Additionally, some bodies are statutorily included in the Commissioner’s remit even though they are either abolished or no longer active.

HOW MANY BODIES AND POSITIONS DO WE REGULATE?

Figure 26

| At 31 March | 2021 | 2020 | 2019 | 2018 |
|--|-------------|-------------|-------------|-------------|
| No. of bodies regulated | 99 | 97 | 95 | 95 |
| No. of posts regulated | 717 | 755 | 677 | 660 |
| Avg. no. of regulated positions per board | 7.2 | 7.8 | 7.1 | 6.9 |

Consumer Scotland, the Scottish National Investment Bank and the Scottish Fuel Poverty Advisory Panel were added to the Commissioner’s remit over the course of the year and the Parole Board for Scotland was removed.

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

HOW MANY APPOINTMENTS DID WE OVERSEE?

During the previous calendar year, 71 regulated board appointments were made to 30 public bodies. For a more detailed breakdown of appointment activity see Appendix One. The data in Appendix One are supplied by the Scottish Government. It covers a calendar rather than financial year. It sets out all appointments made by the Scottish Ministers in 2020, the number of applications for the posts and the oversight level applied by the Commissioner.

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

NUMBER OF ALLOCATIONS MADE

Figure 27

| Allocations made | 2020/21 | 2019/20 | 2018/19 | 2017/18 |
|------------------------------------|-----------------|------------|------------|------------|
| Brought forward from previous year | 40 ¹ | 58 | 43 | 24 |
| Started in year | 58 | 70 | 96 | 90 |
| Active during year | 98 | 128 | 139 | 114 |
| Completed | 45 | 83 | 81 | 71 |
| Open at end of year | 53 | 45 | 58 | 43 |

¹ Five rounds were reported as live at the end of 2019/20 which were subsequently closed with a closing date at the end of March 2020 and therefore should have been included in the "completed in year" category.

The significant drop in number of rounds completed during the year 2020/21 can largely be attributed to a temporary cessation in appointment activity due to the Covid-19 pandemic. The oversight levels for all allocations in 2020/21 are included in our [standalone public appointments report](#). How the Commissioner decides on an appropriate oversight level is explained in the guidance on application of the Code.

HOW MANY PEOPLE APPLY FOR A PUBLIC APPOINTMENT?

During 2020, 71 appointments were made to 30 public bodies following 1,307 applications made by 1,117 applicants. This information is provided by the Scottish Government and relates to a calendar year.

NUMBER OF APPLICATIONS AND APPOINTMENTS

Figure 28

| Number of | 2020 | 2019 | 2018 | 2017 |
|--------------------------------------|-------|-------|-------|-------|
| Applications | 1,307 | 2,088 | 2,832 | 2,048 |
| Appointments | 71 | 135 | 168 | 108 |
| Average applications per appointment | 18.4 | 15.5 | 16.9 | 19.0 |

BREAKDOWN OF APPLICATIONS

Figure 29

| Number of applications | 2020 | 2019 | 2018 | 2017 |
|-----------------------------|-------|-------|-------|-------|
| Applied | 1,307 | 2,088 | 2,832 | 2,048 |
| Reached shortlist | 1,299 | 2,079 | 2,827 | 2,017 |
| Invited to interview | 242 | 442 | 580 | 368 |
| Recommended for appointment | 87 | 151 | 176 | 132 |
| Appointed | 71 | 135 | 168 | 108 |

HOW LONG DOES AN APPOINTMENT ROUND TAKE?

As with the appointments' statistics, much of the material relating to these measures is provided to the Commissioner by the Scottish Government and relates to a calendar year. Concerns have historically been raised about the time taken for appointment rounds and reappointments and the Commissioner therefore included indicative targets for timescales in guidance on application of the Code. All of the indicative targets were surpassed in the prior three reporting years but not met by a small margin in this year. Full details are included in the [standalone public appointments report](#).

HOW MANY APPLICANTS HOLD OR HAVE HELD A PUBLIC APPOINTMENT?

This indicator relates to whether applicants hold or have previously held a public appointment.

