



Northern Ireland
Assembly

Research and Information Service Research Paper

October 2011

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Directions and procedures relating to the Standards Commissioners in UK legislatures

NIAR 717-11

This research paper looks at how the Standards Commissioners in the Scottish Parliament, National Assembly for Wales, House of Commons and House of Lords operate within the Directions and Procedures laid down in legislation or issued by the respective institution.

Key Points

- The Northern Ireland Assembly Commissioner for Standards and Scottish Parliamentary Standards Commissioner may be directed by their respective legislatures (in practice the standards committees). This power to direct is set out in the legislation establishing these offices
- No such power of direction exists in relation to the National Assembly for Wales Commissioner for Standards
- The Parliamentary Commissioner for Standards in the House of Commons is not a creature of statute. Rather, his role is defined in the Standing Orders of the House of Commons. However, his work is also guided by Procedural Notes issued by the Commons' Committee on Standards and Privileges
- The work of the House of Lords Commissioner for Standards is conducted in accordance with the procedures set out in the Guide to the Code of Conduct
- The Northern Ireland Assembly, Scottish Parliament and National Assembly for Wales have all produced procedures that detail the steps that will be taken in dealing with complaints against Members. These procedures are publically available and are intended for consumption by a wide audience, including the general public. However, Procedures are different to the Directions that the Northern Ireland Assembly and Scottish Parliament are empowered to make. Directions are aimed solely at the Commissioner who must comply with the instructions given. There is specific provision for Directions in legislation.
- The Directions and Procedures issued to the Commissioners augment the legislation (in the case of Scotland and Wales) and deal with technical matters that could not reasonably be contained in legislation or Standing Orders (in the case of the House of Commons)
- The Commissioners in the Scottish Parliament, National Assembly for Wales and House of Commons are in the process or will be commencing a period of review that will encompass the Directions/Procedures they currently operate under

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1 Introduction

This briefing paper examines to what extent Parliamentary/Assembly Standards Committees in UK legislatures (and the House of Lords) have the power to issue Directions or other guidance to their respective Standards Commissioners operating in those institutions. The research was requested by the Northern Ireland Assembly's Committee on Standards and Privileges to inform the new standards regime established following the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011. In particular, the Committee sought information on:

- the admissibility criteria for complaints
- how to deal with inadmissible complaints
- how to initiate an investigation when no complaint has been made
- the general principles to be followed in conducting all investigations
- how to ensure procedural fairness and natural justice in conducting these investigations
- how to advise witnesses
- how to present evidence in reports to the Committee (including when to redact information, and when to name complainants and witnesses)
- how to deal with media enquiries
- how to seek legal advice
- how to deal with complaints that raise matters that have previously been substantially considered
- how to deal with administrative matters

The standards regimes within the Scottish Parliament and National Assembly for Wales are currently in a period of review regarding the Directions/Procedures guiding the work of the Commissioners. The Scottish Parliamentary Standards Commissioner has submitted comments to the Standards, Procedures and Public Appointments Committee on the Directions issued to his office since its inception and it is likely that the Directions will be reviewed on this basis in the near future.

Similarly, the National Assembly for Wales Standards Commissioner has submitted comments to the Standards of Conduct Committee on the Procedures agreed by the Committee in 2008. The Commissioner was appointed in 2010 following the introduction of the National Assembly for Wales Commissioner for Standards Measure 2009 and the Commissioner was asked to submit his views on possible areas for change.

Furthermore, the Parliamentary Standards Commissioner stated in his annual report of 2009-10 that it was his intention to review the Procedural Notes that guide his work in light of changes made to the standards regime at Westminster, for example the establishment of the Independent Parliamentary Standards Authority. To date however, this work has not been taken forward¹.

Therefore, the current Directions and Procedures still apply until any changes are agreed by the respective Committees and it is these documents that have been used to inform this paper. Furthermore, separate guidance has been issued by the Scottish Commissioner in agreement with the Committee. These are *Policy on Unacceptable Actions by Complainers*² and *Media Strategy*³.

2 Background

The Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 became law in March 2011. Part two of the Act makes provision for the appointment of a Northern Ireland Assembly Commissioner for Standards. The main function of the Commissioner is to investigate alleged breaches of the Assembly's Code of Conduct.

Section 24 of the Act allows for the Assembly (which in practice means the Committee on Standards and Privileges) to issue directions to the Commissioner. Section 24 states:

Directions to the Commissioner

24—(1) The Commissioner shall comply with any directions given by the Assembly under this section.

(2) Directions given under this section may include provision—

(a) as to the general procedure to be followed by the Commissioner in the exercise of the Commissioner's functions; and

(b) requiring the Commissioner—

(i) to comply with such principles, codes of conduct and other statements of standards or ethics as the Assembly may specify; and

(ii) to register such financial and other interests on such occasions and in such manner as the Assembly may require.

(3) A direction under this section may not—

(a) prevent the Commissioner from carrying out any specific investigation in accordance with this Part;

(b) limit the scope of any such investigation;

(c) direct the Commissioner as to how any such investigation is to be carried out or reported to the Assembly;

(d) interfere with the exercise of the Commissioner's discretion in relation to any specific investigation; or

(e) otherwise interfere with the exercise of the Commissioner's functions under this Part in respect of any specific investigation

Therefore Section 24 allows Directions to be issued by the Assembly whilst ensuring the independence of the Commissioner by prohibiting interference with investigations.

