



Office of the Commissioner for Public Appointments in Scotland

Methodology for Investigations and Examinations of Public Appointments Processes and Complaints about these and / or OCPAS itself.

This document sets out the methodology, used by the Office of the Commissioner for Public Appointments in Scotland, for a complaint investigation or an examination of the methods and practices employed by the Scottish Ministers in the making of appointments, and recommendations for appointment to the relevant public bodies.

The investigation or examination by the Commissioner's office follows a set pattern. If a complaint or concern is raised regarding a public appointment an investigation will follow. The purpose of the complaint investigation or examination is to obtain sufficient evidence to determine whether or not there is reasonable cause to believe that a breach of the Code has occurred or is about to occur. OCPAS will review whether the practices required by the Code have not been followed. OCPAS will also review an action or set of actions, relevant to the complaint or examination, against the principles of the Code of Practice for Ministerial Appointments to Public Bodies in Scotland (the Code) to evaluate whether these principles have been upheld.

It is always for the Commissioner to determine how the Code is to be interpreted.

OCPAS will collect and analyse all available factual evidence that is relevant to the complainant's allegation(s), as well as to the respondent's defence(s). The same process is carried out if the Commissioner wishes to examine the methods used in a public appointments process.

Depending on the nature and complexity of the complaint, the Commissioner may seek specialist advice or comment from relevant experts.

All matters will be examined and decided upon giving consideration to the merits of each individual case. Factors taken into account may include the frequency and similarity of particular breaches, any mitigating circumstances, information available to the Commissioner and any other relevant matter.

All information will be considered strictly within the context of the investigation and will not be used by OCPAS for any other purpose except for the production of statistical information.

A final determination will be made by the Commissioner when she is satisfied that sufficient material from all relevant sources has been obtained and examined. There is no right of appeal.

After a final determination is made, the Commissioner will also determine the next course of action. This may be a report to the Minister and / or directorate concerned or a report to Parliament if the breach has been identified as a material one.

A typical investigation will follow these steps:



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1. The Commissioner will write to the relevant Head of Directorate and / or Minister outlining her concerns regarding the appointment process and indicating that the concerns were sufficient to merit further investigation. For internal complaints, the relevant staff member or sub-contractor will be advised that they are the subject of an investigation.
2. The Commissioner will arrange for a member of the OCPAS team to conduct initial interviews with the party or parties subject to the examination or investigation as well as with other parties that may hold information pertinent to the examination or investigation. Time permitting, a set of preliminary questions will be passed to the interviewee/s to allow them time to prepare their response. Interviews will normally be taped and, if so, the party or parties to be interviewed will be advised that this is the case.
3. The same parties will be required to produce a copy of the audit trail relevant to their part in the appointment process or issue under examination or investigation and provide this to the Commissioner. Electronic or original versions are to be provided, for example if an e-mail formed part of the audit trail the Commissioner will require the original e-mail to be e-mailed to her office as opposed to a hard copy being printed out.
4. The Office of the Commissioner will establish a case file. This will contain all of the information gathered pertinent to the investigation or examination.
5. The Commissioner will review the interviewee/s' answers to the questions and the audit trail (the case file). If the Commissioner has remaining concerns regarding the appointment process or issue or feels that there is insufficient information available to make a determination, the Commissioner will request additional documentary information to be provided and may also confirm a requirement for further interviews. This will usually be to afford the relevant parties an opportunity to address any continuing concerns.
6. Once this process is complete, the Commissioner will provide a report for each party, in the form of a minute, on the discussions that took place and offer each party an opportunity to comment on the report. Any disagreement as to the content of the report will be checked against the tape of the conversation and, if merited, will be altered. The Commissioner's decision as to the contents of these minutes is final although if there is a continuing disagreement the comments pertinent to that disagreement will be lodged along with the Commissioner's approved report in the case file.
7. Based on the sum of the information in the case file, the provisions of the Public Appointments and Public Bodies etc (Scotland) Act 2003 (the Act), and the Code, the Commissioner will produce a final report giving her decision. The report may be for the relevant Minister and / or sponsor directorate only and may include recommendations as well as the Commissioner's decision. If it is the Commissioner's decision that a material breach of the Code has occurred, the procedure to be followed will be as set



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out in section 2 of the Act. Complaints that are upheld regarding the conduct of OCPAS employees or sub-contractors will lead to invocation of the OCPAS disciplinary and grievance procedures or to a review of contract.

The management of the case file and any other records held by OCPAS are governed by the requirements of the Freedom of Information (Scotland) Act 2002, the Data Protection Act 1998 and in accordance with OCPAS Freedom of Information Publication Scheme.