

**Local Government, Housing and Planning Committee**  
**Tuesday 19 November 2024**  
**31<sup>st</sup> Meeting, 2024 (Session 6)**

## **Introduction**

1. The purpose of this paper is to provide information to inform the Committee's scrutiny of annual reports for 2023-24 published by—
  - The Ethical Standards Commissioner; and
  - The Standards Commission for Scotland

## **Ethical Standards Commissioner Annual Report 2023-24**

2. The Ethical Standards Commissioner's Annual Report can be [downloaded via a link on the ESC's website](#).

## **Background**

3. The primary functions of the ESC are—
  - to investigate complaints about the conduct of MSPs, local authority councillors and board members of public bodies.
  - 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.
  - to regulate and monitor how people are appointed to the boards of public bodies in Scotland, and to promote diversity in that process.
4. The ESC is an independent regulator appointed and funded by the Scottish Parliamentary Corporate Body (SPCB) and approved by MSPs. It is underpinned by various pieces of legislation, including the Ethical Standards in Public Life, etc (Scotland) Act 2000, the 2002 Scottish Parliamentary Standards Commissioner Act and the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 ("the 2010 Act").
5. Under the 2010 Act, the ESC is an independent officeholder and the exercise of his or her statutory functions, unless otherwise provided for in the Act, is not under the direction or control of MSPs, the Scottish Government or the SPCB. This is to protect their independence.
6. Where the ESC considers there has been a breach of the relevant Code of Conduct, they will report to the Standards Commission for Scotland (SCS) in the case of councillors and members of public bodies. In the

case of MSPs, the ESC will report to the Parliament's Standards, Procedures and Public Appointments Committee.

## Annual Report 2023-24

7. The ESC's Annual Report states that in 2023-24, it received double the number of complaints about MSPs as in 2022-23 (93 vs. 46). This translated to an increase of just under 40% in cases (43 vs. 31).
8. The Report also confirms that over the same timeframe, complaints about councillors and members of public boards more than doubled compared to the previous financial year (344 vs. 156) and the number of cases was just under 70% higher (184 vs. 109).
9. Pages 12 to 15 of the Annual Report provide a summary of "significant positive changes and new ways of working that have strengthened our operations, enabling us to enhance the efficiency of our existing processes, improve the team's resilience and investigate complaints in a shorter timeframe."
10. Pages 15 to 17 then provide a summary of developments in respect of public appointments in what is described as having been "a busy year" for the ESC.
11. Further information can be found in the SPICe briefing which is attached as an annexe.

## Standards Commission for Scotland Annual Report 2023-24

12. The Committee will take evidence on the Standards Commission for Scotland's Annual Report from—
  - Suzanne Vestri, Convener; and
  - Lorna Johnston, Executive Director
13. The Annual Report can be [downloaded via a link on the Standards Commission's website](#).

## Background

14. The SCS is an independent body set up by the Ethical Standards in Public Life etc. (Scotland) Act 2000. It "encourages high ethical standards in public life through the promotion and enforcement of Codes of Conduct for Councillors and Members of Devolved Public Bodies."
15. The SCS works with local authorities and public bodies to help them assist their councillors and members to achieve the highest standards of conduct. It also issues guidance on how provisions in the Codes of

Conduct should be interpreted and publishes advice notes and e-Learning modules on specific topics covered by the Codes, such as on how to identify and manage conflicts of interests, gifts and hospitality, confidentiality and bullying and harassment.