¹ 2009-10 annual report of the Parliamentary Standards Commissioner:

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomstan/418/418.pdf>

² Policy on Unacceptable Actions by Complainers: <http://www.spssc.co.uk/docs/UnacceptableActionsPolicy.pdf>

³ Media Strategy of the SPSC 2005: <http://www.spssc.co.uk/docs/Media-Strategy2-05-05.pdf>

Difference between Directions and Procedures

It is important to understand the difference between Directions and Procedures.

The Northern Ireland Assembly⁴, Scottish Parliament⁵ and National Assembly for Wales⁶ have all produced procedures that detail the steps that will be taken in dealing with complaints against Members. These procedures are publically available and are intended for consumption by a wide audience, including the general public. However, Procedures are different to the Directions that the Northern Ireland Assembly and Scottish Parliament are empowered to make. Directions are aimed solely at the Commissioner who must comply with the instructions given. There is specific provision for Directions in legislation.

The equivalent legislation for Wales does not contain any provision for the National Assembly for Wales to issue Directions to the Standards Commissioner. At Westminster, the role of the Parliamentary Commissioner for Standards is dictated by the Standing Orders of the House of Commons, specifically Standing Order No. 150⁷. Furthermore, the Parliamentary Commissioner for Standards is guided by Procedural Notes produced by the Standards and Privileges Committee. These could be said to be a combination of Directions and Procedures, in that the Commissioner must comply with their instructions, but some of the contents are for a wider audience.

The Procedures relating to the House of Lords Standards Commissioner are found in the Guide to the Code of Conduct for Members⁸.

This paper seeks to bring information together from all of these sources to address insofar as possible the specific issues raised by the Committee on Standards and Privileges.

3 Scottish Parliamentary Standards Commissioner

The Scottish Parliamentary Standards Commissioner Act 2002 established the office of the Standards Commissioner. Section 4 of the Act states:

4 Directions to the Commissioner

(1)The Commissioner shall, in carrying out the functions of that office, comply with any directions given by the Parliament.

⁴Northern Ireland Assembly Code of Conduct together with the guide to the rules relating to the Conduct of Members http://www.niassembly.gov.uk/reports/code_of_conduct.htm# (see The Complaints Procedure)

⁵Code of Conduct for Members of the Scottish Parliament http://www.parlarnaid-alba.org/msp/conduct/code_final.pdf (see Section 9: Enforcement of the Rules)

⁶National Assembly for Wales Procedure for Dealing with Complaints against Assembly Members <http://www.assemblywales.org/complaintprocedure-e.pdf> June 2008

⁷ Standing Orders of the House of Commons

⁸ Code of Conduct for Members of the House of Lords and Guide to the Conduct <http://www.publications.parliament.uk/pa/ld/ldcond/code.pdf> March 2010

- (2) Any direction to the Commissioner by the Parliament under this section may, in particular—
- (a) make provision as to the procedure to be followed by the Commissioner when conducting—
- (i) investigations generally into any complaint about the conduct of a member of the Parliament; or
- (ii) investigations into complaints falling within such class or classes as may be specified in the direction (and different provision may be made in relation to different classes of complaint); or
- (b) require the Commissioner to make a report to the Parliament upon such matter relating to the exercise of the functions of the Commissioner as may be specified in the direction.
- (3) However, any direction to the Commissioner by the Parliament under this section shall not direct the Commissioner as to whether or how any particular investigation is to be carried out.

Standing Order 3A of the Scottish Parliament confirms that the Standards, Procedures and Public Appointments Committee shall have the authority to issue directions.

Rule 3A.3 Directions to the Public Standards Commissioner

1. Any direction that can be given by the Parliament to the Public Standards Commissioner under section 4, 7, 10, 11, 12 or 19 of the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16) shall be given by the Standards, Procedures and Public Appointments Committee.
2. A direction is given by the Standards, Procedures and Public Appointments Committee if it is signed on its behalf by the convener of the Standards, Procedures and Public Appointments Committee.

To date, the following Directions have been issued to the Commissioner by the Committee. Where reference is made to another section other than section 4 (as in the above Standing Order), this is because that provision empowers the Parliament to act on a specific matter.

Table 1: Directions issued to the Scottish Parliamentary Standards Commissioner by the Standards Committee

Direction
<p>TRANSITIONAL PROVISION DIRECTION BY THE STANDARDS COMMITTEE</p> <p>In exercise of the power conferred by section 19(1) of the Scottish Parliamentary Standards Commissioner Act 2002 and by virtue of Rule 3A.3 of the standing orders of the Scottish Parliament, the Standards Committee of the Scottish Parliament directs the Scottish Parliamentary Commissioner for Standards (“the Commissioner”) as follows:</p> <p>Citation and commencement</p> <p>1. This direction may be cited as the “Scottish Parliamentary Standards Commissioner Act 2002 (Transitional Provision) Direction 2003” and shall come into force on Thursday 6 February 2003.</p> <p>Complaints referred to the Standards Adviser prior to 31 January 2003</p> <p>2. Subject to paragraph 4, the Commissioner shall deal with any complaint to which this direction applies as if it were a complaint made to the Commissioner under section 3(1) of the Scottish Parliamentary Standards Commissioner Act 2002 (“the Act”) on or after 31 January 2003.</p> <p>3. This direction applies to any complaint which was referred by the Standards Committee to the Standards Adviser prior to 31 January 2003 other than a complaint which has been dismissed or which has been the subject of a report to the Standards Committee by the Standards Adviser.</p>

4. Section 7(1) of the Act shall not apply to any complaint mentioned in paragraph 3 but the Commissioner shall inform the complainer and the member of the Parliament concerned in writing of the fact that, in accordance with this direction, the Commissioner will be dealing with the complaint.