Figure 30

| | 2020 | | | | 2019 | | | | 2018 | | | |
|--|-------|---|-------|---|-------|---|-------|---|-------|----|-------|----|
| | ● | % | ● | % | ● | % | ● | % | ● | % | ● | % |
| Total | 1,117 | | 1,301 | | 1,786 | | 2,088 | | 2,058 | | 2,832 | |
| Currently holds /previously held a public appointment* | 91 | 8 | 101 | 8 | 83 | 5 | 97 | 5 | 348 | 17 | 612 | 22 |
| Currently holds /previously held a regulated public appointment* | 54 | 5 | 64 | 5 | 52 | 3 | 72 | 4 | 249 | 12 | 467 | 17 |
| Did not say** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 81 | 4 | 92 | 3 |

Key: Applicants ● Applications ●

*Applicants who complete the relevant fields on the application form do not restrict themselves to listing regulated appointments. Two figures are provided as a consequence; the number of those who have declared any appointment and those who declared regulated appointments. The former includes children's panels, housing associations, tribunals, justice of the peace posts and appointments in England among others.

**Applicants are now obliged to provide an answer to this question.

MINISTERS INTERVIEWING APPLICANTS

The guidance on application of the Code states that the appointing minister is anticipated as meeting with appointable applicants, particularly in the case of significant chair appointments. During 2020, the Scottish Ministers only met the potential appointees on one round which was seeking new members for the Care Inspectorate.

WHAT DO APPLICANTS THINK OF THE APPOINTMENTS PROCESS?

The Commissioner published the 2019 Annual Applicant Research report in January 2021. The only recommendations in the 2019 research report were that the Scottish Government take on board the views of applicants as expressed in the report and provide a response to these. This response was received and is published on the website alongside the report.

Applicant surveys continued to be undertaken for the majority of rounds taking place in the financial year 2020/21.

In summary:

- 1,170 applicants were asked for their views on 27 appointment rounds. This is in comparison to 1,372 applicants covering 48 appointment rounds in 2019, 2,230 applicants covering 53 appointment rounds in 2018, 1,601 applicants covering 40 rounds in 2017 and 805 applicants covering 16 rounds in 2016.
- 293 applicants responded in full or in part (25%). This is a decrease of 7 percentage points on response rates in comparison with the 2019 annual survey.

Due to the low numbers of applicants responding to the surveys in this year, and the changed operational circumstances of the Commissioner's office, it is not intended to produce an annual applicant survey report for 2020 and instead continued discussions will take place with the Scottish Government as to how applicant participation in the survey can be encouraged with a view to producing an annual report in 2022, for the survey's conducted in 2021

We also ask public body and panel chairs to provide their views on the contribution of our PAA and on the appointments process. We use a simple 1 to 5 scale (5 is very satisfied, 1 is very dissatisfied), the results of which have consistently exceeded 4 in the past two years.

SATISFACTION WITH THE APPOINTMENT PROCESS

Figure 31

| Average satisfaction level | 2020/21 | 2019/20 | 2018/19 | 2017/18 |
|----------------------------|---------|---------|---------|---------|
| PAA's contribution | 4.46 | 4.51 | 4.71 | 4.55 |
| Appointments process | 3.85 | 4.05 | 4.21 | 4.18 |

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

PROVIDING GUIDANCE

ENQUIRIES AND REPORTS ARISING FROM SCRUTINY

The following tables summarise substantive contacts with the office during the reporting year.

Figure 32

| Issues raised | Supplementary Information | 2020/21 | 2019/20 | 2018/19 | 2017/18 |
|--|---------------------------|------------|------------|------------|------------|
| Enquiry - Asked for advice on the Code of Practice | 1* | 177 | 166 | 155 | 167 |
| Enquiry - Asked for advice on good practice | | 14 | 8 | 27 | 23 |
| Enquiry – Asked for exceptions to the Code, or term extensions or to discuss options not covered by the Code | 2* | 46 | 46 | 35 | 28 |
| Diversity research enquiry | | 0 | 5 | 16 | 48 |
| Enquiry - General enquiry on the work of the office | | 42 | 30 | 60 | 76 |
| Enquiries and Reports - Miscellaneous or “Other” enquiries or reports | | 346 | 315 | 283 | 190 |
| Enquiry - Freedom of information requests | | 0 | 0 | 0 | 2 |
| Report a complaint about an appointment round | 3* | 4 | 1 | 2 | 1 |
| Report a concern about an appointment round or a failure in administration | 4* | 100 | 91 | 93 | 84 |
| Report about good practice | 5* | 20 | 10 | 13 | 20 |
| Report about non-compliance with the Code of Practice | 6* | 7 | 8 | 13 | 7 |
| Totals | | 756 | 680 | 697 | 646 |

