



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government, Housing and Planning Committee

Tuesday 10 January 2023

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 10 January 2023

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
STANDARDS COMMISSION FOR SCOTLAND ANNUAL REPORT 2021-22.....	2
COMMISSIONER FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND ANNUAL REPORT AND ACCOUNTS 2021-22	15

**LOCAL GOVERNMENT, HOUSING AND PLANNING COMMITTEE
1st Meeting 2023, Session 6**

CONVENER

*Ariane Burgess (Highlands and Islands) (Green)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

*Miles Briggs (Lothian) (Con)

*Mark Griffin (Central Scotland) (Lab)

*Paul McLennan (East Lothian) (SNP)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ian Bruce (Commissioner for Ethical Standards in Public Life in Scotland)

Karen Elder (Commissioner for Ethical Standards in Public Life in Scotland)

Angela Glen (Commissioner for Ethical Standards in Public Life in Scotland)

Lorna Johnston (Standards Commission for Scotland)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Local Government, Housing and Planning Committee

Tuesday 10 January 2023

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Ariane Burgess): Good morning, and welcome to the first meeting in 2023 of the Local Government, Housing and Planning Committee. I remind all members and witnesses to ensure that their devices are on silent and that all other notifications are turned off during the meeting.

The first item on our agenda is a decision on whether to take items 4, 5, and 6 in private. Do members agree to take those items in private?

Members indicated agreement.

Standards Commission for Scotland Annual Report 2021-22

The Convener: Under agenda item 2, we will take evidence on the Standards Commission for Scotland's annual report for 2021-22.

We are joined by Lorna Johnston, the executive director, and Sarah Nicholson, the office manager, for the Standards Commission for Scotland. I welcome our witnesses to the meeting and invite Lorna to make a short opening statement.

Lorna Johnston (Standards Commission for Scotland): As the committee will be aware, the Standards Commission was established by the Ethical Standards in Public Life etc (Scotland) Act 2000. The commission is an independent public body that is responsible for encouraging high standards of conduct in public life in Scotland. The 2000 act provides a framework under which ministers issue codes of conduct for councillors and members of public bodies. The Standards Commission's role is to promote those codes, to issue guidance on how they should be interpreted, to adjudicate on alleged breaches and, when breaches are found, to apply sanctions.

The Commissioner for Ethical Standards in Public Life in Scotland is a separate and distinct office holder, whose responsibilities include investigating complaints that councillors and members have breached their respective codes. The commissioner sends a report to the Standards Commission on the conclusion of his investigations into complaints about councillors and members. On receipt of a report from the commissioner, the Standards Commission has three options under the 2000 act: to hold a hearing, to direct the commissioner to carry out further investigation, or to do neither—which essentially means that no further action will be taken on the complaint.

Hearings, which are conducted by a hearing panel comprised of three members of the Standards Commission, are held, usually in public, to determine whether the councillor or member concerned has breached their respective code of conduct. If a breach is found, the panel is obliged to impose a sanction, which could be censure, suspension, or, in the most serious cases, disqualification.

If, having considered a referral report from the commissioner, the Standards Commission does not consider that it is in the public interest and proportionate to hold a hearing, it will take no further action on the case. The parties to the complaint are advised and a relatively short, anonymised written decision is published on the Standards Commission's website, outlining the reasoning and any learning points.

The Standards Commission has one full-time member of staff, which is me. As the executive director, I am the accountable officer. I am assisted by a case manager, an office manager and an administrative assistant, all of whom are part-time, with the overall staffing complement being equivalent to 3.1 full-time members of staff.

The Standards Commission has five part-time members, who are appointed by the Scottish Parliamentary Corporate Body with the agreement of the Parliament. The convener is contracted to work the equivalent of three days a month, while the remaining members work two days a month. As previously noted, members also sit on hearing panels, as and when that is required.

As the committee will have noted from our annual report, the Standards Commission's strategic aims are:

"To have a positive impact on ethical standards in public life. ... To pursue continuous improvement in the ethical standards framework and the way we do our work. ... To pursue and develop strong relationships with our stakeholders. ... To ensure all stakeholders have easy access to high quality information about the organisation, its work, and any initiatives."

Work that was undertaken last year to meet those aims included participating in a working group that was established by the Government to review and revise the codes of conduct. That included analysing responses to the Government's consultation on the proposed revised codes, and amending their provisions in light of feedback and suggestions.

Following the consultation and the issuing of the codes in December 2021, the Standards Commission produced, issued and published revised guidance and advice notes. We also produced and published standard training presentations and videos on the main changes to the codes and their key provisions. In addition, we ran various training events and workshops to help to promote awareness and understanding of the revised codes.

The Standards Commission established a good working relationship with the acting commissioner and worked with him to improve the processes for the investigation and adjudication of complaints, with a view to trying to ensure consistency in the interpretation of the codes. We also undertook a review of lessons learned from the Covid pandemic, and made various improvements to our governance and adjudication processes and arrangements.

Despite an increase in the number of reports received from the commissioner, the Standards Commission processed all of them timeously. Decisions were made, issued and published on all no-action cases within seven days of receipt of a report from the commissioner.

In the year to date, we have continued to undertake outreach work to promote the codes. That has included presenting at the Society of Local Authority Lawyers and Administrators in Scotland—SOLAR—annual conference and providing tailored training sessions to the boards of several public bodies. In October, we held our annual monitoring officers' workshop, which was attended by monitoring officers from councils throughout Scotland. We look forward to our annual standards officers' workshop in March.

The Standards Commission has continued to update the case examples and illustrations in its guidance, advice notes and standard presentations in light of feedback and inquiries received, and decisions made. We have also developed and published interactive e-learning modules and animated videos on specific aspects of the codes and the ethical standards framework.

I hope that that is a helpful introduction, and summary of our remit and work. I am happy to answer any questions that the committee may have.

The Convener: Thanks very much, Lorna. It is very helpful to have heard that and to have it so clearly laid out. The level of participation, engagement and feedback that you seek in your work came across to me from your statement. That is very impressive.

A key objective in the commission's strategic plan is:

"To have a positive impact on ethical standards in public life".

I would be interested in understanding how that positive impact is measured. Can it be measured? If so, do you have a sense that standards in public life are improving? What can you say about the levels of public trust in local politicians? Has trust improved in recent years?

Lorna Johnston: We do surveys to measure our impact. We did surveys of councillors and monitoring officers in 2022. We picked 2022 because we wanted to get the views of outgoing councillors on what they saw as the standards, whether the standards had deteriorated or were improving, whether their colleagues had a good understanding of the requirements of the code, and whether they had experienced or witnessed bullying or harassment. The same applied to monitoring officers to try to get the views of council officers. We did similar surveys of members of devolved public bodies and public bodies' standards officers.

We analyse the inquiries that we receive. We get a lot of inquiries about how the codes should be interpreted and about how complaints should be made, as people quite often confuse us with

the Commissioner for Ethical Standards in Public Life in Scotland. We analyse those, and we always seek feedback from our hearings. Therefore, we have various sources of information.