5. In dealing with any complaint in accordance with paragraph 2 the Commissioner may take into account any investigations which have been carried out and findings which have been made by the Standards Adviser.

Mike Rumbles MSP
 Convener of the Standards Committee
 Committee Chambers
 George IV Bridge
 5 February 2003

**SPECIFICATION UNDER SECTION 7(6)
 DIRECTIONS BY THE STANDARDS COMMITTEE**

In exercise of the power conferred by section 7(6) of the Scottish Parliamentary Standards Commissioner Act 2002(a) and by virtue of Rule 3A.3 of the standing orders of the Scottish Parliament, the Standards Committee of the Scottish Parliament gives the following directions to the Scottish Parliamentary Commissioner for Standards:

Citation and commencement

1. These directions may be cited as the "Scottish Parliamentary Standards Commissioner Act 2002 (Specification Under Section 7(6)) Directions 2002" and shall come into force on 30 January 2003.

Specification

2. The classes of case specified for the purposes of section 7(6) of the Scottish Parliamentary Standards Commissioner Act 2002(a) are cases in which the complaint fails to meet one or more of the specified requirements because the complaint-

- (a) is not signed by the complainer;
- (b) does not state the name of the complainer;
- (c) does not state the address of the complainer; or
- (d) does not name the member of the Parliament concerned.

Mike Rumbles MSP
 Convener of the Standards Committee
 Committee Chambers
 George IV Bridge
 15 January 2003

**PROCEDURES, REPORTING AND OTHER MATTERS
 DIRECTIONS BY THE STANDARDS COMMITTEE**

In exercise of the power conferred by section 4 of the Scottish Parliamentary Standards Commissioner Act 2002(a) and by virtue of Rule 3A.3 of the Standing Orders of the Scottish Parliament, the Standards Committee of the Scottish Parliament gives the following directions to the Scottish Parliamentary Standards Commissioner:

Citation, commencement and interpretation

1. These directions may be cited as the "Scottish Parliamentary Standards Commissioner Act 2002 (Procedures,

Reporting and Other Matters) Directions 2002” and shall come into force on 30 January 2003.

2. In these Directions-

“the Act” means the Scottish Parliamentary Standards Commissioner Act 2002

“the Committee” means the Standards Committee of the Scottish Parliament;

“document” means anything in which information is recorded in any form;

and

“vulnerable person” means a person who appears to the Commissioner to suffer from a mental illness, mental handicap, significant impairment of intelligence and social functioning or to be vulnerable for any other special reasons.

Information as to name of complainer

3. For the purpose of considering whether it would be inappropriate to inform a member of the name of a complainer under section 7(1)(c) of the Act and without prejudice to any other matter that the Commissioner considers relevant, the Commissioner shall-

(a) have regard to whether or not the complainer is or appears to be a vulnerable person;

(b) have regard to any reasons given by the complainer as to why the member complained about should not be informed of the name of the complainer; and

(c) consider whether informing the member of the name of the complainer would be likely to prejudice an investigation into the complaint.

4. Where the Commissioner receives a complaint about the conduct of a member and considers that it would be inappropriate to inform that member of the name of the complainer under section 7(1)(c) of the Act the Commissioner shall make a report on the matter to the Committee setting out the reasons for that decision.

Interviews

5. At least 48 hours before interviewing any person for the first time in the course of an investigation, the Commissioner shall notify that person in writing of-

(a) the purpose of the interview;

(b) the powers of the Commissioner under section 13(1) of the Act;

(c) the procedure to be followed in connection with the investigation of the complaint, including that the interview will be tape recorded;

(d) the right of that person to have a third party present at the interview;

and

(e) the right of that person to have his or her views conveyed through an interpreter.

6. For the purposes of paragraph 5, a notification is to be treated as made in writing where the text of the notification is-

(a) transmitted by electronic means;

(b) received in legible form; and

(c) capable of being used for subsequent reference.

7. If the Commissioner interviews any person in the course of an investigation, the Commissioner shall-

(a) have regard to whether or not that person is or appears to be a vulnerable person;

(b) allow that person to have a third party present at the interview; and

(c) allow that person to have his or her views conveyed through an interpreter.

8. The Commissioner shall make and keep a tape-recorded record of any interviews that are carried out in the course of any investigation.

9. No summary of an interview with a witness shall be included in any report by the Commissioner to the Committee unless the witness has been given a copy of the draft summary and an opportunity to make representations about the draft summary. The Commissioner shall annexe to the report to the Committee any representations which are not given effect to in the summary.

Documents and records

10. The Commissioner shall keep (whether in written or electronic form) details of each interview which is carried out in the course of any investigation.

11. The Commissioner shall keep each document which is considered in the course of any investigation unless the document requires to be returned to the person who provided it. If the Commissioner requires to return any document, the Commissioner shall make and keep a copy of it.