* Narrative below provides further detail

1* - Requests for advice on the Code of Practice

Comparative analysis of these requests showed that seeking advice related to planning were the highest in the year concerned. Requests for advice on application and assessment methods were the next most common. There was a significant jump in queries relating to recruitment consultants (12 compared to 1 in the previous year) which will have been as a result of panels seeking advice on new statutory guidance introduced on this subject during the year (see below).

2* - Exception requests and options discussions

The Scottish Ministers can approach the Commissioner and make a case for specific provisions of the Code to be varied. The Commissioner’s agreement to such “exceptions” allows for courses of action to be taken that would otherwise not comply with the Code.

Thirty-nine such cases were approved during the year in comparison with 28 in 2019/20:

- The largest number of exceptions sought in 2020/21 were in relation to extensions to board member and chairs' terms. This was due to appointment activity being temporarily ceased due to the Covid-19 pandemic and Scottish Government staff who would normally be engaged in this work being required to support work related to the pandemic for a short time. Exceptions were therefore needed (with the Commissioner having assured the Scottish Government that these would be agreed) in order to allow boards to continue to operate until such time as appointment activity could recommence. In the course of the year there were 27 contacts with the office about extension requests which resulted in 24 extensions being agreed covering 20 different bodies and 30 posts in total. Extensions tended to be for about 9 months.
- Other exception requests were:
 - additional appointments were made to three bodies
 - changes to panel membership were allowed for twice
 - unanticipated vacancies were filled from a reserve list of people considered suitable but not appointed at the conclusion of a recent competition once
 - an emergency interim appointment was allowed for twice
 - three miscellaneous Code variations were agreed. One was a request for a panel to convene a planning meeting remotely, rather than in person. This became a norm as the year progressed.

3* - Report a complaint about an appointment round

One of the complaints received during the year was as a result of a discussion where an applicant wanted to provide feedback in addition to that which had been provided in an applicant survey. It became clear that some of the applicant's experience was closer to an individual complaint than generic feedback about the process. The complainer was therefore referred to the Scottish Government as they had not yet raised their complaint direct. The Commissioner only investigates complaints once the Scottish Government's complaints handling process has been exhausted. The other two complaints received (one being made twice resulting in two contacts with the office) were out with the Commissioner's remit and the individuals were directed to the appropriate body to raise their concerns.

During the year, the Commissioner made no reports of material non-compliance with the Code of Practice to the Scottish Parliament (2019/20: Nil), nor direct the Scottish Ministers to delay making an appointment or recommendation for appointment (2019/20: Nil).

4* - Reported concerns

Reported concerns this year were roughly on a par with the previous one. Concerns about planning were the highest followed by public confidence and application and assessment methods.

5* - Reported good practice

Twenty good practice reports were received during the course of the year which included the following:

- Two referred to the panel's consideration of changing board needs due to the pandemic.

- Five related to various instances of good practice in succession planning. These included board chairs discussing the impact of the pandemic and societal changes in general on succession planning for their boards, use of succession planning committees and use of skills assessment for succession planning.
- Four related to reports of interviews going well, particularly in relation to the online environment which replaced face to face interviews as the year progressed.
- Five related to innovative approaches to publicising the opportunities through avenues such as good quality packs, video links describing the opportunity or virtual events to promote the opportunity.
- One described a panel's good use of priority criteria
- One described a good use of assessment with a simulated interview with a journalist being used to assess communication skills
- One referred to a great contribution from one of the Scottish Government's PAT managers who provided advice and support on using ICT for assessment and bias mitigation
- One related to support for applicants following their appointment to the role.

6* - Report non-compliance

There were 7 contacts relating to non-compliance – three of these were about the same instance but providing updates therefore there were 5 reports in total. The instances of non-compliance are listed below.

