
To: Audit, Risk and Scrutiny Board

On: 23 January 2023

Report by: Director of Finance & Resources

**Heading: Commissioner for Ethical Standards in Public Life in
Scotland – Annual Report 2021/22**

1 Summary

- 1.1 The Acting Commissioner for Ethical Standards in Public Life in Scotland has issued his 2021/22 annual report. The report is available on the Commissioner's website at <https://www.ethicalstandards.org.uk/publication/esc-annual-report-2020-21>.
- 1.2 The report provides details of investigation of complaints about the conduct of councillors, members of devolved public bodies and MSPs and scrutiny of Scotland's Ministerial public appointments process. Where there has been contravention of the relevant Code, the Commissioner reports this, in the case of councillors and members of public bodies, to the Standards Commission for Scotland and in the case of MSPs and in relation to lobbying complaints, to the Scottish Parliament.
- 1.3 The statutory functions of the Commissioner in relation to conduct and public appointments are set out in the report, together with details of the restructure exercise that was conducted.
- 1.4 The report relates to a revised strategic plan for 2021 to 2024 which outlines the Commission's purpose values and strategic objectives.

2. Recommendations

- 2.1 That the 2021/22 Annual Report by the Commissioner for Ethical Standards in Public Life in Scotland be noted; and
- 2.2 That the actions taken in Renfrewshire in relation to the Code of Conduct development as detailed in paragraph 5.5 of the report be noted.

