



Office of the Commissioner for Public Appointments in Scotland

COMPLAINTS GUIDANCE

General

The Commissioner for Public Appointments has a duty under the legislation which founded her Office – the Public Appointments and Public Bodies etc (Scotland) Act 2003 – to promote compliance with the Code of Practice for Ministerial Appointments to Public Bodies. Scottish Government Directorates are required to follow the Commissioner's Code of Practice to ensure that appointments are made on merit, after fair and open competition. The Act may be seen at

www.opsi.gov.uk/legislation/scotland/acts2003/20030004.htm

and the Code of Practice at

www.publicappointments.org/publications/5/code-of-practice

Prior to raising a complaint with the Commissioner you must give the relevant Directorate of the Scottish Government the opportunity to respond to your concerns. If you are dissatisfied with the Directorate's response you may then ask the Commissioner to consider an investigation.

The Commissioner will limit the investigation of a complaint to an appointment made no more than one year previously.

Subject to this time limit, the Commissioner will investigate all complaints relating to appointment rounds within her remit which complainants believe have not been resolved following investigation by the relevant Directorate. A list of those bodies the Commissioner regulates may be seen at

www.publicappointments.org/regulating-appointments/regulated-bodies/

Following completion of the investigation of a complaint, the Commissioner will not enter into protracted discussion with you about the outcome of the investigation and will not reopen the investigation unless relevant new evidence comes to light.

The Commissioner has no remit to investigate complaints relating to non-selection or non-reappointment unless it appears that the selection process has breached the Code.

Commissioner's Action

On receipt of a complaint an acknowledgement letter will be sent to you by the Commissioner's Office within 3 working days.

Within 20 working days of receipt of a complaint the Commissioner will either



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- let you know she is not going to take action and explain why, or
- send a statement of complaint to you which will
 - set out the issues that fall within the Commissioner's remit and make it clear that these are the only features of the complaint that will be dealt with
 - make clear the extent of the Commissioner's remedial powers in the event that the complaint is upheld
 - seek your permission for the release of copies of correspondence between yourself and the relevant Directorate.

On receipt of your permission the Commissioner will write to the Head of the relevant Scottish Government Directorate:

- setting out the complaint
- listing the issues to which the Directorate is expected to respond
- setting a deadline for that response (usually 20 working days). The Directorate will be asked to notify OCPAS immediately if it feels that this deadline cannot be met.

If it appears to the Commissioner that the Code has not been complied with in a material regard, the Commissioner will also inform the Scottish Government Permanent Secretary of the investigation she is undertaking.

On receipt of the information requested from the Directorate the Commissioner will undertake her investigation. If the investigation takes more than 20 working days to complete the Commissioner will write to you to explain why and keep you updated at intervals of not more than 20 working days.

The Commissioner's findings will be communicated both to you and the Scottish Government in the form of individual letters setting out:

- the key conclusions and the reasons behind them
- any action that the Commissioner intends to take or recommends the Directorate should take in the light of the investigations.



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Ongoing Complaints

It is possible that you may not be content with the outcome and/or the way that the investigation was handled. These two areas are entirely separate and, accordingly, will be treated differently:

- the Commissioner will not enter into protracted discussion with you about the outcome of the investigation, and
- will not reopen the investigation unless relevant new evidence comes to light.

The Commissioner will clarify points raised in relation to her reply, and respond to questions raised about the way the complaint has been handled.

If you remain dissatisfied, a final letter will be sent to you setting out the course of action open thereafter. It will also be made clear that this recourse only applies to the way in which a complaint was handled, or the service received from the Commissioner and her Office, and not to the outcome of the investigation.

The work of the Commissioner's Office is overseen by the Scottish Public Services Ombudsman.

Complex Complaints

The Commissioner recognises that some complaints are particularly complex and/or require specialist skills. In such cases, the Commissioner may choose to bring in her external auditors to investigate a case on her behalf.

The Commissioner will produce tightly drafted terms of reference prior to the start of such an investigation. These will:

- set out the complaint
- set out the key issues to be investigated
- describe the work to be performed
- outline a timetable for the investigation and reporting.

The terms of reference will be for internal use only.

The Commissioner will also draw up a statement of complaint prior to the start of the investigation, based on the terms of reference and outlining the issues. This will be sent to both the complainant and the Scottish Government.



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The auditors' report is for the Commissioner only. The Commissioner's formal response to the complainant will draw heavily on the auditors' report. It will be in the form of a letter setting out the key conclusions of the investigation and any subsequent action that the Commissioner intends to take. This will include the Commissioner's recommendations to the Directorate on the action it should take.

The Commissioner will write to the Government setting out the findings and the reasons behind them. It will draw extensively on the conclusions in the auditors' report.

You may contact the Commissioner, Karen Carlton, at the address below.

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