16. Complaints about breaches of the Codes of Conduct by councillors and members of devolved public bodies are investigated by the Ethical Standards Commissioner (ESC). Following the completion of an investigation, the ESC will submit a report for the consideration of the SCS which then reviews the ESC's report and determines whether to: direct the ESC to carry out further investigations, hold a Hearing, or do neither.
17. The SCS will hold a Hearing if it considers it is in the public interest and proportionate to do so, to determine whether the councillor or member of a devolved public body in question has contravened their Code of Conduct. If the SCS Hearing Panel finds that a breach of the Code had occurred, it will then determine the sanction to be applied, in accordance with the 2000 Act.
18. The SCS identified in its [Strategic Plan for 2020-24](#), that its four key objectives were to—
  1. Have a positive impact on ethical standards in public life.
  2. Pursue continuous improvement in the ethical standards framework and the way it does its work.
  3. Pursue and develop strong relationships with its stakeholders.
  4. Ensure all stakeholders have easy access to high quality information about the organisation, its work, and any initiatives.
19. Looking ahead to the next four years, the SCS Strategic Plan for 2024-28 identifies the following four key aims—
  1. We will take all opportunities to be a strong and consistent voice for the importance of the key principles of public life and to educate on the standards of conduct expected of councillors and members of devolved public bodies.
  2. We will continue to develop strong relationships with our stakeholders and work with them to resolve issues and prevent breaches of the Codes of Conduct.
  3. We will make clear, evidence-based and well-reasoned decisions on cases referred to us for adjudication to help improve standards and ensure that any failure to meet those expected by the Codes of Conduct is dealt with in a fair, consistent and proportionate manner.
  4. We will continue to invest in, engage with and empower Members and staff to deliver our work effectively and efficiently.

20. The SCS comprises a convener and four Commission members who are appointed by the SPCB. The Commission employs four staff, led by an Executive Director, and had an annual budget of £338,000 for the reporting year which was provided by the Scottish Parliamentary Corporate Body.

## **Annual Report 2023-24**

5. Section 3 of the Annual Report summarises the impact the SCS had during the reporting year in respect of Engagement with Stakeholders and Promotional Work, Statutory Powers of Oversight (largely relating to the ESC which had been issued with a statutory Direction by the SCS in 2020-21 to provide assurance that the ESC's office was acquitting its functions in accordance with the governing legislation – The SCS decided that it was not necessary to renew the Eligibility Direction when it expired in August 2023), and training and educational work.
6. Section 4 of the Annual Report then considers the adjudication of complaints to the SCS whilst Section 5 provides an overview of its governance and finances during the reporting year.
7. The SCS held a total of sixteen Hearings between 1 April 2023 and 31 March 2024, of which nine resulted in the finding of a breach leading to five censures and four full suspensions.
8. Further information can be found in the SPICe briefing which is attached as an annexe.

## **Feedback from Improvement Service**

9. In order to help inform its scrutiny, the Committee invited the Improvement Service to provide feedback on its experience of interacting with the SCS and how well it is performing in its role. The response has been reproduced in Annexe A.

## **Proposed legislative changes**

10. Members should note that the SCS and ESC wrote jointly to the Convener on 26 September to inform the Committee that they had written to the Scottish Government requesting it consider making changes to legislation relating to their roles. The letter states that “the SCS and ESC have undertaken a joint review ... Having consulted with stakeholders, the SCS and ESC are proposing that the changes identified in the attached document be made in order to enhance and improve the ethical standards framework.”

11. Further information can be found in the [letter and annexe which can be accessed on the SCS website](#).

**Conclusion**

12. The Committee is invited to consider the information above in its evidence sessions with the Ethical Standards Commissioner and the Standards Commission for Scotland.

**Committee clerks,  
November 2024**

## **ANNEXE: Feedback from Improvement Service**

IS engagement with the Standards Commission relates to the proactive educational role they have around the ethical standards framework. This aligns with our work in supporting members development and good local democratic governance.

In 2024, my engagement with the Standards Commission has been on the following:

- Jointly ran three webinars for elected members on aspects of the Code of Conduct and they followed up with elected members who had further questions after these sessions.
- Jointly developed Advice Note on Councillors Right to Access Information held by the Council ([https://www.improvementservice.org.uk/\\_data/assets/pdf\\_file/0029/47549/EM-Briefing-right-of-access-to-information.pdf](https://www.improvementservice.org.uk/_data/assets/pdf_file/0029/47549/EM-Briefing-right-of-access-to-information.pdf))
- They provided feedback on a briefing note we produced on The Hate Crime and Public Order Act as we wanted to make sure the sections about the Code of Conduct were appropriate.
- They invite me to attend their workshops for Monitoring Officers.