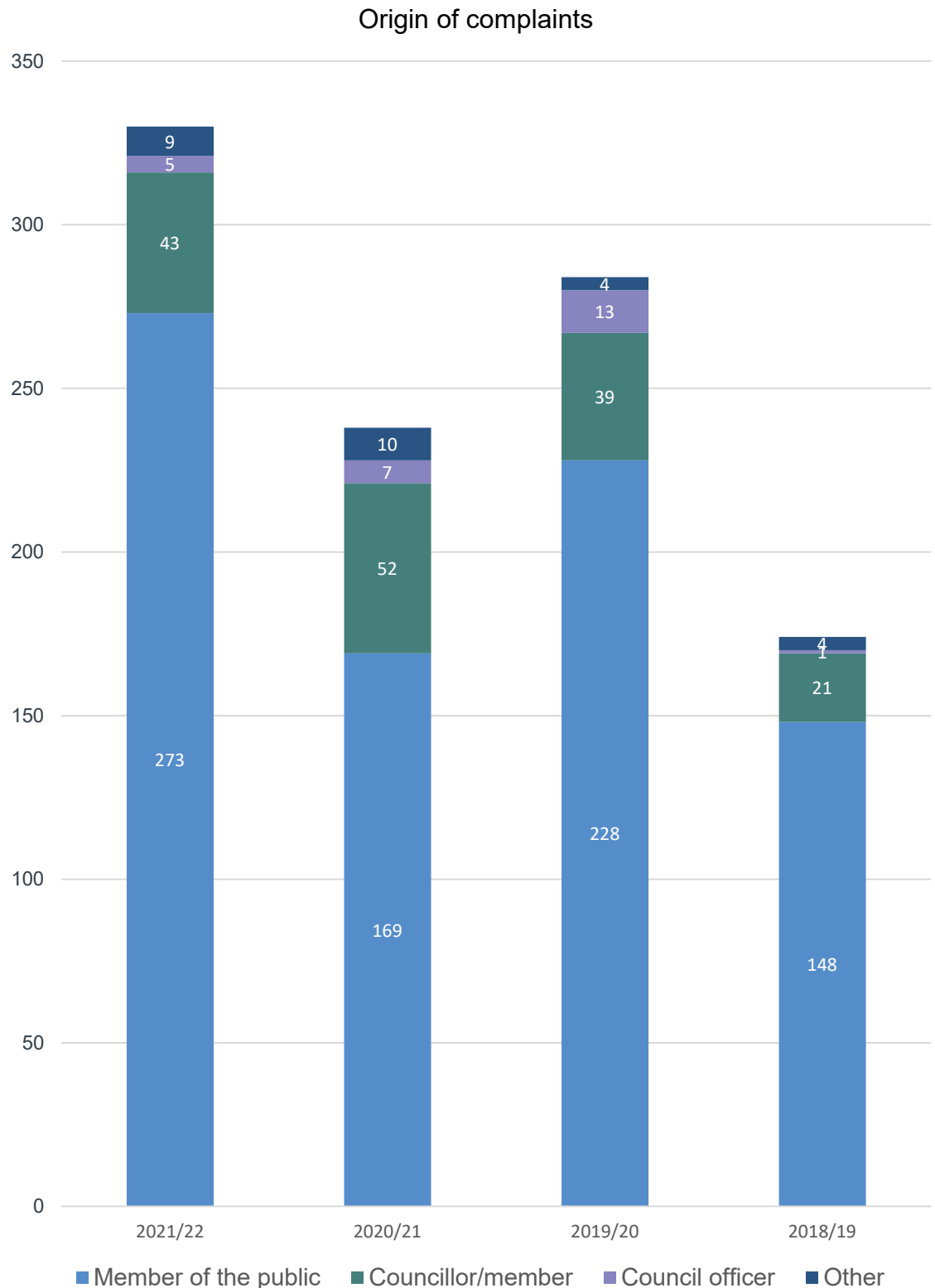
3. Background

- 3.1 The annual report indicated that in April 2021 Ian Bruce took over as Acting Ethical Standards Commissioner as the Commissioner took an extended period of leave. The Commissioner then resigned with effect from 30 April 2022. The annual report advises of the significant activity during a particularly challenging period due to staff shortages and restructure.
- 3.2 Through 2021/22, the public appointments section faced significant challenges with resourcing due to the Public Appointments Manager fulfilling the role of Acting Commissioner and the Public Appointments Officer acting up as Public Appointments Manager. It proved difficult to source additional resource in the team to support this aspect of the office's work and this led to some activities not being completed.
- 3.3 It was noted that the volume of complaints received about councillors and board members continues to be very high. The number of active complaints and complaints received this year are higher than in the two preceding financial years.
- 3.4 The report advised that the number of complaints completed is lower in comparison and is also reflected in the high number of complaints open as at 31 March 2022 compared to preceding financial years. This backlog is attributable to significant staff vacancies and turnover in 2020/21, which meant increasing loss of capacity to handle day to day workload and loss of corporate memory in relation to all aspects of complaints handling.
- 3.5 However, the report indicated that the Commission is working with the Scottish Government to produce positive change and received an unprecedented number of reports of good practice and were able to publish a revised Code of Practice which came into effect in October 2022 prior to their year-end. It was noted that in 2022/23 they would be focusing on producing guidance on application of the Code and training for everyone involved in its implementation.

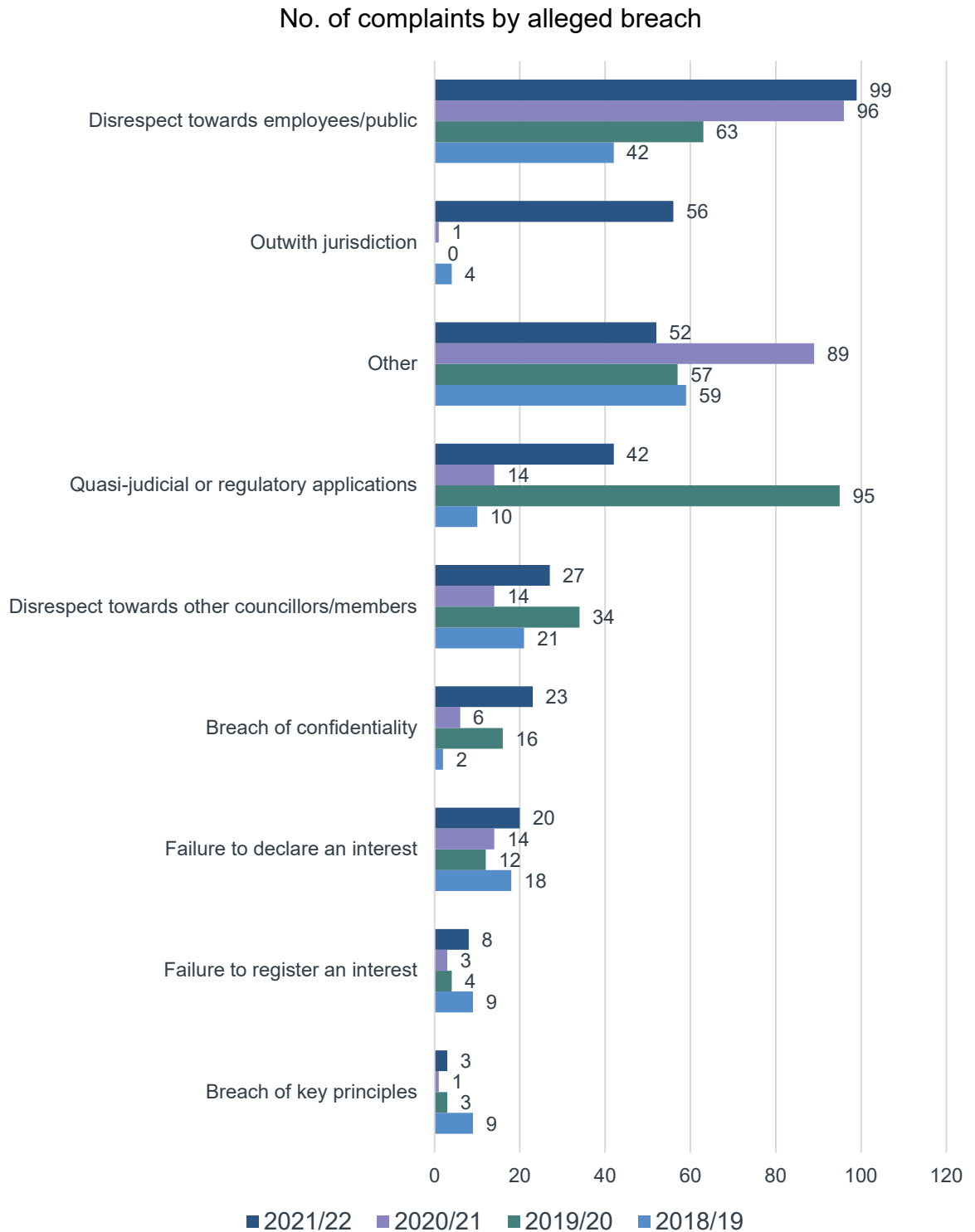
4 Complaints About Conduct of Councillors