The responses in the surveys on whether people felt that standards have improved or not were a bit mixed. The general view was that the vast majority of councillors want to comply with the codes and are doing their best to do so. The issues that crop up most are respect, bullying and harassment—especially respect. Perhaps the issue can simply be someone losing their temper or not thinking things through.

However, we have certainly noticed, in the past five years or so, that there have been far fewer inadvertent breaches of the codes of conduct, such as failures to register interests within the time limit—the month that a person gets to register a new interest, whatever that is. Perhaps that demonstrates that there is a greater understanding of the codes. The breaches that we see now tend to be much more about behaviour, such as bullying and harassment, rather than failures to declare interests, people trying to take advantage of their position, or anything to do with gifts and hospitality.

The Convener: Following on from what you said about the survey that you did in 2022 with outgoing councillors, I would be interested to hear what work you have done since May and the local elections to ensure that new councillors are familiar with their code of conduct. You also mentioned in your opening statement that you have done a bit of work on training and creating e-learning modules.

Lorna Johnston: We were keen to get our updated advice and guidance out at the same time as the codes when they were issued in 2021, which we did. That meant that they were all in place in time for the new councillors coming in after the election. We also put in place the standard training presentation. We knew that we would not be able to get around all 32 councils, but that meant that monitoring officers and other council staff could use our videos and standard PowerPoint presentations on the revised code and the key changes. We were trying to put in place materials that they could use. New councillors get a lot of information thrown at them at the beginning, so we thought that putting those in place would give councils the chance to decide when the best time to do that induction was.

We see our guidance and advice notes as moving documents, because we want them to be as fit for purpose as possible. We update them in light of scenarios that we are told about by officers or councillors. When we get inquiries, we update our case examples and scenarios in those

documents to make sure that they are as relevant as possible.

As I said, we have been working on e-learning modules. We have two in place, and we hope to publish another two by the end of this financial year. One is on the applicability of the code and when it applies, and the other is on identifying and managing conflicts of interest. Those are two topics that we think it would help for councillors to work their way through. We hope that the interactive e-learning module helps them to do that.

The Convener: That is brilliant. It is good to hear that you are aware that when councillors are first elected they are overwhelmed by information, and that you are giving flexibility on when councils can share that information and say, “This is something that is important for you to pay attention to.”

Lorna Johnston: Yes; some of the feedback that we got in surveys was that some of our advice notes and guidance in the past have been unwieldy. They are Word documents, but for some people that is not the best way of learning, so we are trying to improve that by making all our guidance and advice notes more accessible and having them in different formats. We want to make them as fit for purpose as we can.

The Convener: We have done quite a bit of work on removing barriers to elected office. You talk about what happens once somebody is elected, but Word documents and written text could be another barrier or limitation to bringing in more diverse people.

Lorna Johnston: Yes—especially if documents include a lot of jargon and are not in as plain English as possible. We are working on that.

The Convener: Indeed. I bring in Willie Coffey, who has some questions.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning. I want to ask a bit more about sanctions and the sanctions process. You have partly answered one of my questions, and you have said that the available sanctions are suspensions, censure and disqualification. Will you tell us a wee bit more about how that works and whether there is a process through which a councillor might find themselves travelling if repeat offences are found by the commission?

Lorna Johnston: We have a policy on the application of sanctions that outlines all the factors that a hearing panel will take into consideration when deciding on the sanction to be imposed. That has aggravating and mitigating factors in it—for example, an aggravating factor would be if a councillor has been before us and a breach has been found about them on a similar issue in, say,

the past five years. A mitigating factor might be if it was a one-off incident and they had apologised straight afterwards or if it appeared to be inadvertent, whereas an aggravating factor might be if it was deliberate, serious and over a long period of time.

I should have said that the hearing panel is obliged under the 2000 act to impose a sanction if it finds a breach, so it will consider all those factors. The responding councillor or member has an opportunity to respond at a hearing. Once a breach is found, the panel will come back and announce its breach decision and give brief reasons as to why it has found a breach.

The panel will then invite the respondent, councillor or member to make comments in mitigation. Quite often, that person will explain, for example, what other work they do and their commitment to public life, and that will be taken into consideration. They will perhaps use the opportunity as a chance to apologise or explain that the impact of the breach was fairly limited, and the panel will take that into consideration in making its decision on sanction.

09:45

Willie Coffey: There is no sense of the degree of sanction. For example, the first time that an offence is recorded, it could, depending on its nature, immediately be dealt with through any of the three types of sanction, could it not?

Lorna Johnston: Yes, it could be. For a first-time offence, a sanction would be very unlikely to involve something like disqualification unless the offence had been very serious and prolonged. If it had involved bullying and harassment over a really long period and the person in question had shown no insight, I guess that that would be a possibility, but it would depend on the facts and circumstances of each case.

Willie Coffey: Is there a process by which a councillor can appeal against your decision? In your experience, how successful or otherwise have such appeals been?

Lorna Johnston: The 2000 act gives councillors an opportunity to appeal against a decision of breach, and they can also appeal against a sanction if it involves suspension or disqualification.

For as long as I have been in post—well, it does not really matter how long I have been in post; throughout the Standards Commission's whole existence, there has been only one successful appeal in the same case. It ended up at the Court of Session. The sheriff principal found in our favour, but the court overturned that decision.

That case involved a councillor from Renfrewshire who was disqualified for a period of 16 months. He had been before the Standards Commission twice before for similar breaches. The Court of Session upheld the disqualification and agreed with the Standards Commission that it should not have been a brief disqualification. The reason why the court shortened the disqualification period was that it felt that the hearing panel had not taken sufficient account of the timing of the election in its written decision. That has been the only such case.

Willie Coffey: Do you find that the sanctions that are available to you are pretty much adequate to cover the kinds of behaviours that you have observed over the years? Are they sufficient?

Lorna Johnston: I think so. Standards Commission members have certainly had discussions on that in the past couple of years, and we hope that discussions with the commissioner about it will be in our business plan for next year—in fact, we will put it in our business plan. We want to look at the possibility of amending the legislation to give us the opportunity to issue warning letters in cases that are slightly less serious—for example, where the breach has been admitted and the evidence is not in dispute. Rather than going to a hearing, we could say, “Do you accept this breach?” by letter or other correspondence. If it is accepted, some kind of warning could go out that would go on the record, or something like that.

We have not looked at that issue in any great detail, but it is the only one that we feel that we need to address. Sometimes a hearing is not the best approach, but on the other hand we do not want to take no action, so we might need something that is slightly between those two options.

Willie Coffey: Do you get many repeat offences? What are the numbers like in that regard?

Lorna Johnston: Actually, no, we do not. There are very few. During the time that I have been in post, we have had a couple of repeat respondents before us, but the breaches have involved different aspects of the code. For example, the first may be about a failure to register, and the second might be a respect breach. Repeat offences are actually quite rare.