12. All documents and records shall be kept for a minimum period of 5 years from the date on which the complaint was dismissed by the Commissioner or, as the case may be, the Commissioner's report upon the outcome of the investigation was made. If the Commissioner is directed to carry out further investigation under section 10 of the Act, the documents and records shall be kept for a minimum period of 5 years from the date on which the Commissioner's report on the further investigation was made.

13. The Commissioner may destroy the documents and records after the period mentioned in paragraph 12, unless the Committee instructs the Commissioner to keep the documents and records for a further specified period.

Criminal Offences

14. If the Commissioner is satisfied in relation to any complaint that the member has committed the conduct complained about and that the conduct would, if proved, constitute a criminal offence, the Commissioner shall-

- (a) suspend investigation and consideration of the complaint;
- (b) submit a report to the Procurator Fiscal; and
- (c) notify the Committee.

15. The Commissioner shall resume investigation and consideration of a complaint in respect of which investigation and consideration has been suspended under paragraph 14-

- (a) at the conclusion of any criminal proceedings instituted in consequence of the report by the Commissioner; or
- (b) on receipt of confirmation from the Procurator Fiscal that no such proceedings will be raised; or
- (c) on receipt of confirmation from the Procurator Fiscal that the Commissioner may do so.

Reports under sections 7(11) or 8(3) of the Act

16. The Commissioner shall send a copy of any report submitted to the Committee under sections 7(11) or 8(3) of the Act to-

- (a) the complainer (if the complainer's name and address is known), and
- (b) to the member concerned (if the identity of the member is known), unless the Commissioner considers that doing so would prejudice the outcome of any investigation.

Mike Rumbles MSP
 Convener of the Standards Committee
 Committee Chambers
 George IV Bridge
 15 January 2003

**SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002
 (ENQUIRIES ABOUT COMPLAINTS) DIRECTION 2004**

In exercise of the power conferred by section 4 of the Scottish Parliamentary Standards Commissioner Act 2002 (47) (“the 2002 Act”) and by virtue of Rule 3A.3 of the Standing Orders of the Scottish Parliament, the Standards Committee of the Scottish Parliament gives the following Direction:

Citation and commencement

1. This Direction may be cited as the Scottish Parliamentary Standards Commissioner Act 2002 (Enquiries about Complaints) Direction 2004 and shall come into force on 29 December 2004.

Dealing with enquiries about complaints

2. In response to an enquiry about a complaint or alleged complaint, the Commissioner must not confirm nor deny the existence of that complaint or alleged complaint.

Exceptions

The Commissioner may confirm the existence of a complaint-

- (a) for the purpose of, or in connection with, the investigation of the complaint;
 - (b) where the complaint has been made public by the Standards Committee;
 - (c) in statistical data that does not disclose confidential information (for example, the identity of the complainer, the identity of the member concerned, details of the conduct complained about);
- or
- (d) in a report to the Parliament under the 2002 Act.

Brian Adam MSP
 Convener of the Standards Committee
 Scottish Parliament
 Edinburgh
 22 December 2004

4 National Assembly for Wales Commissioner for Standards

The National Assembly for Wales Commissioner for Standards Measure 2009 does not contain a provision for the Assembly to issue Directions to the Commissioner. However, in 2008 the document *Procedures for Dealing with Complaints against Assembly Members* was published. As with the equivalent document produced by the Northern Ireland Assembly, the procedures provide an overview of the complaints handling process without the level of detail found in the Directions issued to the Scottish Commissioner.

The current Commissioner was asked by the Chair of the Standards of Conduct Committee to provide a brief report for the new Committee established following the May 2011 Assembly elections on potential areas of work for the Committee in the new mandate. In his report the Commissioner identified some aspects of the Procedures that, in his view, should be revisited⁹.

⁹ Preliminary Observations on Code of Conduct and Standing Orders and the Procedures for dealing with Complaints against Assembly Members - March 2011

It is therefore likely that these Procedures could be revised in the near future. Below is highlighted those areas that the Commissioner believes would benefit from a review:

whether there should be an Initial stage (before the Preliminary Investigation Stage) which essentially seeks to determine whether the “complaint” could ever be admissible, as there are from time to time complaints made which on any view could rarely satisfy 3.1.vi. of the Procedure (e.g. a complaint concerning the “quality” of representation by an Assembly Member)
the inter-relationship between 3.1.vi, and 4.1 – it appears unclear how far the Commissioner may proceed down the line of seeking to establish whether 3.1.vi is established without embarking upon the Formal Investigation envisaged under 4.1 of the Procedure;
similarly, section 10 of the Procedure requires that “facts” shall have been found (and not disputed) during the preliminary investigation and an apology tendered – why should this procedure not be available (in appropriate cases where the Chair agrees) at any stage of the Complaint process?
whether under 2.3 of the Procedure, where a complaint is dismissed without prior reference to the Member concerned because it is inadmissible, it is necessary and/or desirable that the Member must be notified that the complaint has been made and rejected
the requirements of, and enforceability of, confidentiality during the various processes. Thus, for example, is “will be asked to respect this confidentiality” (section 4.6 of the Procedure) sufficient?
whether the provisions of Section 6 (parallel criminal investigations) meet the needs of the National Assembly in terms of protecting its reputation in circumstances where an Assembly Member is accused of serious criminal conduct

5 Parliamentary Commissioner for Standards and House of Lords Commissioner for Standards

House of Commons

The Office of the Parliamentary Commissioner for Standards was set up by the House of Commons in 1995 as a result of recommendations made by the Committee on Standards in Public Life.

