

Scottish Parliamentary Standards Commissioner Act 2002

Directions by The Standards, Procedures and Public Appointments Committee

In exercise of the powers conferred by sections 4 and 7(6) of the Scottish Parliamentary Standards Commissioner Act 2002 (“the 2002 Act”) and by virtue of Rule 3A.2 of the Standing Orders of the Scottish Parliament the Standards, Procedures and Public Appointments Committee of the Scottish Parliament (“the Committee”) gives the following directions to the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”).

Citation and commencement

1. These Directions may be cited as the “The 2022 Directions to the Commissioner for Ethical Standards in Public Life in Scotland” and shall come into force on 1 September 2022.

Direction under section 7(6)

2. For the purposes of section 7(6) of the 2002 Act the specified classes of complaint are cases in which the complaint fails to meet one or more of the specified requirements because they—
 - (a) are not signed by the complainer;
 - (b) do not state the name of the complainer;
 - (c) do not state the address of the complainer; or
 - (d) do not name the member of the Parliament concerned.

Direction under section 4

3. For the purposes of section 4 of the 2002 Act the Committee gives the Commissioner the following direction:

Informing the member of the name of the complainer

- (1) In considering whether it would be inappropriate to inform a member of the name of a complainer under section 7(1)(c) of the 2002 Act and without prejudice to any other matter that the Commissioner considers relevant, the Commissioner shall -
 - (a) have regard to whether or not the complainer is or appears to be a vulnerable person;
 - (b) have regard to any reasons given by the complainer as to why the member complained about should not be informed of the name of the complainer; and
 - (c) consider whether informing the member of the name of the complainer would be likely to prejudice an investigation into the complaint.
- (2) Where the Commissioner receives a complaint about the conduct of a member and considers that it would be inappropriate to inform that member of the name of the complainer under section 7(1)(c) of the 2002 Act, the Commissioner shall make a report on the matter to the Committee setting out the reasons for that decision.

Interviews

- (3) At least 48 hours before interviewing any person for the first time in the course of an investigation, the Commissioner shall notify that person in writing of—
 - (a) the purpose of the interview;
 - (b) the powers of the Commissioner under section 13(1) of the 2002 Act;
 - (c) the procedure to be followed in connection with the investigation of the complaint, including that the interview will be audio recorded (or audio-visually, if required, where the interviewee is a sign language user);
 - (d) the right of that person to have a third party present at the interview; and
 - (e) the right of that person to have his or her views conveyed through an interpreter.
- (4) A notification transmitted by electronic means is to be treated as being in writing for the purposes of subparagraph (3) if it has been recorded and is capable of being reproduced in legible form.

- (5) The Commissioner shall allow any person interviewed to have—
 - (a) third party present; and
 - (b) his or her views conveyed through an interpreter.
- (6) If the Commissioner interviews any person in the course of an investigation, the Commissioner shall have regard to whether or not that person appears to be a vulnerable person.
- (7) For the purposes of subparagraphs (1) and (6) “vulnerable person” means any person who by reason of age, infirmity, illness, disability or any other circumstance appears to the Commissioner to be in need of care or attention.
- (8) The Commissioner shall make and keep an audio (or audio-visual, if required, where the interviewee is a sign language user) record of any interviews that are carried out in the course of any investigation.
- (9) No summary of an interview with a witness shall be included in any report by the Commissioner to the Committee unless the witness has been given a copy of the draft summary and an opportunity to make representations about the draft summary. The Commissioner shall annexe to the report to the Committee any representations which are not given effect to in the summary.

Documents and records

- (10) The Commissioner shall keep (whether in written or electronic form) details of each interview which is carried out in the course of any investigation.
- (11) The Commissioner shall keep each document which is considered in the course of any investigation unless the document requires to be returned to the person who provided it. If the Commissioner requires to return any document, the Commissioner shall make and keep a copy of it.
- (12) All documents and records shall be kept for a minimum period of 12 months from the date on which the complaint was dismissed by the Commissioner or, as the case may be, the Commissioner’s report upon the outcome of the investigation was made. If the Commissioner is directed to carry out further investigation under section 10 of the 2002 Act, the documents and records shall be kept for a minimum period of 12 months from the date on which the Commissioner's report on the further investigation was made.
- (13) The Commissioner may destroy the documents and records after the period mentioned in subparagraph (12), unless the Committee instructs the Commissioner to keep the documents and records for a further specified period.

- (14) In subparagraphs (11), (12) and (13) of this direction “document” means anything in which information is recorded in any form.

Criminal offences

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

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

- (16) The Commissioner shall resume investigation and consideration of a complaint in respect of which investigation and consideration has been suspended under subparagraph (15)(a)—

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

Reports under sections 7(11) or 8(3) of the 2002 Act

- (17) The Commissioner shall send a copy of any report submitted to the Committee under sections 7(11) or 8(3) of the 2002 Act to—

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

Reports to the Parliament and draft reports under section 9 of the 2002 Act

(18) Where there is a question about whether a member's alleged treatment of a person breaches a relevant provision of the Code of Conduct on the treatment of staff or treatment of other members, the Commissioner shall (in addition to the requirements in section 9(3) of the 2002 Act)—

- (a) in so far as possible, make available a copy of the report to be made to the Parliament under section 9(1) of the 2002 Act in draft to the person and the member (whose conduct is being complained about);
- (b) give the person and the member an opportunity to make representations on the alleged breach and the draft report.

(19) Where there is a question about whether a member's alleged treatment of a person breaches a relevant provision of the Code of Conduct on the treatment of staff or treatment of other members, the Commissioner—

shall not include any information in the report to the Parliament under section 9(1) of the 2002 Act that identifies the person or enables the person to be identified,

unless the Commissioner is satisfied that there is a good reason for including the information.

(20) Subparagraph (19) does not in itself prevent the Commissioner from including identifying information in a copy of the draft report given to a member or a person mentioned at subparagraph (18).

Revocation

4. The following Directions are revoked:

The 2020 Directions to the Commissioner for Ethical Standards in Public Life in Scotland.

Martin Whitfield MSP
Convener of the Standards, Procedures and Public Appointments Committee
Scottish Parliament
Edinburgh
31 August 2022