The Convener: I bring in Marie McNair, who joins us online.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning, panel, and happy new year. I will ask about how the standards and complaints system in Scotland compares with the systems in other parts of the UK and in countries around the world. Which systems are examples of

best practice, and what can Scotland learn from them?

Lorna Johnston: There is no comparable system in England, where local authorities take charge of their own disciplinary issues. We have analogous bodies in Wales, Northern Ireland and the Republic of Ireland, and we have quite a lot of contact with them—especially the one in Northern Ireland. We share experiences with them and discuss matters such as the extent to which freedom of expression might apply in certain cases. We had a lot of contact with those bodies during the pandemic, when we held online hearings, to learn about their experiences and share ours. I am not sure what systems are in place more widely, across the world.

Marie McNair: What impact has the growth of social media had on the standards of public life? The committee has heard that toxic online behaviour can be a barrier to people considering standing for local election. What are the commission's insights in that area? Did the move to online council and committee meetings during the Covid-19 pandemic have any impact on conduct and behaviour?

Lorna Johnston: That was one of the questions that we asked in our survey about whether behaviours had improved or deteriorated during the Covid pandemic, particularly during online meetings, and to be honest, responses were very mixed. Some councillors and monitoring officers felt that behaviours had improved and some felt that they had deteriorated, so I guess that it differs from council to council. We produced an advice note on conduct in online hearings to try and help improve behaviours, because we saw that there may be a gap in that area.

I am sure that the commissioner will say more about this, but we are getting more complaints about problematic behaviours on social media, and that is a barrier to representation. Councillors and other people in public life often face abuse on social media, and that is difficult and completely unacceptable, but it sometimes causes those people to react, and in return they might do something that is disrespectful, offensive or that could be seen as bullying and harassment. At other times, it is a case of political point scoring that goes beyond what might be considered acceptable and into the realms of a breach of the code of conduct. We have been doing a lot of work to educate people on that. We try to show councillors and members of public bodies where the line is, explain to them that we want them to lead by example and tell them that if they do not want to face abuse they also need to lead by example in what they post.

Problematic behaviour online is a barrier to representation. Anecdotally, from our inquiries and

surveys, we hear that women councillors in particular sometimes face bullying and harassment on social media and from colleagues, and we are aiming to improve those standards.

Paul McLennan (East Lothian) (SNP): I want to talk about the directions that were issued to the ethical standards commissioner during 2021, to get a bit of context about that and about what the impact has been since then. We understand that those directions are to be in place for a further two years. Can you explain why there continues to be a need for those directions and whether you envisage ending the arrangements at the end of that period?

Lorna Johnston: In July 2020, a direction on the progress of investigations was issued to the then commissioner. That was issued because the standards commission was not getting any information, so we did not know how quickly cases were being progressed, if there were any delays or whether parties to the complaints were being updated. That direction was issued to give us the comfort that cases were being progressed without undue delay and that parties were being updated.

We issued the outcome direction in November 2020, and that direction required the commissioner to send all reports and investigations to us for us to make the final decision. That was issued because there was a lack of engagement with the former commissioner and we were told by a number of parties that a vast majority of complaints were being rejected at admissibility without an investigation taking place, or in cases where a very limited investigation was undertaken.

We wanted to make sure that complaints were being investigated and that they were coming to us to make the final decision. Both of those directions expired last year, so we consulted with the commissioner and decided to extend the progress of investigations direction for another two years. We have extended the outcome direction for three months; we are waiting to see whether the committee also—

Paul McLennan: Can you clarify what dates will those be? You said two years and three months. What exact dates are those?

Lorna Johnston: I think that the outcome direction expires at the end of February, but we are looking to extend it again. The reason for that is not because we have any concerns about the acting commissioner and his office, but because we feel that it is good to have a really clear separation of functions between the two organisations, with one doing investigation and one doing adjudication.

We feel that having a body—the Standards Commission—doing a review of all cases means

that there is an independent review of the decisions that are made. It also means that, because we can hold hearings on cases in which we take evidence under oath or on affirmation, there is a kind of public airing. If evidence is in dispute or there are complicated issues—for example about the application of the right to freedom of expression—they can be discussed fully out in the open at a hearing. We also publish our decisions, so councillors, officials and members of the public can see what the threshold for a potential breach is.

There are a number of reasons why we think that it is right for us to carry on doing that. Obviously, we are interested in hearing the committee's views on that as well.

Paul McLennan: The next question, which is an extension of that, is about the governance and accountability arrangements between the Standards Commission, the ethical standards commission and also the Scottish Parliamentary Corporate Body. Are those arrangements adequate given the issues that have been faced over the past two years? Are there any lessons to be learned on that in terms of the wider relationships?

Lorna Johnston: We have certainly not had any difficulties with the SPCB. It has been very supportive of us, and we have quite a lot of contact with it.

Since the section 22 report that raised issues on the ethical standards commissioner was issued by Audit Scotland, we have put more a more formal arrangement in place with officer-holder services to have governance-related updates; I think that we are doing that twice a year now. However, we have not experienced any difficulties.

Annie Wells (Glasgow) (Con): Good morning, panel. Lorna Johnston, you mentioned at the beginning that you have 3.1 FTE of staff to help in the commission's role. I know that there is a significant backlog for the ethical standards commissioner and the commission. Do you believe that you have adequate budget and resources to fulfil your role in all of this?

Lorna Johnston: Just to be clear, we do not have a backlog.

Annie Wells: No—I am saying that the ethical standards commission does. Do you agree that you have the right budget to adequately resource your work?

Lorna Johnston: We do. We got a fourth member of staff. A couple of years ago, when the previous business manager retired, we changed our structure a bit. We had another look at all that and at our resourcing, and brought in a case manager—at that stage, part-time—to help with

the cases. We have also rejigged a lot of the way that we work with regard to members' time, so that we are able to absorb those cases and look at those decisions when the extra reports come in from the ethical standards commission. We are confident that we have enough resources at the moment.

Annie Wells: Perfect. Thank you.

The Convener: To continue with the budget question, do you think that the ethical standards commission has enough budget and resourcing?

Lorna Johnston: My understanding is that it is recruiting four staff at the moment. When those staff are in place, it will, I hope, clear the backlog that the commission has at the investigations stage.

The acting commissioner did a lot of work piecing together the business case, so I am sure that it will get those resources in place. However, with the best will in the world, it takes a while for staff to be trained and inducted. With investigations, the more experience you have, the more understanding you get of certain cases, so you get faster and faster. For that reason, I do not think that it is going to be an instant solution, but I have confidence that it will work.

10:00

Miles Briggs (Lothian) (Con): Thank you for joining us. I have two questions. I have had conversations with councillors about their inability to talk with members of the public about planning applications. Councillors find that incredibly challenging and members of the public do not like it. What is your view of potential reform of that situation? How many complaints relate to that kind of conversation, or to breaches of those rules?