- 4.1 The Commission advised that the staff shortage meant that a backlog of complaints persisted throughout 2021/22, and this remains an ongoing issue. In the interim, the Standards Team continue to keep stakeholders, complainers and respondents informed about the progress and status of complaints and invite contact if any queries arise.

- 4.2 The report advised that nationally the Commission experienced an increase in the number of complaints received. The largest category of complaints related to disrespect toward employees/public (99).
- 4.3 Nationally, during 2021/22 the Commissioner received a total of 330 complaints, compared with 238 in 2020/21. Complaints originated from: Members of the Public (273); Councillors (43); Council Officer (5) and Others(9.)



- 4.4 The categories of complaints received, and the number of complaints received for 2021/22 are indicated below and are compared with the figures for the previous years.



- 4.5 Nationally a total of 26 cases (75 complaints) progressed to full investigation and were reported on and finalised during the year, with 6 being breach reports (regarding 5 complaints) which were heard by the Standards Commission, and 21 being reported on as non-breach (regarding 69 complaints).

4.6 Outcome of the Complaints

	2021/22				2020/21			
	Complaints		Cases		Complaints		Cases	
Full investigation	75	36%	26	30%	49	18%	24	15%
Breach	6	3%	5	6%	39	14%	17	11%
No breach	69	33%	21	24%	10	4%	7	4%
Initial assessment	125	60%	56	63%	227	82%	132	84%
Withdrawn	8	4%	6	7%	1	-	1	1%
Totals	208		88		277		157	

4.7 Information has been received separately from the Commissioner that, during the period covered by the report, three complaints were received relating to Renfrewshire Council compared with five in 2020/21 and five in 2019/20.

4.8 All three complaints received relating to Renfrewshire Council in 2021/22 related to disrespect to the public/council officers.

4.9 One of the complaints was dismissed at the admissibility stage and did not progress to investigation. One of the complaints progressed to investigation where the Commissioner found the Councillor had not breached the Code of Conduct. The third is still under an open investigation.

4.10 Hearings

Under current Directions, the Commissioner reports the outcome of all investigations to the Standards Commission for Scotland (SCS). They may hold a hearing, direct the Commissioner to conduct further investigation or do neither. The following table provides further information about two hearings held during 2021/22 which relate to Renfrewshire Council. If the SCS concludes at a hearing that a breach of the Code has occurred, they must impose a sanction. Nationally, a further 17 reports where the Commissioner found there was no breach were submitted to the SCS. The SCS required further investigation in two instances and no further action in the remaining 15 cases.