The Parliamentary Commissioner for Standards is appointed by a Resolution of the House of Commons for a fixed term of 5 years and is an independent officer of the House. The Committee on Standards and Privileges oversees the work of the Parliamentary Commissioner for Standards and publishes reports he submits to the Committee on complaints against MPs¹⁰.

There is no statutory underpinning to the role of the Commissioner (unlike Scotland, Wales and Northern Ireland). Rather, Standing Order 150 sets out the role of the Commissioner, the format of his or her investigations, and specifies circumstances in which he or she can be dismissed, should they be considered to be unfit to continue in the role. There is no provision for the Committee on Standards and Privileges (the functions of which are determined by Standing Order No. 149) to dictate the powers of the Commissioner or how the Commissioner conducts investigations.

¹⁰ The Commissioner’s role and remit: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/pcfs/remits/> retrieved 17 October 2011

However, the Committee does issue Procedural Notes that bear some similarities to the Directions issued by the Standards, Procedures and Public Appointments Committee. To date, six Procedural Notes have been issued covering the following matters:

- description of the Complaints Investigation Process¹¹
- complaining against an MP¹²
- guidance for Members who are the subject of a complaint¹³
- note for witnesses¹⁴
- policy on the disclosure of information about the handling of complaints against Members of Parliament¹⁵
- frivolous or vexatious complaints¹⁶

House of Lords

The House of Lords Commissioner for Standards is responsible for the independent and impartial investigation of alleged breaches of the House of Lords Code of Conduct. This includes investigating breaches of the rules on Members' financial support and parliamentary facilities.

The Commissioner conducts a preliminary assessment of all complaints. Following this preliminary assessment he will inform both the complainant and the Member concerned whether or not he will investigate the complaint. If the Commissioner decides that a complaint does not merit investigation then he will provide the person who has complained with a brief explanation of the reasons for his decision.

The first Commissioner was appointed in June 2010¹⁷.

6 Available documentation set against the information requested by the Committee

Taken together, the available documentation relating to the Standards Commissioners in the Scottish Parliament, National Assembly for Wales, House of Commons and House of Lords go some way to addressing the points raised by the Standards and Privileges Committee. The following tables set the relevant information against the issues identified by the Assembly's Committee on Standards and Privileges.

¹¹ House of Commons Procedural Note 1: www.parliament.uk/documents/upload/PCFSProcedNote1.pdf

¹² House of Commons Procedural Note 2: <http://www.parliament.uk/documents/pcfs/procedural-notes/pcfsprocednote2.pdf>

¹³ House of Commons Procedural Note 3: www.parliament.uk/documents/upload/PCFSProcedNote3.pdf

¹⁴ House of Commons Procedural Note 4: <http://www.parliament.uk/documents/pcfs/procedural-notes/pcfsprocednote4.pdf>

¹⁵ House of Commons Procedural Note 5: <http://www.parliament.uk/documents/pcfs/procedural-notes/pcfsprocednote5.pdf>

¹⁶ House of Commons Procedural Note 6: www.parliament.uk/documents/upload/PCFSProcedNote6.pdf

¹⁷ House of Lords Commissioner for Standards: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/the-commissioner-for-standards/>

The admissibility criteria for complaints/How to deal with inadmissible complaints			
Scottish Parliamentary Standards Commissioner	NAfW Commissioner for Standards	Parliamentary Standards Commissioner	House of Lords Standards Commissioner
<p>Directions</p> <p>Section 7(6) of the Scottish Parliamentary Standards Commissioner Act 2002 states: “Except in the case of a complaint falling within such class or classes of case as may be specified in any direction by the Parliament under this section, the Commissioner shall, before making the report to the Parliament under subsection (4), investigate whether the complaint satisfies the third test (that the complaint warrants further investigation) and, if it does, the report shall contain a statement to that effect; but, if the Commissioner considers that the complaint fails to satisfy that test, the Commissioner shall dismiss the complaint accordingly and no report requires to be made under that subsection”. Therefore, the Committee directed that the classes of case specified for the purposes of section 7(6) of the 2002 Act are cases in which the complaint fails to meet one or more of the specified requirements because the complaint:</p> <ul style="list-style-type: none"> •is not signed by the complainer •does not state the name of the complainer •does not state the address of the complainer •does not name the member of the Parliament concerned <p>Procedures</p>	<p>According to the Procedure for Dealing with Complaints against Assembly Members , a complaint is admissible under this procedure if:</p> <ul style="list-style-type: none"> •it is in writing •it is about the conduct of an Assembly Member •it is not anonymous and clearly identifies the complainant in a way which provides for further communication with him/her •it clearly identifies the Assembly Member complained of •it is made within one year from the date when the complainant could reasonably have become aware of the conduct complained about •it appears that there is enough substance to justify further investigation (i.e. there is enough evidence to suggest that the conduct complained about may have taken place, and if proved might amount to a breach of any of the matters encompassed within Standing Orders 16.1(i) 	<p>Procedural Note 1 makes clear that the Commissioner will not consider anonymous complaints or those which are not supported by evidence sufficient to suggest that they merit at least a preliminary enquiry. The Committee has also made clear that it would expect the Commissioner to consult it before accepting for investigation a complaint against a former Member or one that goes back more than seven years. Procedural Note 6 provides further information on admissibility criteria: (The Commissioner will not) accept even for preliminary inquiry any complaints which:</p> <ul style="list-style-type: none"> •are anonymous •fall outside his terms of reference •are unsupported by any evidence •appear to raise issues so minor as to make the use of the complaints machinery in relation to them entirely disproportionate 	<p>The Guide to the Code of Conduct is clear that “Complaints submitted by telephone or email will not be considered; the complainant should give a postal address, telephone number and, if available, email address for subsequent communication”. Furthermore, “The Commissioner will not without good reason consider either anonymous complaints or ones where the complainant is not prepared to have his name and complaint disclosed to the Member whose conduct is criticised.”</p> <p>In addition, the complaint must be made within four years of the conduct complained of.</p>

<p>Volume 3, section 9 of the Code of Conduct (which contains the Procedures for dealing with complaints) for MSPs states:</p> <p>The Commissioner will investigate and determine whether or not a complaint is admissible. A complaint is admissible if it appears to the Commissioner that the complaint is relevant, which means:</p> <ul style="list-style-type: none"> •the complaint is about the conduct of a member of the Parliament; •the complaint is not an Excluded Complaint under paragraph 9.1.6 of the Code or it is subject to a reference by the Standards, Procedures and Public Appointments Committee under paragraph 9.50 •if proved, the conduct complained about would amount to a breach of the Standing Orders, the Code of Conduct or the Interests of Members of the Scottish Parliament Act 2006 •is not a Procedurally Defective Complaint or, as the case may be, is not to be treated as a Procedurally Defective Complaint •warrants further investigation, which means: it appears to the Commissioner after an initial investigation that the evidence is sufficient to suggest that the conduct complained about may have taken place. <p>In addition, complaints should be made within one year from the date when the Complainer could reasonably have become aware of the conduct complained about.</p>			
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How to initiate a complaint when no complaint has been made			
Scottish Parliamentary Standards Commissioner	NAfW Commissioner for Standards	Parliamentary Standards Commissioner	House of Lords Standards Commissioner
N/A	N/A	<p>In the Seventh Report of the Standards and Privileges Committee, Session 2010-11, the Committee recommended that the Commissioner have the power to initiate investigations. This followed a recommendation from the Committee on Standards in Public Life that the Commissioner should have such a power. The Committee noted that:</p> <p>We agree that there is a risk that the creation of a power for the Commissioner to initiate investigations might encourage public expectations that each and every media report alleging impropriety by a Member will be fully investigated or that the Commissioner will go on fishing expeditions for evidence of breaches. The resource implications of this would, indeed, be potentially enormous. There is also a risk that the effectiveness of the Commissioner's operations would be damaged. We are concerned to avoid such a situation arising.</p> <p>Our predecessors recognised this danger by observing that it would be particularly important for there to be a firm evidential basis for any decision by the Commissioner to carry out an investigation in the absence of a complaint. We agree, and our proposed amendment to the Standing Order takes full account of this important requirement. Nonetheless, we trust that the House will continue to provide the</p>	<p>According to the House of Lords' Guide to the Code of Conduct:</p> <p>A complaint made by a third party is the usual basis for the Commissioner to start an investigation. In exceptional circumstances however, and with the agreement of the Sub-Committee on Lords' Conduct, he may start an investigation in the absence of a complaint, either at the request of the Member concerned, or if by other means he becomes aware of evidence sufficient to establish a prima facie case that the Code of Conduct has been breached.</p>

		<p>Commissioner with the resources he needs to discharge fully the responsibilities placed upon him and we would expect him to inform us immediately were he to feel that necessary resources were lacking.</p> <p>On 2 December 2010 Standing Orders were amended to incorporate the Committee's recommendation.</p>	
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General principles to be followed in conducting all investigations/How to ensure procedural fairness and natural justice in conducting these investigations/How to advise witnesses			
Scottish Parliamentary Standards Commissioner	NAfW Commissioner for Standards	Parliamentary Standards Commissioner	House of Lords Standards Commissioner
<p>Withholding complainer's name</p> <p>The Committee directed that the Commissioner should have regard to the following when deciding to withhold a complainer's name:</p> <ul style="list-style-type: none"> •whether or not the complainer is or appears to be a vulnerable person (the Direction defined 'vulnerable person' as someone who appears to the Commissioner to suffer from a mental illness, mental handicap, significant impairment of intelligence and functioning or to be vulnerable for any other special reasons •any reasons given by the complainer as to why the member complained about should not be informed of the name of the complainer •whether informing the member of the name of the complainer would be likely to prejudice an investigation into the 		<p>Procedural Note 4 (Note for Witnesses) provides information for potential witnesses on their obligations and what they can expect if asked to appear before the Commissioner. It states that although the Commissioner has no power to call for witnesses, the Committee expects that such requests should be adhered to, and that it would use its power in this regard if necessary.</p> <p>The Commissioner will write to the person in question informing them of the nature of the investigation and setting out the questions/issues. Responses should be made in writing but the Commissioner will consider telephone or face-to-face interviews.</p> <p>The Commissioner will record or take a note of the meeting and will subsequently</p>	<p>Natural justice</p> <p>The Code of Conduct states that: In investigating and adjudicating allegations of non-compliance with this Code, the Commissioner, the Sub-Committee on Lords' Conduct and the Committee for Privileges and Conduct shall act in accordance with the principles of natural justice and fairness".</p> <p>Proceedings are not adversarial, but inquisitorial in character. The Commissioner is an independent and impartial investigator, appointed by the House, whose task is to establish the facts of a case and report these, along with his conclusions as to whether or not there has been a breach of the Code, to the Sub-Committee on Lords' Conduct.</p> <p>The civil standard of proof is adopted at all stages in the enforcement process, not only by the Commissioner, but by the Sub-</p>