Lorna Johnston: We have not had many referrals on that topic. When the codes were revised, it was important to be much clearer in that regard. Councillors can have those conversations, but they cannot prejudge or show beforehand that they will support an application or an objection. They absolutely can have those conversations and hear people's views, but they must be very careful not to prejudge the application because what the code and the legislation want them to do is to look at and consider the merits of the application on the day.

The revised code makes that all much clearer. The previous version of the code was not so clear. I hope that that will be less of an issue in future.

Miles Briggs: That is helpful. That issue has been raised with me and probably with other members. Many councillors feel that they cannot have those conversations and are concerned that,

even after the revisions, there may be complaints if they try to engage with members of the public.

Lorna Johnston: We have produced an assisting constituents card that councillors can hand out to their constituents as a way of managing expectations about what they can do. That card says that councillors can listen to constituents and to their views but cannot express an opinion ahead of time. We have recently produced a card for councillors who are attending community council meetings. There can be issues when they go to those meetings. Community councillors may expect the councillor to make a decision on the spot or to support the community council's view of a planning application. We hope that having that card, which they can hand out and use as an explanation to community councillors of what they cannot do, will help them.

Miles Briggs: That is helpful. I have not seen those cards. Could you share them with the committee?

Lorna Johnston: Yes.

Miles Briggs: What lessons has the commission learned during the Covid-19 pandemic? How have you changed your ways of working?

Lorna Johnston: The first thing to say is that we found holding online hearings to be fairly successful. We will not go back to holding those in all cases, because we think that it is important to get out there. We hold hearings where the councillor or member is based. We think that it is important to go out there and for members of the public to be able to come and watch our hearings. We will carry on doing that, but if the evidence is not in dispute and no witnesses are to be called, we will look at whether it would be more efficient to hold a meeting online. When we hold meetings online, we live stream them on our website for people to watch. We are looking to improve that process.

We have, essentially, gone paperless. We have learned about better communication between the office and members. We have a hybrid working system and flexible working arrangements.

Miles Briggs: Thank you.

The Convener: It was interesting to hear about the cards that you give out. We would like to pick up on that and promote it more. They are an important tool.

That brings us to the end of our questions. Thank you for coming to give evidence. It has been useful to hear that and your opening statement was helpful in clarifying the role of the Standards Commission and the work of the ethical standards commissioner.

There will be a brief suspension to allow the witnesses to leave.

10:04

Meeting suspended.

10:07

On resuming—

Commissioner for Ethical Standards in Public Life in Scotland Annual Report and Accounts 2021-22

The Convener: The third item on our agenda is to take evidence on the Commissioner for Ethical Standards in Public Life in Scotland's annual report for 2021-22. We are joined by the acting commissioner, Ian Bruce, who is accompanied by Angela Glen, the senior investigating officer, and Karen Elder, the head of corporate services and accountable officer. I welcome our witnesses to the meeting and invite Ian Bruce to make a short opening statement.

Ian Bruce (Commissioner for Ethical Standards in Public Life in Scotland): Thank you, convener and members of the committee, for the invitation and the opportunity to talk to you about the work of our office. I will keep this brief, because I have no doubt that the committee will have a number of questions for me and my colleagues.

We are here to provide more detail about our work on complaint handling and on our governance arrangements. My colleagues will be able to assist with some of the detail about those issues. We are keen to ensure that the committee is fully informed about our performance, and we are happy to answer questions today as well as to provide follow-up supplementary information. We will do whatever the committee would find helpful.

I trust that members have reviewed the last two annual reports and that they have given them a flavour of the challenges that our organisation has faced since I took office as acting commissioner almost two years ago. I do not plan to rehearse all those challenges, but we will be happy to respond to any questions that members may have about them. I felt that it might be more helpful at this point briefly to bring the committee up to speed on the current circumstances and our plans for the future.

Audit Scotland will lay another section 22 report in January to follow up on the progress that we have made in the usual way. We anticipate that that will reflect positively on the work that we have done to rebuild our office and the services that we provide, and to restore confidence in the ethical standards framework. However, we also expect it to reflect the fact that more work still has to be done to embed the good practices that we have adopted since the previous section 22 report was laid by the Auditor General for Scotland.

On the progress that we have made, we have included all the details of that on our website and in summary in our annual report. In brief, we have fully implemented 11 of our auditor's recommendations and partially implemented the remainder that we were able to implement—we can provide more detail on all that during this meeting. We have concentrated on re-establishing our governance, our systems of assurance, our relationships with stakeholders, and our staffing levels. I think that that gives us a firm footing for the future.

On my plans for the immediate future, as Lorna Johnston, the executive director of the Standards Commission, said, I intend to complete additional recruitment, followed by induction, so that we can clear our investigations backlog and, just as important, process complaints much more quickly in future than the office has ever done in the past. I also plan to introduce a communications strategy and develop and measure progress against key performance indicators for our office. We will publish all that, given our commitment to openness and transparency.

I trust that that was of interest to the committee, convener. I and my colleagues will be happy to answer any questions that you and other members have.

The Convener: Thank you very much, Ian. Those were useful opening remarks.

I have a few questions before I bring in colleagues. It is interesting to note that there has been an increase in complaints about councillors since 2015. Are you satisfied that the current standards system is doing enough to ensure ethical standards in public office and deter bad behaviour?

Ian Bruce: It is fair to say that there is a very mixed picture. I will bring in Ms Glen to give you some of the detail, but I can say in general terms that we have seen a steady rise in complaints about conduct, specifically in relation to courtesy and respect.

Having said that, there has been a decrease in complaints received in this financial year—we can give you the figures. It is not entirely clear to us whether we are looking at a blip or a downward trend. We have undertaken to conduct research into the area, once we have the capacity for that. We would like to do a deep dive into our statistics, going back several years, to try to gain a proper understanding—not just for ourselves but for the committee, the Standards Commission, councils and others who have an interest in the topic—of what is causing complaint numbers to rise or fall.

Angela Glen (Commissioner for Ethical Standards in Public Life in Scotland): Good morning, committee members. I will add to what the acting commissioner said.

Cases that relate to councillors and members form the bulk of our day-to-day work on complaints. I can give you a snapshot of the most recent trends. In 2021-22, there were 164 cases, whereas in the current financial year we are looking at about 79 cases. We have been here before: in 2017-18, there were 80 cases in total, so a lower number of cases has occurred before. We plan to conduct research to understand the reasons for the current downward trend and why complaint volumes fluctuate.

As Ms Johnston said, a high proportion of the complaints that we get relate to conduct—in particular, the conduct of councillors in social media, which is very visible. The framework of additional training for councillors, to make them aware that they can be readily perceived to be councillors even when they are using social media, will always be beneficial.

The Convener: Is additional training in the works, to make clear to councillors that, when they are on social media, they are still being perceived as being in that role, whatever the conversation?