- The panel chair did not take part in shortlisting due to being on leave and delegated someone to attend in their place, with no prior warning to the rest of the panel.
- A role description was notified as being unable to be changed by the panel as a result of a decision by the minister. This was later clarified as a misunderstanding.
- A mismatch in the time commitment listed in the pack to the chair's understanding of the actual time commitment required.
- Two cases in which a potentially inappropriate candidate had been identified for the role. One of these was circumvented from becoming material non-compliance through intervention to preclude this during the course of the round. The other resulted in an investigation which found that there was no material non-compliance.

PAT and the Scottish Government's cooperation when non-compliance was identified precluded material breaches of the Code arising.

GUIDANCE ON APPLICATION OF THE CODE

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

Statutory guidance was provided during the course of the year on the following topics:

- The statutory guidance document was updated and published in May 2020 to take account of the Gender Representation on Public Boards (Scotland) Act 2018 which came into force on 29th May 2020.
- The use of recruitment consultants.

The Commissioner also updated the PAAs comprehensive good practice toolkit during the course of the year, particularly in relation to assessment using ICT.

CORPORATE PERFORMANCE

Creating an effective information governance system designed to support our business aims

PERFORMANCE AGAINST OUR BUSINESS PLAN

The business plan covering the period October 2020 to March 2021 set the following corporate and financial goals.

Figure 33

| Corporate Goals for 2021/22 | Achieved |
|--|----------|
| Annual Report and Accounts design formatting and online presentation project | ● |
| Decision on office accommodation needs | ✓ |
| Review of organisation restructure | X |
| Remote working arrangements | ✓ |
| Review contractual arrangements for CMS | ● |
| Furnishing new staff with full suite of IT/home office equipment and induction materials/training as necessary | ✓ |
| Workforce development plan refresh | ● |
| Develop method to renew Cyber Essentials Plus accreditation | ✓ |

✓ Achieved ● Partially achieved X Not achieved

Details about our financial position are published in our annual report and account.

CORPORATE RESPONSIBILITY

Environmental matters

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

Social, community and human rights issues

The Code of Practice for Ministerial Appointments to Public Bodies adopted in October 2013 includes a principle of "Diversity and Equality", which along with other code revisions is intended to make the appointment process more attractive and accessible to groups who are under-reflected on the boards of public bodies. All of our activities are intended to ensure the application of high levels of ethical standards to the conduct of elected members and those appointed to public office by Ministers and to ensure fairness, transparency and equality of opportunity in the appointment process. Our revised strategic plan for 2021-24 includes a set of values that reflect our approach to our interactions with the public and our stakeholder organisations. We have made a public commitment to treat each individual who comes into contact with us with us with kindness, empathy and respect. The conclusions that we reach on whether councillors, board members or MSPs have breached the rules that are applicable to their conduct are always reached having taken cognisance of the provisions of the European Convention on Human Rights.

Whistleblowing

The Commissioner is a 'prescribed person' under the Public Interest Disclosure Act 1998. The Act provides protection for employees who pass on information concerning wrongdoing in certain circumstances. The protection only applies where the person who makes the disclosure reasonably believes:

1. that they are acting in the public interest, which means that protection is not normally given for personal grievances; and
2. that the disclosure is about one of the following:
 - criminal offences (this includes financial improprieties, such as fraud),
 - failure to comply with duties set out in law,
 - miscarriages of justice,
 - endangering someone's health and safety,
 - damage to the environment, or
 - covering up wrongdoing in any of the above categories.

The Prescribed Persons Regulations 2017 came into force on 1 April 2017. Prescribed persons are required to report annually on whistleblowing disclosures made to them.

During the reporting year 1 April 2020 to 31 March 2021 the Commissioner received seven whistleblowing disclosures (2019/20: Nine). Disclosures are registered when a complainer indicates on the complaint form that they wish to be considered a whistle-blower.

Depending on whether a complaint is admissible, we will explore this further with the complainer.

Figure 36

| Category | Number of disclosures | |
|--|-----------------------|---------|
| | 2020/21 | 2019/20 |
| Number of non-qualifying disclosures | 7 | 8 |
| Number of disclosures withdrawn prior to confirming whistle-blowing status | 0 | 1 |
| Number of qualifying disclosures | 0 | 0 |
| Number of qualifying disclosures requiring no further action | 0 | 0 |
| Number of qualifying disclosures requiring further action | 0 | 0 |

No investigations were carried out and no actions or improvement objectives were required during this reporting year.