Complaint number	Council / Public Body	Nature of Complaint	ESC Decision	Hearing date	Hearing decision	Sanction imposed
Report submitted in 2020/21; hearing held in 2021/22						
LA/R/3262 ¹	Renfrewshire Council	Disrespect towards other Councillors	Breach	03/05/2021	Breach	Disqualification
LA/R/2257 ¹	Renfrewshire Council	Disrespect towards other Councillors	Breach	03/05/2021	Breach	Disqualification

5 Code of Conduct

- 5.1 At the Council meeting held on 16 December 2021, a report was submitted relative to the revised Councillors' Code of Conduct which came into force on 7 December 2021.
- 5.2 The purpose for the review was to bring the Code up to date, to make the Code easier to understand and to take into account developments in society such as the increased use of social media. The Code was also strengthened to reinforce the importance of behaving in a respectful manner and to make it clear that bullying and harassment was completely unacceptable and should not be tolerated.
- 5.3 The Commissioner and the Standards Team have participated in the (SCS) Monitoring Officers' workshop, attended SCS events to discuss the new Councillor's Code of Conduct and the new Model Code, assisted the Scottish Government and SCS with drafting the Codes and the SCS with its guidance and co-presented with the SCS at Scottish Government new board member induction events. The Acting Commissioner and the Senior Investigating Officer engaged with the SCS Members at bi-annual meetings, and the Acting Commissioner has met with representatives from COSLA, SOLAR and SOLACE to consult them on his Strategic Plan and to ensure that our ongoing engagement with them is meaningful and constructive.
- 5.4 The Council's Head of Corporate Governance is available for members should they wish to seek advice on the Code of Conduct generally and specifically in relation to the registration and declaration of interests.
- 5.5 During the year April 2021 to March 2022 the Council, as part of its programme of events and development opportunities for Councillors provided 2 briefings for Councillors in relation to the Code of Conduct as follows:-
- Code of Conduct for Councillors - Standards Commission – 22 September 2021
 - Code of Conduct – Declarations of Interest – 1 March 2022

6 Public Appointments

- 6.1 The Commission regulates how Scottish Ministers make appointments to the boards of public bodies that are within their remit.
- 6.2 The Commission continue to provide oversight of appointment activity. With the appointments process being run online and with officials and panels becoming more used to this way of working, appointment activity has returned to a similar level as that in 2019/20. Reappointments also seem to be at a higher level than would normally be expected.
- 6.3 It was noted that a new and progressive Code of Practice had been published at the year-end which, if properly implemented, should see further positive changes in both the effectiveness and diversity of their boards.
- 6.4 Eighty-one allocations were made to potential new appointment rounds during the year in comparison with 58 in 2020/21.

7 Future Plans

- 7.1 For the financial year 2021/22, the outstanding recommendations that Commission had under consideration, setting aside the future plans, included:
- further engagement with the Scottish Parliamentary Corporate Body (SPCB) about external oversight of our governance
 - potentially reviewing the Commissioner's decisions in respect of complaints received and dealt with between August 2020 and her going on leave in March 2021
 - a comprehensive workforce planning exercise
 - a review of all outstanding policies and our website, alongside our publication scheme.
- 7.2 All of this work was scheduled in their rolling biennial business plan and they have advised that they will report on further progress on an ongoing basis.
- 7.3 Their engagement with the (SPCB) about external oversight of their governance has continued, although they consider that there should be direct engagement between the auditors and the SPCB on recommendations over which they have no real control.
- 7.4 The Commissioner advised that they conducted their full workforce planning exercise over April and May 2022, earlier than scheduled, as it was clear by that point in time that they had insufficient resources to fulfil their statutory functions. That remains the case and it is having an adverse impact on members of the public who bring complaints to them in the expectation that they will be dealt with timeously. It clearly also has an adverse impact for the same reason on councillors, board members and MSPs who are subject to such complaints. In addition, the situation is having an adverse impact on the dedicated staff of a relatively small office which lacks resilience and capacity.
- 7.5 A comprehensive workforce plan and business case for additional resources was submitted to the SPCB in May and the Commissioner was able to make the case to them in person in October. Their request for all of the resources that they had asked for was granted shortly thereafter. Recruitment to fill the additional posts will begin in 2022/23.
- 7.6 Finally, the Commissioner advised that his staff had faced unprecedented challenges and thanked them for their extraordinary efforts in order to repair an almost broken organisation and to restore trust in the ethical standards framework in Scotland. He advised that the Commission had worked very hard to implement all of the recommendations made by their auditors and had done so alongside acquitting their core statutory functions.

Implications of the Report

- 1 Financial - None**
- 2 HR & Organisational Development - None**
- 3 Community Planning – None**
- 4 Legal - None**
- 5 Property/Assets – None**
- 6 Information Technology - None**
- 7 Equality & Human Rights –** The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
- 8 Health & Safety – None**
- 9 Procurement - None**
- 10 Risk – None.**
- 11 Privacy Impact – None**
- 12 COSLA Implications – None**
- 13 Climate Risk - None**

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