We have had discussions about further joint work in early 2025. My contacts are two officers, Lorna Johnston and Richard Wilson.

My experience is that they are very open to working in partnership to develop learning opportunities for elected members to support good conduct in public life. They have been generous with their time when providing feedback on a briefing note that contained messages about the Code of Conduct, helping us to get the messaging right.

The presentations they delivered at the webinars were excellent and well received. These were recorded and are being used by councils for members who didn't attend on the day. They spent time after the presentations in open discussion and Q&A with members, answering their questions and providing helpful advice that supported members to adhere to the code.

I find the officers professional, respectful, and knowledgeable about the importance of good conduct in public life. They are open to feedback and suggestions about how to improve guidance on the code, and understanding the challenges of how it works in practice as well as in principle.

I don't have many interactions with the Ethical Standards Commissioner and his office. When I have met Mr Bruce, I have found him to be open, knowledgeable and driven to improve the investigatory function after what was a challenging time for the office. I can't comment on how the investigatory function is working as I have no involvement with it.

**SPICe**

**The Information Centre**  
An t-Ionad Fiosrachaidh

**Local Government, Housing and Planning Committee**  
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## **Ethical Standards Commissioner Annual Report and Accounts 2023-24 and Standards Commission for Scotland Annual Report 2023-24**

Members have the opportunity to question the following witnesses:

**Panel 1:** Ethical Standards Commissioner: Ian Bruce, Ethical Standards Commissioner.

**Panel 2:** Standards Commission for Scotland: Suzanne Vestri, Standards Commission Convener, and Lorna Johnston, Executive Director.

### **Background information**

The ethical standards framework covers all councillors in Scotland, and members of public bodies listed under Schedule 3 of the [2000 Ethical Standards in Public Life Act](#). Councillors are obliged to comply with their code of conduct. Complaints that they have failed to do so are assessed and, where admissible, investigated by the Ethical Standards Commissioner (ESC). Following investigation, the ESC may then refer the matter to the Standards Commission for Scotland (SCS). If the SCS finds at a Hearing that a breach of the Code has occurred, it will impose a sanction.

### **The Standards Commission for Scotland**

The Standards Commission is a statutory body established by the [2000 Act](#). The Act - one of the first pieces of legislation of the devolution period – included provisions for a new code of conduct for councillors which would be enforced by the Standards Commission. The Act was intended to “enhance the reputation of local government and to ensure a commitment to the highest standards”.

The [2000 Policy Memorandum for the Bill](#) states that legislation would “provide for clear standards for all councillors and a transparent system for the investigation and consideration of alleged breaches”. It goes on to state:

“The Bill will establish a Standards Commission for Scotland which will have overall responsibility for dealing with alleged breaches of the codes. The Executive consider that the creation of a single independent body is necessary to provide the public, the bodies governed by the Bill, and their members with confidence that every allegation will be subject to a consistent process and will be dealt with thoroughly and fairly. A national body will also develop expertise in dealing with alleged breaches.”

The single independent body system existed until 2010 when the [Scottish Parliamentary Commissions and Commissioners etc. Act 2010](#) was passed. This transferred investigatory powers to the newly created Ethical Standards Commissioner (ESC). A separate investigatory body had been a recommendation of the Session 3 [Review of SPCB Supported Bodies Committee](#), and the [subsequent Bill](#) was a Committee Bill.

According to the [Standards Commission website](#), the independence of the investigatory role undertaken by the ESC and the adjudicatory role undertaken by the Standards Commission is a crucial principle. The reason for the separation of functions between the two distinct organisations is to ensure impartiality, fairness and objectivity in the decision-making process.