Authorisation



Karen Elder
Accountable Officer

Date: 29 October 2021

APPENDIX ONE: APPOINTMENTS MADE IN 2020

| Body | DG | Position | ● | ● | Level |
|--|-----|--------------------------------|--------------|-----------|-------|
| Bord na Gaidhlig | E | Chair | 2 | 1 | H |
| Bord na Gaidhlig | E | Member | 4 | 1 | H |
| Borders Regional College | EJ | Chair | 6 | 0 | H |
| Care Inspectorate Board (Social Care and Social Work Improvement Scotland) | HSC | Member | 20 | 2 | H |
| Community Justice Scotland | EJ | Member | 36 | 2 | H |
| David MacBrayne Ltd | E | Chair | 22 | 0 | H |
| Dumfries and Galloway College | EJ | Chair | 8 | 0 | H |
| Healthcare Improvement Scotland | HSC | Member | 18 | 1 | H |
| Highlands and Islands Enterprise | E | Chair | 14 | 1 | H |
| National Museums Scotland | E | Chair | 10 | 1 | H |
| Historic Environment Scotland | E | Member | 34 | 4 | L |
| National Galleries of Scotland | E | Member | 41 | 4 | L |
| NHS Ayrshire and Arran | HSC | Member | 45 | 3 | H |
| NHS Ayrshire and Arran ¹ | HSC | Chair | 18 | 3 | H |
| NHS Forth Valley | HSC | Chair | | | H |
| NHS Orkney | HSC | Chair | | | H |
| NHS Borders | HSC | Member | 31 | 1 | L |
| NHS Greater Glasgow & Clyde | HSC | Member | 69 | 3 | H |
| NHS Highland | HSC | Member | 54 | 3 | H |
| NHS Lanarkshire | HSC | Member | 34 | 1 | H |
| NHS Lothian | HSC | Member | 86 | 2 | H |
| NHS 24 | HSC | Member | 48 | 1 | L |
| NHS Golden Jubilee Board (National Waiting Times Centre Board) | HSC | Member | 14 | 1 | L |
| NHS National Services Scotland | HSC | Member | 49 | 2 | L |
| NHS Tayside | HSC | Chair | 8 | 2 | H |
| NHS Tayside | HSC | Member | 13 | 2 | H |
| NHS Golden Jubilee Foundation Board (National Waiting Times Centre Board) ² | HSC | Whistleblowing Champion Member | 24 | 3 | H |
| Healthcare Improvement Scotland | HSC | Whistleblowing Champion Member | | | H |
| NHS National Services Scotland | HSC | Whistleblowing Champion Member | | | H |
| NHS Western Isles | HSC | Whistleblowing Champion Member | | | H |
| Public Health Scotland | HSC | Member | 171 | 7 | H |
| Scottish Law Commission | EJ | Member | 13 | 2 | M |
| Scottish National Investment Bank | E | Member | 231 | 8 | H |
| South of Scotland Enterprise | E | Member | 116 | 6 | H |
| The State Hospitals Board for Scotland | HSC | Member | 54 | 3 | H |
| West College Scotland | ECJ | Chair | 14 | 1 | H |
| Totals | | | 1,307 | 71 | |

¹ The figures supplied gave the aggregate number of applications and appointments for all of three of these NHS board chair posts. We have disaggregated the appointments figure to show which boards appointments were made to.

² The figures supplied gave the aggregate number of applications and appointments for all of the nonexecutive whistleblowing champions. We have disaggregated the appointments figure to show which boards appointments were made to.

Key for table

Applications: ● Appointments: ●

Column: DG

DG - Director General with sponsorship responsibility

C – DG for General Communities
E – DG for General Economy
EJ - DG for General Education and Justice
HSC – Chief Exec of NHS Scotland
SE - DG for Scottish Exchequer
Cor – DG for General Corporate

Column: Level

L - low
M - Medium
MSG – PAA involvement during planning requested
H - High
HSG - Set at high at the request of the Scottish Government

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