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**To: Audit, Risk and Scrutiny Board**

**On: 22 January 2024**

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**Report by: Director of Finance & Resources**

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**Heading: Commissioner for Ethical Standards in Public Life in  
Scotland – Annual Report 2022/23**

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## **1 Summary**

- 1.1 The Commissioner for Ethical Standards in Public Life in Scotland has issued his 2022/23 annual report. The report is available on the Commissioner's website at [https://www.ethicalstandards.org.uk/sites/default/files/publications/ESC%20Annual%20Report%202022-2023\\_1.pdf](https://www.ethicalstandards.org.uk/sites/default/files/publications/ESC%20Annual%20Report%202022-2023_1.pdf)
- 1.2 The report provided 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.
- 1.2 The report advises of revised governance arrangements, reinstated transparency reporting and a new rolling biennial business covering all office functions.

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## **2 Recommendations**

- 2.1 That the 2022/23 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 11.2 of the report be noted.
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### 3 Background

3.1 The annual report indicated that from the start of the financial year until the end of February 2023, Ian Bruce continued to fulfil the role of Acting Ethical Standards Commissioner for Scotland, following his temporary appointment by the Scottish Parliamentary Corporate Body (SPCB) on 20 April 2021. The Commissioner was on an extended period of leave from early March 2021 and resigned with effect from 30 April 2022. Following a recommendation from the SPCB, Ian Bruce was appointed by the Scottish Parliament as Commissioner for a six-year period from 1 March 2023.

#### 3.2 Section 22 Report

The last Ethical Standards Commission (ESC) annual report made reference to a Section 22 Report laid by the Auditor General for Scotland into the work of their office. Audit Scotland laid a further section 22 report in January 2023 which followed up on their office's progress in the usual way. It reflected positively on the work done to rebuild the office and the services they provide, and to restore confidence in the ethical standards framework. However, it also made it clear that more work had to be done to embed the good practices adopted since the prior section 22 report was laid by the Auditor General.

3.3 Through the last financial year, the public appointments section faced significant challenges with staff resourcing which led to a large backlog. However, all appointments have now been made permanent and has provided the service with much needed capacity and support.

### 4 Complaint Volumes In 2022/23

4.1 Nationally, during 2022/23 the Commissioner received a total of 156 complaints, compared with 330 in 2021/22 and 238 in 2020/21.

4.2 The report advised that at the start of 2022/23, there were a large number of complaints and cases already open as a result of the backlog of cases that had built up in the previous year. Over the course of the year, the Standards Team completed a total of 127 cases, an increase of 44% from the previous year.

#### *Complaint volumes during 2022/23 and previous two years*

	2022/23	2021/22	2020/21
Already open at 1 April (beginning of financial year)	150 <sup>1</sup>	24	63
Received	156	330	238
<b>Active during year</b>	<b>306</b>	<b>354</b>	<b>301</b>
Completed	218	208	277
Cases remaining open at 31 March, (end of financial year)	88	146	24

1. There are minor differences in the carry forward totals from 2021/22 to 2022/23. This is due to a small number of cases either being re-opened or additional complaints being added to existing cases during the 2022/23 financial year.