The Standards Commission for Scotland (SCS) encourages high ethical standards in public life including the promotion and enforcement of [relevant codes of conduct](#). They issue guidance to councils and devolved public bodies, and, crucially, adjudicate through hearings on alleged breaches of codes of conduct by councillors or board members. Where a breach is found, the Commission will apply a sanction.

The Commission comprises a convener and four Commission members who are appointed by the SPCB. The Commission employs four staff, led by an Executive Director, and has an annual budget of around £300,000 from the SPCB.

The Standards Commission has an oversight role in respect of how the ESC undertakes some of its functions and has powers to issue Directions under the 2000 Act. As [noted by Audit Scotland](#), the Standards Commission used these directive powers for the first time during 2020-21.

The Standards Commission previously told the Committee that there is no comparable system in England, where local authorities take charge of their own disciplinary issues. However, there are similar bodies in Wales, Northern Ireland and the Republic of Ireland. Today’s session will focus on the [Commission’s Annual Report 2023-24](#).

### ***The Ethical Standards Commissioner***

The Ethical Standards Commissioner (ESC) is an independent regulator appointed and funded by the Scottish Parliamentary Corporate Body (SPCB) and approved by MSPs. It is underpinned by various pieces of legislation, including the [Ethical Standards in Public Life, etc \(Scotland\) Act 2000](#), the 2002 [Scottish Parliamentary Standards Commissioner Act](#) and the [Scottish Parliamentary Commissions and Commissioners etc. Act 2010](#)

The SPCB allocated a budget of £1,606,000 to the ESC in financial year 2023-24, although the Commissioner handed back £50,000 in February 2024. The Commissioner's office employed 19 FTEs in 2023-24, up from 14 in 2022-23 and 7.6 in 2018-19. The Annual Report tells us that staff costs increased from £715,000 to £1,165,000 in 2023-24, a 63% increase in the space of one year. This was due to the "filling of pre-existing vacancies and the recruitment of new staff following a workforce planning exercise in October 2022".

Total expenditure by the ESC in 2023-24 was £1,540,000. This compares to £1,014,000 in 2022-23, a 52% increase over the year.

Under [the 2010 Scottish Parliamentary Commissions and Commissioners Act](#), the ESC is an independent officeholder and the exercise of their statutory functions is not under the direction or control of MSPs, the Scottish Government or the SPCB. This is to protect their independence.

The 2010 Act provides that the Commissioner must lay an annual report on the performance of their functions. A [2009 review](#) recommended that the SPCB supported bodies, including the ESC, should be subject to committee monitoring and scrutiny on the exercise of their functions on at least an annual basis.

Today's session will focus on the Ethical Standards Commissioner [Annual Report and Accounts 2023-24](#), with a particular focus on work relating to local councillors.

### ***What does the Ethical Standards Commissioner do?***

The Ethical Standards Commissioner (ESC) has three main roles:

1. To investigate complaints about the conduct of MSPs, local authority councillors, board members of public bodies and lobbyists.
2. To investigate complaints about lobbyists who have failed to register or provide certain information to the Scottish Parliament.
3. To regulate how people are appointed to the boards of public bodies in Scotland.

Where the ESC considers there to have been a breach of the relevant Code of Conduct, they will report to the Standards Commission for Scotland (SCS) in the case of councillors and members of public bodies. In the case of MSPs, the ESC will report to the Parliament's Standards, Procedures and Public Appointments Committee.

### ***The complaints process***

Anyone can complain to the Ethical Standards Commissioner (ESC) if they believe someone in public office, including a councillor or MSP, has breached their respective code of conduct.

#### **We are focussing today on the complaints system in respect of councillors.**

The Councillors Code of conduct - most recently revised in 2021 and approved by Parliament – is [available to view on the SCS website](#). The MSP code of conduct can be [viewed on the Parliament's website](#).

The ESC looks into each complaint and assesses whether or not the code of conduct has been followed. During the “screening stage”, the ESC asks the complainer for more information. If at this point they decide not to investigate the complaint, the ESC will write to the complainer explaining their reasons.