<p>complaint.</p> <p>Interviews</p> <p>The Standards, Procedures and Public Appointments Committee directed that a person must be given at least 48 hours written notice which shall inform that person of:</p> <ul style="list-style-type: none"> •the purpose of the interview •the powers of the Commissioner under section 13(1) of the Act (that the Commissioner has the power to call for witnesses) •the procedure to be followed in connection with the investigation of the complaint, including that the interview will be tape recorded •the right of that person to have a third party present at the interview •the right of that person to have his or her views conveyed through an interpreter <p>The Direction further states that a notice shall be treated as 'written' where it has been sent by electronic means, is legible and could be used for subsequent reference. The Commissioner must also have regard to whether an interviewee is a vulnerable person, to allow that person to have a third party present and to allow that person to use an interpreter.</p> <p>The Commissioner must keep a tape-recorded record of the interview.</p> <p>Furthermore, a summary of an interview with a witness may not be included in a report made by the Commissioner unless the witness has been given the opportunity</p>		<p>check the accuracy of this with the interviewee.</p> <p>Suitable arrangements will be made for those persons whom English is not their first language and for persons with a disability.</p> <p>Witnesses may be accompanied by a legal adviser or other 'friend', but witnesses must answer questions themselves.</p> <p>The Committee itself may want to hear from a witness and in these circumstances the hearing will usually take place in private. Wherever possible, the Commissioner will inform a witness of the impending publication the Committee's report.</p> <p>Reasonable travel costs will be reimbursed, but not loss of earnings.</p> <p>Ensuring natural justice</p> <p>Procedural Note 1 details the process to be followed by the Commissioner if certain issues cannot be resolved:</p> <p>If there are significant contested issues of fact between the Member complained about and the Commissioner, the Commissioner may (and must, if requested by the Committee), set up an Investigatory Panel under the provisions of Standing Order 150 of the House. The Panel will consist of the Commissioner as Chairman and two assessors, one of whom must be legally qualified (appointed by the Commissioner)</p>	<p>Committee on Lords' Conduct and the Committee for Privileges and Conduct. Thus, in order to find against a Member, the Commissioner will require at least that the allegation is proved on the balance of probabilities.</p>
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<p>to comment on a draft. The Commissioner must include as an annexe in his final report any representations which are not included in the summary.</p> <p>Documents and records The Commissioner has been directed to:</p> <ul style="list-style-type: none"> •keep (in written or electronic form) details of each interview carried out over the course of an investigation •keep each document considered in the course of an investigation unless the person who provided it asks for it to be returned. The Commissioner may keep a copy of a document that has to be returned •documents will be kept for a minimum of five years from the date a complaint is dismissed or from the date the Commissioner’s report on the investigation was made. If further investigation is requested under section 10 of the Act, the five years will apply from the date that the request for further investigation was carried out •after the five years has passed, the Commissioner may destroy the documents unless otherwise instructed by the Committee <p>Criminal offences The Commissioner has been directed to suspend his investigation and consideration of a complaint if the conduct of a member complained about would, if proved, constitute a criminal offence. In such circumstances the Commissioner must also</p>		<p>and the other a Member (not a member of the Committee on Standards and Privileges) appointed by the Speaker.</p> <p>The Panel meets in private and its procedures are determined by the Commissioner. Both the Member and the Panel may call and question witnesses.</p> <p>When the Panel has completed its proceedings, the Commissioner prepares a report to the Committee setting out the facts of the case as now established and expressing an opinion on whether the Code has been breached. The legal assessor to the Panel is required to give the Committee his opinion as to the extent to which its proceedings have been consistent with the principles of natural justice...</p>	
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<p>submit a report to the Procurator Fiscal and inform the Committee of this.</p> <p>The Commissioner should resume the investigation and consideration of the complaint in the following circumstances:</p> <ul style="list-style-type: none"> •at the conclusion of any criminal proceedings instituted in consequence of the report by the Commissioner •on receipt of confirmation from the Procurator Fiscal that no such proceedings will be raised • on receipt of confirmation from the Procurator Fiscal that the Commissioner may do so 			
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How to deal with media enquiries			
Scottish Parliamentary Standards Commissioner	NAfW Commissioner for Standards	Parliamentary Standards Commissioner	House of Lords Standards Commissioner
<p>The Direction issued in December 2004 addressed the issue of enquiries about complaints. The Direction stated that if queried, the Commissioner must not confirm or deny the existence of a complaint or alleged complaint. However it did outline exceptions to this rule and the Commissioner may confirm the existence of a complaint:</p> <ul style="list-style-type: none"> •for the purpose of, or in connection with, the investigation of the complaint •where the complaint has been made public by the Standards Committee •in statistical data that does not disclose confidential information (for example, the identity of the complainer, the identity of the 		<p>Procedural Note 5 (Policy on the Disclosure of Information about the Handling of Complaints against Members of Parliament) provides information on how the Commissioner and his staff should approach the media:</p> <p>It is important that Members have confidence in the confidentiality of their dealings with the Commissioner and that the public know and understand the arrangements for upholding standards and considering complaints.</p> <p>Accordingly, the Commissioner and the Committee have agreed that he and his staff should and will be free to talk at any point, in general terms, to the press and others about</p>	