### Case Volumes during 2022/23 and previous years

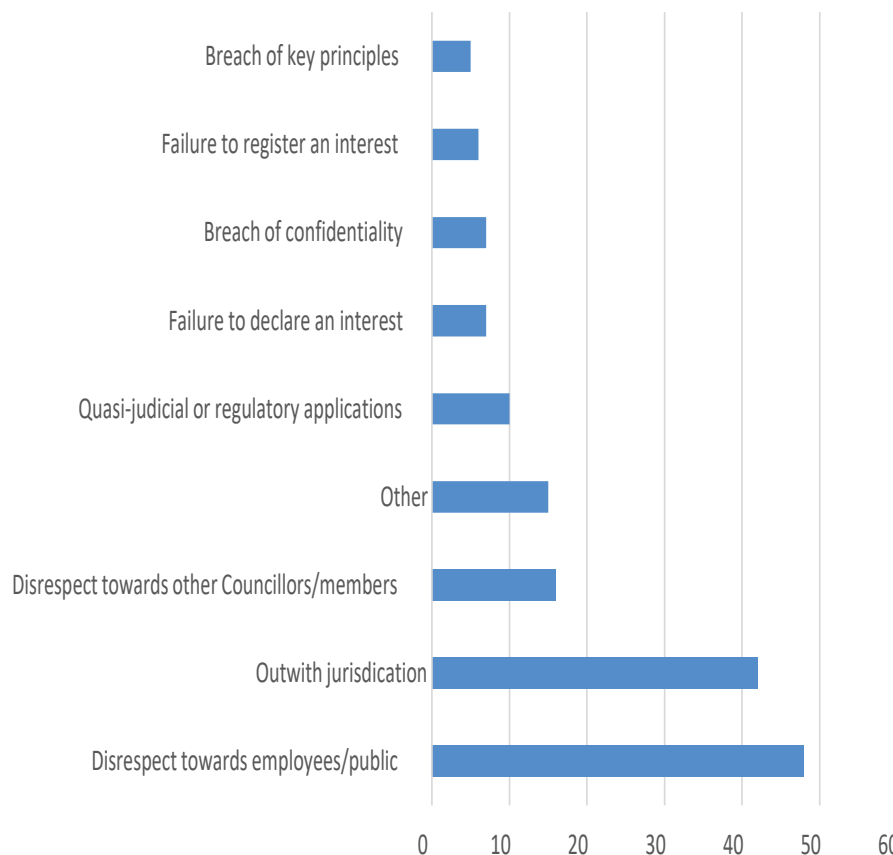
	2022/23	2021/22	2020/21
Already open at 1 April (beginning of financial year)	86 <sup>1</sup>	8	35
Received	109	164	130
<b>Active during year</b>	<b>195</b>	<b>172</b>	<b>165</b>
Completed	127	88	157
Cases remaining open at 31 March, (end of financial year)	68	84	8

1. There are minor differences in the carry forward totals from 2021/22 to 2022/23. This is due to a small number of cases either being re-opened or additional complaints being added to existing cases during the 2022/23 financial year.

## 5 Categories of Complaints Received

5.1 The categories of complaints received, and the number of complaints received for 2022/23 are indicated below with disrespect towards employees and the public being the most common type of complaint received. This remains unchanged from previous years. Taking together cases in relation to disrespect towards both councillors/members, employees and the public accounted for 40% of the total complaints received during 2022/23.

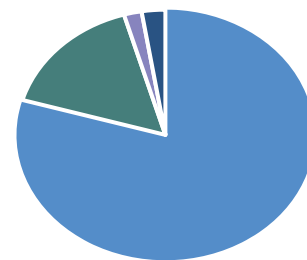
### Complaints Received During 2022/23 (Total 156)



NOTE: Outwith jurisdiction complaints are complaints which are about conduct which, following assessment, does not fall within the remit of the Code. They are distinct from complaints which we cannot accept as they are outwith the jurisdiction of the Commissioner's office, such as a complaint about a Councillor in England

## 6 Origin of Complaints

- 6.1 The pie chart provides details of who made complaints to the Commission in 2022/23. Complaints from members of the public accounted for almost 80% of the total number of complaints received during 2022/23 and this figure is similar to previous years.



■ Member of the public ■ Councillor/member ■ Council officer ■ Other

## 7 Complaints About Conduct of Councillors

- 7.1 The Commission saw a reduction in the number of new complaints received during the year and this allowed them to dedicate more staff time to reducing their backlog. The report advised that the backlog had significantly reduced such that it was now taking up to four months, instead of the previous wait of 11 months, for an initial complaint to be assessed. In the interests of transparency, their website now has a banner and a supporting page which sets out waiting times and investigation times for all complaints.
- 7.2 The report noted that when several complaints were received about the same or closely related issues, they combined these complaints together and assessed and/or investigated them as a single case.
- 7.3 The Standards Commission for Scotland (SCS) Direction of March 2021 requires the Commission to investigate all complaints received about councillors or members, except in fairly narrow circumstances. In essence, any conduct which has happened in the 12 months prior to the complaint being made and where, on the face of it, a breach of the applicable code has taken place must be investigated. This Direction was renewed for a five-month period in March 2023. The SCS agreed not to renew the Direction beyond August 2023 following agreement from the Ethical Standards Commissioner that the Commissioner would include wording from it on the face of the ESC Investigations Manual. The Commission continues to investigate all complaints that could, on their face, represent a breach of the Code. This has increased the number of complaints being investigated since the start of 2021/22.