10:15

Ian Bruce: Lorna Johnston and her team have already rolled out training of that nature, and the revised code is much clearer than the previous version about that. However, to be honest, it is a difficult area. Social media being what it is, people have a mix of private and public accounts, and the lines between those sometimes become very blurred. Alongside the Standards Commission, we will need to continue to have a dialogue with councils to help councillors to understand that, on occasion, they might think that they are operating an account that has nothing to do with their political activities but, because they are commenting on political matters and so on, they are perceived as a councillor. In fairness, that is probably work in progress.

The Convener: I will broaden out the discussion. It is interesting to hear that the number of complaints is going down. Obviously, there was an election in 2022, which brought in a lot of new councillors. I would be interested in hearing about what work the ethical standards commissioner's office has done with new councillors to ensure that they understand what is acceptable and what is unacceptable in relation to bad behaviour in public office.

Ian Bruce: I reiterate the point that Ms Johnston made: there is a separation of roles. However, we happily assist the Standards Commission by going

to the workshops that it or others such as SOLAR set up to demonstrate that we have a united front and a shared understanding of what the codes require. It is the Standards Commission's role to provide guidance, training and support, and our primary role is to investigate complaints. We report to the Standards Commission on the outcomes of all our investigations, and it is at that point that people will gain an understanding of whether the conduct that we have investigated represents a breach of the code. That is a decision for the Standards Commission to make.

The Convener: In effect, your work can become a case study.

Ian Bruce: Precisely. That is a very good point.

Willie Coffey: You still get a large number of complaints that are either not pursued or investigated and not upheld. Could you give a flavour of why you deal with so many complaints that are not taken further forward? Is there a lack of understanding among the public about what they can and cannot, or should and should not, complain about in relation to the behaviour of local members?

Ian Bruce: That is a good and very interesting question. Far and away the majority of the complaints that we receive are deemed to be inadmissible at stage 1. To be simplistic about it, we have a two-stage process, and stage 1 relates to admissibility. We look at the conduct that has been complained about and take a view on whether the code applies to it.

I will give a couple of simple examples. Some constituents might be unhappy that a councillor is not responding to emails, or not responding as quickly as they would like them to, or they might like a councillor to take a particular approach to a local issue, but the councillor is not taking that approach. The constituents cast around for someone to complain to and, given that we have a website and a complaint form that is easy for people to complete, they land on us, so we receive complaints of that nature. Such complaints are not admissible. Again, to be simplistic about it, the code of conduct is about the ethical conduct of councillors; it is not about whether they are fulfilling their role in the way in which one or two disgruntled constituents feel that they should. A lot of complaints get ruled out on that basis, simply because the code does not apply to them.

As we have already said, a lot of the more nuanced cases that we investigate relate to discourtesy and disrespect. We get quite a lot of those cases, because people say things online that one or two members of the public find objectionable. However, the fact that a particular member of the public finds it objectionable does

not necessarily mean that the person has been disrespectful.

Again, I will give a concrete example. Quite polarised political debates are going on in the country. As a constituent, I might disagree with a councillor's position on the side of a particular political debate, but the fact that I disagree with them does not necessarily mean that what that councillor has said online is inherently disrespectful. However, we would need to investigate that to establish whether that is the case, and some cases can be a wee bit borderline.

The other thing that we need to take account of, which is not on the face of the code—again, Ms Johnston mentioned this—is people's right to freedom of political expression in article 10.2 of the European convention on human rights. Sometimes people will say something that people find objectionable and, on the face of it, it could appear to be discourteous or disrespectful. However, there is enhanced protection for politicians by virtue of that convention right, so there are occasions when we determine that that right is applicable and that, as a consequence, a breach of the code cannot be found.

Willie Coffey: In closing down a complaint, do you inform the complainer about the decision that you have taken, why you have reached that decision and that the issue that they are complaining about is not within the scope of the work that you do?

Ian Bruce: Yes, and we plan to go further than we have gone previously by providing full reports. Complainers receive written decisions, and I provide reasons for my decisions. That happens in relation to all my work, but we are planning to go further on that. Perhaps I can ask Angela Glen to give a bit more detail.

Angela Glen: Yes, certainly. At the end of the stage 1 process—which is informed by the 2000 act and the eligibility direction of the Standards Commission and in which we assess the complaint against all of our admissibility criteria—if we consider that the complaint cannot proceed to a stage 2 investigation, we draft a decision letter, which is shared with the complainer. In the very near future, we will be sharing a copy of that letter with the respondent, too, to inform them that we received the complaint and of the reasoning why it was not taken forward to a stage 2 investigation.

Willie Coffey: That is good. Now, I really have to ask you about the 2019 to 2021 period, when the number of complaints that were not taken forward was excessively high. The figure was more than 80 per cent, and that possibly gave rise to the Audit Scotland section 22 report that we all know about. Will you tell us, as far as you can,

why the percentage was so high during that period, and could you also give the committee some sense of why the complaints that were made during that period cannot be reinvestigated?

Ian Bruce: Sure. That is a challenging question, to be honest. The decisions at that time were taken by my immediate predecessor, and I think that that is also relevant to your follow-up question. She was the commissioner, and she was exercising her judgment as she saw it at the time. That meant that a number of complaints were dismissed early and a number of complaints were investigated but no breach was found. That is just the reality.

Again, Ms Glen will be able to give you the figures, but we have now returned to investigation and admissibility rates being pretty much comparable with those during the tenures of prior commissioners. When we get a new commissioner in post, they are the statutory office holder and they conduct the role in the way in which they see fit. That is just the reality once someone is appointed to a post of that nature.

I understand that some people are disgruntled that their case was not investigated or that there was not found to be a breach of the code following an investigation. They have been in touch with the office to discuss those things with me, and I have been very open with them about what I am and am not able to do.

The committee will be aware from the section 22 report that there was a recommendation that all the complaints from the period from the August prior to my immediate predecessor departing up to March, when she went on leave, should be independently looked at again. We felt that we needed to take legal advice on that recommendation, and we did so. We have been happy to share that legal advice with the SPCB and our auditors in order to explain why we could not take forward that suggestion. I would be happy to share that advice, in confidence, with the committee—I have been very open about this.

The legal advice was unequivocal and was to the effect that—except in narrow circumstances—it would be unlawful for me to reinvestigate complaints on which another commissioner had already reached a decision. The legal principle involved is *functus officio*. I do not want to get into Latin here, so it might be helpful if I suggest an equivalent term. You will be familiar with the concept of double jeopardy, which basically means that a person cannot be brought before the court for potential conviction for the same crime twice, except in narrow circumstances. The narrow circumstances in which I could revisit a complaint would involve situations in which there had been a fundamental mistake of fact, there had been fraud or the public authority—in this case, the

commissioner—had not completed the investigation. If those circumstances do not apply, I cannot reopen closed cases.

There is a natural justice aspect to that. We can look at it from the other side. People against whom complaints were not upheld, and who therefore feel that they had been exonerated, might think it unfair that another commissioner two years down the line can come in and reinvestigate them even though, from their perspective, they had been cleared.