<p>member concerned, details of the conduct complained about)</p> <ul style="list-style-type: none"> •in a report to the Parliament under the 2002 Act <p>See also the Commissioner’s Media Strategy: http://www.spsc.co.uk/docs/Media-Strategy2-05-05.pdf</p>		<p>the system for regulating Members’ conduct and investigating complaints.</p> <p>They have also agreed that neither the Commissioner nor his staff will talk to the press or others, whether in the context of any more general interview or otherwise, about any individual complaint, other than within the framework laid down in this note, unless it has been finally disposed of.</p> <p>This means that the Commissioner would not normally expect to have contact with the press about individual cases...The Chairman of the Committee will normally take the lead in dealing with inquiries from the press about the published reports of the Committee, and will discuss with the Commissioner the handling of press interest in each particular case.</p>	
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How to deal with complaints that raise matters that have previously been substantially considered			
Scottish Parliamentary Standards Commissioner	NAfW Commissioner for Standards	Parliamentary Standards Commissioner	House of Lords Standards Commissioner
		<p>Procedural Note 1 (Description of the Complaints Investigation Process) states that: (The Commissioner will not) consider complaints which appear to him clearly trivial or vexatious or which substantially repeat allegations which have already been the subject of inquiry (unless there is significant fresh evidence in their support).</p>	<p>The Guide to the Code of Conduct contains similar wording to that contained in Procedural Note 1 of the House of Commons.</p>

<p>How to present evidence in reports to the Committee (including when to redact information, and when to name complainants and witnesses)</p>

Scottish Parliamentary Standards Commissioner	NAfW Commissioner for Standards	Parliamentary Standards Commissioner	House of Lords Standards Commissioner
<p>Volume 3, Section 9 of the Code of Conduct for MSPs</p> <p>The report by the Commissioner to the Standards, Procedures and Public Appointments Committee will include:</p> <ul style="list-style-type: none"> • details of the complaint; • details of the investigation carried out by the Commissioner; • the facts found by the Commissioner in relation to whether or not the conduct complained about was committed by the member; and, • the Commissioner's conclusion in relation to the complaint. <p>Before making a report the Commissioner will give the member concerned a copy of the draft report and will give the member concerned the opportunity to make representations about the alleged breach and on the draft report. The representations of the member will be annexed to the report in as far as they are not given effect to in the report.</p>	<p>When a formal investigation into a complaint has been completed, the Commissioner shall make a report to the Committee on Standards of Conduct. The report shall include:</p> <ol style="list-style-type: none"> i. details of the complaint; ii. details of the investigation carried out by the Commissioner; iii. the facts found by the Commissioner in relation to whether the Member concerned has committed the conduct complained about; iv. the conclusion reached by the Commissioner as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i); but v. shall not express any view upon what sanction would be appropriate for any breach. <p>4.3 No report, concluding that a Member has breached one of the matters within Standing Order 16.1(i) shall be made to the Committee unless the Member and the complainant have been given a copy of the draft report and an opportunity to comment on</p>	<p>Procedural Note 1 outlines the general format of the Commissioner's reports:</p> <p>The role of the Commissioner as an investigator is to report the facts as he has found them and, wherever possible, offer his own conclusion on whether the Code has been breached. Accordingly, the Commissioner's report normally comprises a description of the complaint and of the relevant aspects of the Code or Rules; an account of the evidence; his finding of facts; and a conclusion, along with any relevant recommendation(s), for example for the amendment of procedures so as to help Members avoid pitfalls in future. The report includes as an appendix information supplied by the Member and others, along with supporting documents, etc where these are relevant.</p> <p>Procedural Note 3 (Guidance for Members who are the Subject of a Complaint) states: The Commissioner will include in his report the Member's version of events and views, both in the body of the report and as annexes. Any evidence which a Member supplies can therefore be expected to become public, although the Committee is normally sympathetic to requests for the deletion of confidential and personal information where it can protect privacy without jeopardising the public interest in knowing the facts on which the Committee has based its conclusions.</p>	<p>If the Commissioner's investigation has uncovered material evidence that is at variance with the Member's version of events, he will put this to the Member, who will have a chance to challenge it. Before finalising his report, the Commissioner will also share with the Member a draft of those parts of his report dealing with issues of fact, so that the Member has an opportunity to comment on it. If, having considered the Member's comments, the Commissioner considers that there remain significant contested issues of fact, he will prepare his own account of the facts of the case, while drawing the attention of the Sub-Committee to those points which are contested.</p> <p>The Commissioner reports his findings to the Sub-Committee, usually in the following form:</p> <ul style="list-style-type: none"> • summary of the initial complaint, and of the relevant elements of the Code of Conduct; • brief account of the key facts in the case, with references to evidence as appropriate, and with any contested points of fact highlighted; • his findings with reasons as to whether or not the Code has been breached; and • any evidence, written and oral.

	<p>factual accuracy. If the Commissioner does not accept any of these comments, the report to the Committee shall include details of these disputed facts.</p>	<p>Procedural Note 4 reiterates this advice in respect of witnesses who give evidence to the Commissioner.</p>	
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