If the ESC decides there may have been a breach, it will conduct a full investigation. At this stage, if they have not already done so, the ESC will write to the person being complained about and the council they represent.

The ESC may contact other people who can help with the investigation and will interview relevant witnesses. If necessary, the ESC can compel witnesses to attend interviews and to produce documents.

The length of time it takes to complete an investigation depends on the complexity and seriousness of the complaint. At the end of the investigation, the Commission will consider the available evidence and decide whether or not there has been a contravention of the Code of Conduct. The Commissioner's decision is final with no right of appeal.

If the ESC finds there has been a contravention, the person complained about will have a chance to review the ESC's conclusions and provide comments. The ESC will then report the outcome of the investigation to the Standards Commission for Scotland (when it relates to councillors or board members).

The Standards Commission will then decide to either direct the ESC to carry out further investigations, hold a hearing, or it will take no further action.

The Standards Commission holds hearings (usually in public) to determine whether a councillor has breached the Code of Conduct. The Hearing Panel is comprised of three members. The ESC will present the findings of their investigation and/or make submissions at the hearing about why they consider the Respondent has or has not contravened the relevant Code. The respondent is entitled to attend or be represented at the hearing and can also present evidence and make submissions. Both parties can call witnesses.

After it has heard all the evidence and submissions, the Hearing Panel will decide whether or not there has been a contravention of the Code by the respondent. If the Hearing Panel decides there has been a breach, it will then impose a sanction, which could include an interim suspension.

### ***Previous problems with the Ethical Standards Commissioner office***

The [ESC's 2020-21 Annual Reports and Accounts](#) noted that the Standards Commission took the unprecedented step of issuing directions to the Ethical Standards Commissioner during that financial year. This was with a view to providing assurance to itself and others that the office was acquitting its functions in accordance with its founding legislation. The Commission directed the ESC to:

- submit interim reports where an investigation takes more than three months.
- report outcomes of each investigation undertaken.
- carry out an investigation into every complaint about a Councillor and Member save in specific circumstances set out in the Direction.

### ***Audit Scotland Section 22 Report***

The unprecedented directions from the Standards Commission, combined with high staff turnover and the absence of engagement with an Advisory Audit Board, led external auditor, Deloitte, to conduct a wider scope audit. Their [external audit report](#) identified a number of failings including:

- an absence of openness and transparency;
- a breakdown in key relationships with stakeholders and within its own office;
- no effective scrutiny or challenge which might have flagged up issues earlier.

The Deloitte report also included around 20 recommendations as to how the ESC could address these shortcomings. Their report led to Audit Scotland issuing a "section 22 report"<sup>1</sup>. [Audit Scotland concluded](#) that "public trust in the body that investigates complaints about the behaviour of MSPs and councillors is now at risk because of serious failings in the way it is run".

Audit Scotland noted that minutes of the Standards Commission's meeting on 26 April 2021 stated that the Standards Commission found that there had been failings in the handling of the majority of rejected cases as either:

- an investigation should have been carried out but was not, or
- some investigation had been carried out before rejection, and so a report should have been made to the Standards Commission, for it to determine what action should be taken.

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<sup>1</sup> A Section 22 report is where the Auditor General can directly raise his concerns with Parliament and the public arising from annual audit work.

Audit Scotland noted that reports on the complaints in question had not been submitted to the Commission (for it to make the final decision on whether the complaint should be upheld), as required by the earlier direction. As such, the Standards Commission concluded there had been a contravention of the Direction and that the Convener of the Standards Commission should send the Scottish Parliamentary Corporate Body a formal complaint.

Caroline Anderson was the Ethical Standards Commissioner between 2019 and April 2022 with her tenure due to run until March 2024. Ms Anderson was on extended leave between March 2021 and 30 April 2022 when she resigned. Ian Bruce was appointed Acting Commissioner in April 2021, and it was announced in March 2023 that he had been appointed Ethical Standards Commissioner for the next six years.

The 2023-24 Annual Report states that of the three Directions issued by the Standards Commission in 2021, only one remains live. This relates to reporting on all investigations' outcomes to the Standards Commission, and it is due to expire on the 31 January 2025.

## **Main issues raised during last year's session**

The Committee heard from the [Standards Commission and the Ethical Standards Commissioner in December 2023](#). The following summarises some of the main points discussed during this session.

### *Ethical Standards Commissioner*

- Given the problems faced by the ESC office since 2021, the Commissioner was content that they are now operating “effectively as an organisation and we have assurance from our auditors on that”.
- They have implemented all of the recommendations from the 2021 audit.
- Waiting times for complaints being looked at reduced from nine months to four months in 2022-23. This has been aided by the recruitment of new staff.
- The Commissioner was confident that his office had the staff and resources required to carry out its functions effectively and efficiently.
- A new strategic plan was being published for the period 2024 to 2028.
- The office now has an internal audit function which means the ESC is no longer marking “their own homework”.
- The ESC receives a lot of complaints that are not admissible and do not engage the councillor code of conduct.

## LGHP/S6/24/31/1

- The number of complaints about councillors was much lower in 2022-23 than it was in 2021-22.
- Social media accounts for around 20 per cent of all complaints.
- The Commissioner was asked about the difference between disagreement and disrespect.
- The Commissioner does not look at people's motivation for making complaints. All he does "is assess the facts against the code [of conduct]".
- The Committee was told about a survey being rolled out to all complainers and respondents giving them an opportunity to provide views on their experience of the ESC.
- "An awful lot of the complaints that are made" are, according to the Commissioner, "unfounded and spurious".
- The Commissioner is also hoping to collect demographic data on complaints and complainers.

### *Standards Commission*

- The SC held training events for councillors in two council areas and board members of nine public bodies during 2022-23. They also published interactive training modules on a new e-learning webpage.
- They published training videos on codes of conduct and blogs discussing ethics and governance issues. Some focus on virtual meetings and social media behaviour.
- The SC works with the Ethical Standards Commissioner to identify trends. They saw an increase in cases that relate to respect.
- The respect cases received are a mix between social media, conduct at meetings, conduct towards officers and sometimes conduct towards constituents.
- It is hard to know whether standards of behaviour are decreasing or if the public are just more aware of the fact that they can make a complaint.
- The SC Executive Director said the Ethical Standards Commission wants to do research on this "in the next year or so".
- The Commission made decisions on 44 cases that were referred to it by the ESC.

- The SC Executive Director believed that the councillor Code of Conduct around accepting hospitality could be strengthened.
- They intended to work with monitoring officers and the COSLA to see if the Commission can do anything to amend the Code.
- There was discussion of the relationship between the Standards Commission and the Ethical Standards Commission. The former had decided to renew all three directions issued in 2021. This came after consulting stakeholders.
- The Executive Director was asked about section 31 of the Local Government (Scotland) Act 1973 relating to disqualification.
- She told the Committee that currently if someone is convicted of a crime of a sexual nature, which had nothing to do with their role as a councillor, but they did not receive a custodial sentence they would not be automatically disqualified.
- The Commission told the Committee that it had written to the Scottish Government asking for this to be reviewed.
- The Executive Director was asked about the code of conduct being used against councillors by local authority officials, which some elected members feel restricts their scrutiny role.
- The code says that councillors cannot criticise in public the conduct, capability or performance of an identifiable officer.
- However, the Executive Director believes this does not preclude councillors “in any way from scrutinising the service of others. They just need to do that in a way that is respectful and does not make it personal.”
- She believes that more training for councillors may be required as she feels that this is more “a misconception than an issue”.

## **Main issues raised in the 2023-24 Annual Reports**

The focus of today’s session is on the recently published annual reports for 2023-24. The following summarises some of the main points raised.

### *Ethical Standards Commissioner Annual Report*

The Ethical Standards Commissioner’s [Annual Report](#) shows that in 2023-24 they received 344 complaints about councillors or public board members. This was more than double the previous year’s number. The increase has been driven by an increase in complaints about councillors (127 in 2022-23 to 317 in 2023-24):

*Complaints received about councillors and board members*

	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Number of complaints received	170	146	173	284	238	330	156	344

Around 80% of complaints were from members of the public, with the next most significant group of complainers being councillors themselves (17%). Councillors and members are complaining about each other’s conduct more frequently.

The vast majority of complaint allegations relate to disrespectful behaviour aimed at council officers, members of the public and other councillors. Such allegations have been on the rise for the last five years, with this year being the highest yet.

Approximately 55% of cases are related to disrespectful, discourteous or bullying and harassing conduct. Roughly a quarter of these relate to online behaviour on social media.

The table below shows the number of complaints about councillors and board members that were completed by the ESC each year. It also shows how many of these were fully investigated and the number which resulted in a report being submitted to the Standards Commission for Scotland with a finding that there had been a possible breach of a relevant code of conduct:

*Table 2: analysis of complaints **completed** (relating to councillors and board members)*

	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
<b>Complaints completed*</b>	<b>224</b>	<b>176</b>	<b>162</b>	<b>256</b>	<b>277</b>	<b>208</b>	<b>218</b>	<b>209</b>
Of which were fully investigated (as % of total complaints)	113 (50%)	55 (31%)	48 (30%)	40 (16%)	49 (18%)	75 (36%)	79 (36%)	76 (36%)
Of which not pursued after initial investigation (as % of total complaints)	102 (45%)	114 (65%)	110 (68%)	214 (84%)	227 (82%)	125 (60%)	121 (56%)	127 (61%)
Of which breach reported to SCS (as %	18 (8.0%)	12 (6.8%)	17 (10.5%)	8 (3.1%)	39 (14.1%)	6 (2.9%)	17 (8%)	20 (10%)

of total complaints)								
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\*total include complaints which were withdrawn during the process.

When the ESC receives several complaints about the same or closely related issues, they may be combined together and assessed/investigated as a single “case”.

Over the year a total of 52 reports were referred to the Standards Commissioner. Of these, 14 were assessed by the ESC to show a breach of the councillor code of conduct. But the SCS only held hearings on 10 of them. On the other hand, the ESC referred 38 reports where they had assessed that *no* breach had taken place. However, the SCS decided to hold hearings on 9 of them (see table below). Members may be interested in exploring this in more detail.

**Exhibit 8 – Details of reports referred to SCS in 2023/24 and their outcome**

Action taken by SCS	Breach report referred to SCS	No breach report referred to SCS
No further action taken by SCS	4	29
Hearing held by SCS	10	9
<i>Hearing held where SCS directed further investigation</i>		1
<i>Hearing held where SCS did not direct further investigation</i>		8
Total number of reports referred in each category	14	38

In addition to data on complaints handling, the Annual Report includes the following key points:

- Waiting times have improved compared to 2022-23. In 2023-24 they were around four months with the aim being to reduce these further in 2024-25.
- A new four-year [Strategic Plan for 2024 to 2028](#) was launched in April 2024.
- During 2023-24 the ESC rolled out a complaint survey to gather feedback on the customer service received by both complainers and responders.
- Due to the small sample size gathered this year, with only three surveys completed, the results were not published.
- The Public Appointments Team (for public boards) now has three full time members of staff, as well as relying on a team of 12 consultant advisers.

- The ESC had to conduct one examination of appointment practices in relation to public boards. This resulted in a report of material non-compliance with the Code being made to the Scottish Parliament, the first such report since 2011.

*Standards Commission Annual Report*

- During 2023-24, the Standards Commission held 16 Hearings to determine whether councillors or members had breached their respective Code of Conduct and, if so, to decide the sanction to be applied.
- The following table sets out the decisions of these hearings:

Decisions	No. of Hearings	No. of Respondents involved in Hearing(s)
Finding of breach	9	9
Finding that, on the face of it, the Respondent's conduct amounted to a breach of the applicable Code, but that a breach finding and imposition of a sanction was not proportionate and justified in light of the Respondent's right to freedom of expression under Article 10 of the ECHR	1	1
Finding of no breach	6	6
<b>TOTAL</b>	<b>16</b>	<b>16</b>

- Of the 9 cases where a breach was found, five respondents were censured and 4 were suspended for a range of periods.
- The Commission presented a number of training events including a workshop for members of Clackmannanshire Council. They also delivered joint webinars with the Improvement Service.
- The Commission reviewed its Guidance on the revised Councillors' Code of Conduct in light of feedback it had received and issues that had arisen during the ESC's investigations and at hearings.
- It also published a number of "advice notes" for the public on the Councillors' Code of Conduct.
- They updated their Policy on the Application of Sanctions to include a new paragraph giving weight to the timing and proximity of local government elections in determining the length of any disqualification.

- The Standards Commission undertook a review of the costs associated with Hearings to ensure best value was being achieved.
- The Standards Commission's net expenditure amounted to £337,000 in 2023-24, up from £289,000 in 2022-23 (an increase of 17% over the year).

## Standard Commission and ESC's proposed changes to legislation

On the 26<sup>th</sup> September the Committee received a joint letter from the Standards Commission and the Ethical Standards Commissioner. This set out both organisation's hopes for changes to certain legislation and they are proposing changes to the original [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#), as well as [The Public Bodies \(Joint Working\) \(Integration Joint Boards\) \(Scotland\) Order 2014](#) and [The Health Boards \(Membership and Procedure\) \(Scotland\) Amendment Regulations 2016](#). As such, they have written to Shona Robison, Cabinet Secretary for Finance and Local Government and Ivan McKee, Minister for Public Finance to ask them to consider the proposed changes to this legislation. See [Proposed Changes to Ethical Standards Legislation | The Standards Commission for Scotland](#).

Some of the specific changes they would like to see include:

- New powers to co-opt additional members to sit on SCS hearing panels.
- Inclusion of explicit powers and a clear route for the Scottish Parliamentary Corporate Body to remove or replace an incumbent SCS Member or the ESC (in the event of a serious performance, conduct or attendance issue).
- It is proposed that the requirement for complaints to be made in writing and signed be amended, as it is not considered that it is necessary for a complaint form that is completed and submitted online to be signed.
- It is proposed 2000 Act be amended to state that the ESC will report to the Standards Commission on the outcome of *all* investigations.
- Currently the SCS has three options when they receive a report from the ESC: hold a hearing, direct the ESC to undertake further investigation or do neither. It is proposed that the 2000 Act be amended to give SCS a further option, which is to find a breach of the Code without holding a Hearing.
- It is proposed the 2000 Act be amended to allow the SCS to consider any previous breaches of similar provisions in the applicable code by the same Respondent within a five-year period, when determining the sanction to be applied for any new contravention.
- It is proposed legislation be amended to give the SCS the discretion not to impose a sanction if it deems it not appropriate to do so (for example in a case where there were compelling, extenuating or mitigating circumstances).

## **The Finance and Public Administration Committee's recent inquiry**

The Finance and Public Administration Committee recently completed its inquiry into [Scotland's commissioner landscape](#). It did not make recommendations on the merits or otherwise of individual Commissioners such as the Standards Commission and the Ethical Standards Commissioner. However, it did recommend that a 'root and branch' review of the commissioner structure is carried out and completed by June 2025. The report recommended a dedicated Parliamentary committee be formed to undertake this review, and [in early November](#), Parliament voted to accept this recommendation.

The review will consider the creation of more effective accountability and scrutiny mechanisms for SPCB supported bodies. It should also commission an evaluation of the effectiveness of SPCB supported bodies to inform the review.