## 8 Outcome of Complaints Nationally

- 8.1 Nationally a total of 45 cases (79 complaints) progressed to full investigation and were reported on and finalised during the year, with 17 being breach reports (regarding 9 cases) which were heard by the Standards Commission, and 62 being reported on as non-breach (regarding 36 cases).

### *Outcome from complaints completed in 2022/23 and previous two years*

	2022/23		2021/22		2020/21	
Initial Assessment	121	56%	125	60%	227	82%
Full Investigation	79	36%	75	36%	49	18%
<i>Breach</i>	17	8%	6	3%	39	14%
<i>No Breach</i>	62	28%	69	33%	10	4%
Withdrawn	18	8%	8	4%	1	0%
<b>Total completed</b>	<b>218</b>		<b>208</b>		<b>277</b>	

### *Outcome from cases completed in 2022/23 and previous two years*

	2022/23		2021/22		2020/21	
Initial Assessment	69	54%	56	64%	132	84%
Full Investigation	45	36%	26	29%	24	15%
<i>Breach</i>	9	7%	5	6%	17	11%
<i>No Breach</i>	36	28%	21	23%	7	4%
Withdrawn	13	10%	6	7%	1	1%
<b>Total completed</b>	<b>127</b>		<b>88</b>		<b>157</b>	

## 9 Outcome of Complaints relating to Renfrewshire Council

- 9.1 Information has been received separately from the Commissioner that, during the period covered by the report, five complaints were received regarding Renfrewshire Council in 2022/2023. Two of these related to disrespect towards the public/council employees, one related to disrespect towards other councillors and two other complaints related to general disrespect and a conflict of interest.
- 9.2 Two of the complaints were dismissed at the admissibility stage and did not progress to investigation. Two of the complaints progressed to investigation where the Commissioner found the Councillor had not breached the Code of Conduct. The fifth is still under an open investigation.

## 10 Hearings

- 10.1 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. If the SCS concludes at a hearing that a breach of the Code has occurred, they must impose a sanction.
- 10.2 Nationally, 36 reports where the Commissioner found there was no breach were submitted to the SCS. There were a further 9 reports which were referred to the SCS where the Commissioner found that a breach had occurred. Renfrewshire Council were not involved in any reports referred to SCS.

## 11 **Code of Conduct**

- 11.1 On 16 August 2023, as part of the programme of events and development opportunities for Councillors, the Head of Corporate Governance provided an annual update to Members on the Code of Conduct/Standards Commission.
- 11.2 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.

## 12 **Public Appointments**

- 12.1 The Commission regulates how Scottish Ministers make appointments to the boards of public bodies that are within their remit.
- 12.2 The ESC report recognised that further improvements could be made in order to achieve effective boards that were reflective of the communities that they served. The revised Code of Practice for Ministerial Appointments came into effect October 2022 and was making a difference to practices.
- 12.3 Training was now obligatory for selection panel chairs and for independent panel members and the ESC were happy to assist the Scottish Government in the design of that training programme and it had been received well. The respective roles and responsibilities of everyone engaged in the appointments process was clearer, with considerably more responsibility vested in the panel chair, who fulfils that role on behalf of the appointing minister. There were signs that the new process was reducing bureaucracy, which was one of the intentions, but also that panel chairs were taking considerably more ownership of the appointment process. They were required to report on reasons for the success or failure of the appointment rounds for which they have responsibility.

## 13 **Future Plans**

- 13.1 Having reviewed and completely revised their governance arrangements during the course of the prior year, the ESC are now in a period of relative stability and are operating to a revised strategic plan for 2021-24 and a new rolling biennial business plan covering all office functions.
- 13.2 The business plan continues to demonstrate progress against each of the external and internal auditors' recommendations and they have drafted a new strategic plan to run from 2024-28.

## **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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