I hope that that helps to explain the situation.

Willie Coffey: It helps a great deal. Thanks for taking the time to explain the situation in detail.

What recourse is there for a person who feels that their complaint has been inappropriately dismissed at the initial stages? Where do they turn to?

Ian Bruce: Judicial review is the option that is open to them. Again, to be clear, I and all the staff in the office are receptive to discussions with people to gain a proper understanding of why they might feel that an initial decision that I have made is wrong. During the investigation process, there are several junctures at which they have an opportunity to make their views clear to me, and I am more than happy to listen to them. There have been occasions on which something that has been said to me in that way has led me to draw a different conclusion.

The Convener: Those were helpful responses. I will bring in Marie McNair, who is joining us online.

Marie McNair: Good morning. The committee is keen to continue to explore the possible barriers to people taking up local elected office. Is there any evidence that the complaints system in Scotland is deterring people from standing or standing again for local elected office? What impact does the process have on councillors who are being investigated, and is support in place to help councillors during the process? Is there evidence of vexatious complaints being made and, if so, what more can be done to discourage those?

Ian Bruce: I think that there are three questions in there, which I will address in turn.

The first question concerns whether the framework in Scotland presents a barrier. I am not sure that it does. If operated properly by all participants, the framework should encourage people into public life, because it encourages good conduct on the part of councillors and board members. To that extent, it should encourage people as opposed to put them off.

10:30

I think that the thing that puts people off relates to conduct. We have already mentioned that there are some quite polarised debates going on in Scotland. There is no issue with that—that is one of the hallmarks of a well-operating democracy. However, the way in which people express themselves sometimes means that some of the debates have been described as “toxic”. That can certainly be off-putting to people.

I do not know whether the committee is aware that the Local Government Association did some research in 2020-21 and produced a report in June of last year that was entitled “Debate Not Hate: The impact of abuse on local democracy”. There were some very interesting findings in it, although it applied to England and Wales, not to Scotland. For example, the findings showed that people were targeted online because of their particular characteristics. Misogyny, homophobia and racism were features. We should certainly all be alive to that if we are concerned about the underreflection of people with protected characteristics in public life. It was also clear from what respondents said that those activities were putting people off standing for election and considering standing for election.

Anecdotally, I know that such things also happen in Scotland, because I receive complaints from councillors who are subjected to some of that conduct. Anecdotally, councillors have said to me that they do not plan to stand again and that they will not be encouraging others to do so because of the treatment that they have had. Again, that should be of concern to all of us, particularly if we are concerned about the diversification of local authorities. I am very passionate about diversification, with my public appointments hat on. It is very important that boards are diverse, and I am sure that the same holds true for councils in order that they can fulfil their roles as well as they possibly can. There are therefore issues in that regard.

Marie McNair also asked about vexatious complaints, which do come up. Again, I see the personal impact of those on councillors. I will give another concrete example. A neighbour of a councillor submitted a complaint to us alleging a contravention of the code, but that was fundamentally about weaponising the code—for want of a better expression—because of a neighbourhood dispute. It had nothing to do with the councillor acting in that capacity. I will not say that that happens particularly frequently, but it does happen.

Of course, occasionally, complaints are politically motivated. We sometimes see tit-for-tat complaints when local political parties are in

dispute and use the code in order to gain some sort of leverage over others.

Marie McNair: As an ex-councillor, I can tell you how toxic council chambers can be at times. The behaviour of some folk is appalling.

Of the 330 complaints that were received about councillors and board members in 2021-22, 99 were complaints about disrespect towards employees or the public. Will you provide more information on that figure and on the definition of “disrespect”? What percentage of complaints relates to interactions on social media?

Ian Bruce: I do not know whether Angela Glen will be able to help with the breakdown. It might be that we do not have a full breakdown for the committee today, but we can certainly get one for you.

In answer to the question about what constitutes “disrespect”, we always refer to the Standards Commission’s guidance note on that, which is particularly helpful. However, it varies significantly, which is perhaps the reason why people come forward with complaints of that nature more frequently than they do with complaints of any other nature. Whether somebody has treated somebody with courtesy and respect is quite a broad concept in comparison with, for example, declaration of interests. People, including members of the public, can much more readily understand what that means, which is possibly one of the reasons why we get more complaints of that nature. However, disrespect can mean a number of different things, and we always look at the particular circumstances. We look at the advice notes and we make a determination thereafter about whether the code is engaged.

Bullying and harassment are probably easier to define but, again, there is a very full advice note on what constitutes bullying and harassment. We also use all the Standards Commission’s decisions on whether there has been a breach as precedents for our decision making when we review cases, and our reports refer to prior decisions to help people to understand why we have reached the conclusion that we have reached.

I am particularly concerned by the number of complaints made by staff, although, to be honest, it is much lower than the number of complaints made by members of the public and councillors. That is the pecking order: members of the public, then councillors, and then the number of complaints from staff members is much lower. However, I am open to having discussions with council officers. They get in touch with the office, and I have made it absolutely clear that, if they want to make a complaint, they can do so. They do not take that lightly, because it can be career

damaging to make a complaint as a senior council officer. However, I make it clear that, if they come to us with a complaint of that nature, it will be properly investigated, and I have absolutely committed to doing that.

Marie McNair: I asked about the percentage of complaints that relate to interactions on social media. If you do not have that figure to hand, can you forward it to the committee? That would be helpful.

Ian Bruce: By all means, we will do that analysis for you.

The Convener: That would be useful. Social media seems to be an area that is causing problems.

Annie Wells: Good afternoon—or good morning, I should say. It has been a long day, as it is the first day back after the new year.

The ESC website states that the initial review time is nine months. You said in your opening statement that you are carrying out recruitment and induction. Can you give us a bit more information on why you are in this situation? Are the wait times improving? If not, when are we likely to see an improvement? Also, are the wait times resulting in complainants not pursuing complaints?

I know that you have been in the role for only two years but, given that the backlog has existed for several years, do you believe that the commissioner’s office has enough budget and staff to do the job properly?

Ian Bruce: I will talk in general terms about that and then bring in Angela Glen so that you get some facts and figures.

Where do I start? Let me go back to the past and the question of why we have a backlog. We had significant staff turnover during the tenure of my immediate predecessor. I will tell you how stark it is. None of the investigatory staff who were in post during Bill Thompson’s time—he was the commissioner prior to my immediate predecessor—is in post anymore. That entire investigatory team has been replaced. The commissioner went out and recruited but also lost those staff. Turnover was a perpetual problem for us; it was at 70 or 80 per cent.

Therefore, one of the first things that I had to do was to recruit into vacant posts, and I started work on that as soon as I came into post. That has happened, and we have basically done away with staff turnover. We have a steady, happy and effective workforce. The new investigatory team members had completed their first year by October of last year. I have been monitoring the situation constantly. Turnover was the reason why the backlog built up, because there was nobody to

investigate complaints—sadly, it is that straightforward.

I could see that we were getting through the complaints but, equally, it did not look as though we were having any impact on the backlog. Therefore, notwithstanding all the other pressures that the staff were under, I said that we needed to carry out a workforce planning exercise and establish how many people we need to fulfil all our roles as effectively as we would like. That includes not just clearing the backlog but getting better at what we do so that people do not have long waiting times in the future. We did all that. We completed the comprehensive workforce planning exercise last May, and we put in a business bid to the SPCB straight away. Members will know what it is like with recess and the rest of it, but I eventually managed to get some time in front of the SPCB in October, and the case was quickly granted thereafter.

We started recruitment at the end of last year, prior to going on the Christmas break when people have a think about their future. We think that we have made a good offer for people to come to work for a significant public sector organisation that values people and the people who work with it. The closing dates are towards the end of this month, so we will soon have people in post. They will need to be inducted but, once we get them up to speed, we will get them on to the backlog.

We have put lots of other measures in place. You asked about the impact in the interim. We have been monitoring the situation constantly. As a senior management team, we decided that it was only fair to let people know that there is a backlog, so we have said so on our website. Since we put that banner up, we have seen no evidence that the volume of complaints has fallen, which suggests to me that it is not necessarily putting people off.

We felt that we could do lots of other things to bring the backlog down and to investigate more effectively. I will ask Angela Glen to talk about some of the things that she and her team have put in place.

Angela Glen: Ian Bruce has covered the majority of the actions that we are taking, but it might be helpful for me to give you a breakdown of how our year is progressing. We began the current financial year in April 2022 with around 60 cases sitting at admissibility stage. Throughout the period of April to October 2022, between 50 and 60 cases were at the assessment stage. At the same time, the number of active on-going investigations per month remained at a very high level compared to similar periods in the past five years. The number of reports that we have issued to the Standards Commission per the outcome direction that Ms Johnston referred to earlier also

represents the highest number of reports ever sent through.

Currently, 33 councillor complaint cases are at assessment stage. We are assessing cases that are dated up to June 2022. You will note that that is a significant step towards bringing down the figures from the 60 cases that we had at the beginning of the year to 33 now. That is because of various measures that we have put in place, some of which Ian has mentioned, but I will go into some of the detail on that.

The team actively committed to allocating to itself that number of backlog cases up to June 2022. We are now moving beyond that, despite having a heavy investigation workload. I cannot thank the team enough and I want to say on public record just how proud I am of them, because of the struggle that we have gone through to reach the stage that we are now at.

We are actively keeping to a triage system where cases that are not within our remit and do not match the eligibility direction are dismissed first. Those are part of the letters that I referred to when I answered Mr Coffey's question. Our triage cases are now up to date, so we do not require to inform complainers that we have not been able to get back to them. That is because the number of cases has gone down through triage, and we will keep that going.

We also preserve evidence. We have an extensive plan to preserve as much evidence as possible to prevent loss through the passage of time as we work through the backlog. That includes requesting and saving webcast meetings, social media, screenshots, which people save to the file, online articles and so on. That all saves time once we have allocated an investigating officer to the case, because they have all the material to hand to complete assessment.

As Ian Bruce mentioned, we have also completed workforce planning, which includes taking into consideration, as a priority, the resources that we need to get through the complaints as quickly as we can. As Ian also mentioned, recruitment is already under way.

10:45

Throughout that, we have also had open and transparent communication. The backlog banner on the website indicates nine months, but that is because it is taking into account the worst-case scenario, which is an outlier case from January that we have not yet been able to close. In reality, the amount of time that it takes for an assessment is approximately 13 weeks. We are looking at a number of cases now and, with the progress that we have already made in bringing down the

backlog numbers, we should be able to clear the backlog within four to six months.

Annie Wells: Thank you very much, and thank you for all the hard work that you are doing to bring this process back into the required timeframe.

Paul McLennan: Good morning. Two key things came out in the section 22 report that was issued. One was that

“key relationships with other public bodies have broken down”,

which you have touched on. The other key thing was that the Auditor General concluded that the ethical standards commissioner’s office was “neither open nor transparent”. Can you talk a bit more about those two issues and go into a bit more detail?

Ian Bruce: Yes. I will talk briefly about stakeholder engagement, but Karen Elder is wholly across corporate services as well as governance so I will bring her in next. Karen is the one who keeps our website regularly updated. That is relevant in relation to openness and transparency—information about how we are doing against the recommendations is published online so that everyone is aware of precisely where we are in relation to those recommendations.

On stakeholder engagement, one of the first things that I did was to try to rebuild bridges with all our stakeholder organisations. As soon as I took up post, I was in touch with the Standards Commission, which is clearly a key stakeholder and where the relationship had broken down completely. I was also in touch with the Convention of Scottish Local Authorities, SOLAR, the Society of Local Authority Chief Executives and Senior Managers and Scottish ministers—you name it.

We have a long list of important stakeholders and it was important that I was in touch with them quickly. It was not just to say, “How are you doing?” and to let them know that I was now in post. It was to say, “I understand that our office has significant issues that you will have concerns about; this is an opportunity for you to articulate those concerns, for you to help me to understand what we need to do to improve, and for me to give you commitments to improving in all those areas.”

Trust does not come automatically. I made it clear that I did not expect them to trust me from day 1, as they would need to see actions on top of words. I explained that I would maintain regular contact with them and that, if they needed to get in touch, they would always be pushing on an open door. I think that everyone, from all our stakeholder groups, knows that all they need to do

is to pick up the phone if they have any concerns or questions about how we are operating and I will have a chat with them about how we are getting on and what we can do to fix any concerns that they may have.

Karen can give some specifics on our transparency.

Karen Elder (Commissioner for Ethical Standards in Public Life in Scotland): Good morning, everyone.

When releasing the section 22 report on our 2020-21 audit, the Auditor General noted that there was

“an absence of openness and transparency”

in the organisation. Since then, we have undertaken a range of activities to become a more open and transparent organisation.

Foremost was the development of a new strategic plan. That began in April 2021, when Ian Bruce was appointed as acting commissioner. The plan clearly set out the values that we would work to. It was the subject of a full public consultation before being laid before Parliament in October 2021.

We carried out a full review of our complaint-handling statistics and published the results in our annual report and accounts for 2020-21. We also publish detailed formal minutes of our monthly senior management team meetings; our business plan and our progress against it; and, as Ian Bruce has mentioned, our progress against the auditor’s recommendations. We have consulted both formally and informally on the investigations manual, and the full public consultation has recently closed. As has been mentioned, in future we plan to publish our reports and decision letters relating to complaints about conduct.

The acting commissioner is open to meeting, and has met, with those who have complained about us. In fact, we have published the outcome of an external investigation into a significant complaint about us. He is also open to meeting, and has met, with any council officer who wishes to talk about the office’s work. Internally, staff input is sought when our business plans are being developed. We have also brought our staff into the process of identifying risks to the business, and we keep up to date with them with regular team and individual meetings.

That is a flavour of where we are with transparency.

Paul McLennan: That is helpful. I have no further questions at this stage, unless Ian Bruce wants to come in on that point.

Ian Bruce: I just reiterate the point that I made during my opening statement. I say to every

parliamentary committee that I appear before that engagement with them is important. We have few opportunities to talk publicly about our work, so we genuinely appreciate the opportunity. The committee should not hesitate to ask at any time for any information that it would find helpful. If we do not have the information to hand and it requires a bit of research, we are more than happy to do that.

Paul McLennan: I was previously on the Standards, Procedures and Public Appointments Committee, which you presented to, and that point came across quite clearly. Thank you for that.

Ian Bruce: Good.

Miles Briggs: Good morning, and thank you for joining us. Directions to the ethical standards commissioner were issued during 2020-21. Will you explain in more detail what impact those directions have had and talk about their on-going application?

Ian Bruce: You have already heard from Ms Johnston from the Standards Commission, and as I have said, it was wholly understandable that those directions were issued, as that was done for a very good reason. There is a separation of functions between the two offices, and I think that having those directions in place makes clear what the different functions are. Potentially, we could make that clearer to the public, and I have plans for that. Although the directions have an impact, they provide a great deal of public assurance that what happened previously could not happen again.

There are three sets of directions, and their impact varies. I am being simplistic about this, but the first direction is about keeping everyone up to date, which is something that we would commit to doing anyway—it is written into our manual. Keeping everyone up to date with the progress of an investigation is the right thing to do. No matter whether that direction was in place or not, we would commit to continuing to do that.

The second direction relates to reporting and means that we are reporting to the commission more frequently than prior commissioners would have done. As Ms Johnston explained, final decisions about whether a breach has occurred statutorily are for the commission to make. It cannot make those decisions without a well set out report. It is also probably worth saying that we have agreed with the Standards Commission on the template letters, template reports and fact sheets that go to the members of the public to ensure that we are on the same page and that everyone knows what to expect from the process.

The last direction, which is the eligibility direction, was issued just prior to my immediate predecessor's departure. That is the one that

gives me least leeway in determining whether an investigation should be taken forward, because it requires that, if there could be a breach of the code—except within very narrow circumstances—we must investigate that and report on it. That means that the number of live investigations is higher than it has been historically. We monitor what we are doing and think that, this year, there will probably be an average of 22 live investigations per month, which is a record level.

The directions have an impact, but it is for the committee and the public to decide whether that is worth it to ensure that we have that level of assurance.

Miles Briggs: That is helpful. It would be helpful for our oversight role if you could provide us with updates about when plans are being implemented.

Ian Bruce: Of course.

The Convener: In your opening statement, you talked about a communication strategy. You may already have covered some of that in your responses to our questions, but this is an opportunity to share more about that. You also mentioned key performance indicators for your office. It would be interesting to hear about both those subjects.

Ian Bruce: Members will be aware that one of the auditor's recommendations was that we should have internal audit services, which we tendered for and obtained. The internal auditors made recommendations, having looked at all the work that we do. I may ask Karen Elder to give some detail about our first internal audit. We had the auditors look at three topics. I hope that it will give you more assurance about our work to know that I am not marking my own homework—we have commissioned someone to look at how we are getting on.

The auditors said that, as well as our overall strategy, we should look at a communication strategy. On reflection, we felt that we would like to take forward that recommendation. We, and you, are aware of the work that we do, but I am not sure that the general public is aware of that work or of the difference between the work of our office and that of the Standards Commission.

I already said that proper operation of the ethical standards framework should encourage more people to come into public life, whether as a board member or by standing for elected office. We have a role in educating the public about the framework and where we sit in that. I had a look at my initial plan yesterday. We have a strategic plan. It is important that the public knows what our purpose, objectives and values are. We must communicate all that to the public and our stakeholders and make clear how they can make complaints, so that

the whole process is more accessible. Those are my thoughts in that area.

We have two sets of KPIs. They are not entirely distinct, but they are a bit dissimilar. The first and most important set of KPIs for people who are going through the process, either as a complainer or as a respondent, deal with how quickly we get through the process. Those KPIs were all included in the manual for consultation.

The other KPIs relate to our communication strategy, which I mentioned, and our values and objectives. We have set out our stall, which is not only about what we will do but about how we will go about that. That is a bit softer. For many years, I have been running anonymous applicant surveys for the public appointments process, and I am going to adopt something similar. At the end of the process, when we write to complainers and respondents, they will get a link to an anonymous survey and will be asked to tell us about their experience of the process. They will not be identifiable unless they choose to give us information that would identify them.

11:00

There is another thing that I plan to do and on which the committee might have a view. We currently gather demographic data from applicant surveys, and I would like to do the same for complainers and respondents simply because, in Scotland, we do not have a handle on the demographics of local authorities. We can use the census data for comparison, but that additional data would allow us to get a sense of whether, for example, more complaints are made about women councillors. It would be helpful to have data in that area. That is about informing future policy and procedures for us, the Standards Commission and others with an interest.

I will ask Karen Elder to talk briefly about internal audit results.

Karen Elder: As Ian Bruce said, we appointed an internal audit function back in spring 2022. The first audit that they carried out for us was in summer last year and it examined our governance arrangements as they stood.

We are pleased that the internal auditors reported that we had substantial controls in place and identified seven good practice points. They had nine recommendations for us. That is above the industry benchmark but they were three medium-level and six low-level recommendations, all of which were tied to the administrative implementation of the recommendations that our external auditor had already made.

The internal auditors also looked at our risk management procedures and concluded that

strong controls were in place. They identified seven good practice points and made four low-level recommendations, which were administrative in nature and related to how we set out our risk register.

We also took the opportunity for them to look at the investigation manual that we were developing while it was still in the consultation phase. The auditors noted that substantial controls were in place through that and identified 10 good practice points against industry standards. We were really pleased to see that, and I congratulate Ms Glen and her team on it. One medium-priority and one low-priority recommendation were made on that.

We were pleased to see the progress that was being examined and validated externally through those reports.

The Convener: Thank you. It is great to hear about the positive direction in your internal audits. I am sure that you are pleased about that.

We have come to the end of our questions, so I thank the witnesses for coming to give evidence. From what I have heard, it seems that they are modelling good leadership in connection with the nine key principles that underpin the standards expected in public life. We all need to model the direction of travel that we need to be going in. That is certainly what I have heard from what the witnesses shared with the committee.

I wish the witnesses well with their recruitment process. We can contact them at any time, but we will see them around this time next year.

Ian Bruce: Thank you very much for the opportunity.

The Convener: We agreed at the start of the meeting to take the remainder of our agenda items in private so, as we have no more public business, I close the public part of the meeting.

11:04

Meeting continued in private until 11:20.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba