



Scottish Parliamentary Standards Commissioner Act 2002

2002 asp 16

Investigation of complaints

5 General provisions relating to an investigation into a complaint

- (1) There are two possible stages to any investigation by the Commissioner into a complaint, namely—
 - (a) Stage 1 which consists of investigating and determining whether a complaint is admissible; and
 - (b) if the complaint is admissible, Stage 2 which consists of further investigating the complaint and reporting upon it to the Parliament,and any reference in this Act to “the stage of an investigation” or to “Stage 1” or “Stage 2” shall be construed accordingly.
- (2) Each stage of an investigation into a complaint shall be conducted in private.
- (3) The Commissioner may at any time make a report to the Parliament as to the progress of an investigation into a complaint.
- (4) Subject to the provisions of this Act, it is for the Commissioner to decide when and how to carry out any investigation at each stage.

6 Stage 1: Admissibility of complaints

- (1) At Stage 1, the Commissioner shall investigate and determine whether a complaint is admissible.
- (2) A complaint is admissible if it appears to the Commissioner that the following three tests are satisfied, namely—
 - (a) that the complaint is relevant;
 - (b) that the complaint meets all the requirements specified in subsection (5) (“the specified requirements”) or that the Parliament has, as under section 7(7)(b), directed the Commissioner to treat the complaint as if it had met all of those requirements; and
 - (c) that the complaint warrants further investigation.

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- (3) The three tests mentioned in paragraphs (a), (b) and (c) of subsection (2) are referred to as the first, second and third tests respectively.
- (4) For the purposes of the first test, a complaint is relevant if—
- (a) it is about the conduct of a member of the Parliament;
 - (b) it is not an excluded complaint or, if it is, that the Commissioner has been directed under section 12 to investigate it; and
 - (c) it appears at first sight that, if all or part of the conduct complained about is established to have been committed by that member, it might amount to a breach of a relevant provision or provisions identified by the Commissioner.
- (5) For the purposes of the second test, the specified requirements are that the complaint—
- (a) is made in writing to the Commissioner;
 - (b) is made by an individual person^{F1}... and states that person's name and address;
 - (c) names the member of the Parliament concerned; [^{F2}and]
 - (d) sets out the facts relevant to the conduct complained about and is accompanied by any supporting evidence which the complainer wishes to submit;^{F3}...
 - ^{F3}(e)
- (6) For the purposes of the third test, a complaint warrants further investigation if it appears after an initial investigation that the evidence is sufficient to suggest that the conduct complained about may have taken place.

Textual Amendments

- F1** Words in s. 6(5)(b) repealed (21.10.2021) by [Scottish Parliamentary Standards \(Sexual Harassment and Complaints Process\) Act 2021 \(asp 12\)](#), ss. 3(2), 4(2) (with s. 4(3))
- F2** Word in s. 6(5) inserted (21.10.2021) by [Scottish Parliamentary Standards \(Sexual Harassment and Complaints Process\) Act 2021 \(asp 12\)](#), ss. 2(2)(a), 4(2) (with s. 4(3))
- F3** S. 6(5)(e) and word repealed (21.10.2021) by [Scottish Parliamentary Standards \(Sexual Harassment and Complaints Process\) Act 2021 \(asp 12\)](#), ss. 2(2)(b), 4(2) (with s. 4(3))

7 Procedures at Stage 1

- (1) When the Commissioner receives a complaint about the conduct of a member of the Parliament, the Commissioner shall—
- (a) notify that member that a complaint has been made;
 - (b) inform that member of the nature of the complaint; and
 - (c) except where the Commissioner considers that it would be inappropriate to do so, inform that member of the name of the complainer.
- (2) If the Commissioner considers that the complaint is admissible, the Commissioner shall proceed to Stage 2 of the investigation into the complaint and shall—
- (a) make a report to the Parliament informing it of that fact and of the relevant provision or provisions identified by the Commissioner for the purposes of the first test; and
 - (b) inform the complainer and the member of the Parliament concerned accordingly.
- (3) If the Commissioner considers that the complaint is inadmissible for failing to satisfy the first or the third test, the Commissioner shall dismiss the complaint and shall inform

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the complainer and the member of the Parliament concerned accordingly, together with the reasons for that view.

- (4) Subject to subsection (6), where the Commissioner considers that a complaint satisfies the first test but fails to meet one or more of the specified requirements, the Commissioner shall not dismiss the complaint as inadmissible for failing to satisfy the second test without making a report upon the matter to the Parliament and receiving a direction under subsection (7)(a).
- (5) The report under subsection (4) shall set out—
 - (a) the reasons as to why the Commissioner considers that the complaint fails to meet one or more of the specified requirements;
 - (b) the reasons (if known) for that failure;
 - (c) any other matters which the Commissioner considers relevant; and
 - (d) the recommendation of the Commissioner as to whether, having regard to all the circumstances of the case, the complaint should be dismissed as inadmissible for failing to satisfy the second test or should be treated as if it had met all of those requirements.
- (6) Except in the case of a complaint falling within such class or classes of case as may be specified in any direction by the Parliament under this section, the Commissioner shall, before making the report to the Parliament under subsection (4), investigate whether the complaint satisfies the third test and, if it does, the report shall contain a statement to that effect; but, if the Commissioner considers that the complaint fails to satisfy that test, the Commissioner shall dismiss the complaint accordingly and no report requires to be made under that subsection.
- (7) After receiving a report under subsection (4), the Parliament shall give the Commissioner a direction under this section either—
 - (a) to dismiss the complaint as inadmissible for failing to satisfy the second test; or
 - (b) to treat the complaint as if it had met all of the specified requirements.
- (8) Where the Commissioner is directed by the Parliament to dismiss the complaint under subsection (7)(a), the Commissioner shall dismiss the complaint and shall inform the complainer and the member of the Parliament concerned accordingly.
- (9) In any case where the member of the Parliament concerned has not been named in the complaint or the complainer is anonymous, subsections (1), (2), (3) and (8) shall apply only to the extent that they are capable of applying.
- (10) The Commissioner may make a report to the Parliament informing it of any complaint which the Commissioner has dismissed as being inadmissible and of the reasons for the dismissal.
- (11) If the Commissioner has not completed the investigation and determined the admissibility of a complaint within two months of the complaint being received, the Commissioner shall, as soon as possible thereafter, make a report to the Parliament upon the progress of any investigation into the complaint at Stage 1.

8 Stage 2: Investigation of an admissible complaint

- (1) At Stage 2, the Commissioner shall investigate an admissible complaint with a view to—

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- (a) making findings of fact in relation to whether the member of the Parliament concerned (whether or not named in the complaint) has committed the conduct complained about; and
 - (b) reaching a conclusion as to whether that member has, as a result of that conduct, breached the relevant provision or provisions identified by the Commissioner for the purposes of the first test.
- (2) The Commissioner may make a finding of fact if satisfied on a balance of probabilities that the fact is established.
- (3) If the Commissioner has not completed the investigation under this section within the period of six months beginning with the date on which the Commissioner found that complaint to be admissible, the Commissioner shall, as soon as possible thereafter, make a report to the Parliament upon the progress of any such investigation.

9 Report

- (1) At the conclusion of an investigation into a complaint at Stage 2, the Commissioner shall make a report to the Parliament upon the outcome of the investigation.
- (2) The report shall include—
 - (a) details of the complaint;
 - (b) details of the investigation carried out by the Commissioner;
 - (c) the facts found by the Commissioner in relation to whether the member of the Parliament concerned (whether or not named in the complaint) has committed the conduct complained about;
 - (d) the conclusion reached by the Commissioner as to whether that member has, as a result of that conduct, breached the relevant provision or provisions identified by the Commissioner for the purposes of the first test and the reasons for that view,but shall not express any view upon what sanction would be appropriate for any breach.
- (3) No report concluding that a member of the Parliament, who is named in the report, has breached a relevant provision shall be made to the Parliament unless the member concerned has been given a copy of the draft report and an opportunity to make representations on the alleged breach and on the draft report; and there shall be annexed to the report made to the Parliament any representations made by that member which are not given effect to in that report.

10 Action on receipt of a report

- (1) The Parliament is not bound by the facts found, or the conclusions reached, by the Commissioner in a report made under section 9.
- (2) The Parliament may direct the Commissioner to carry out such further investigations as may be specified in the direction and to report on the outcome of these investigations to it.
- (3) Subject to any such direction, the provisions of this Act and of any other direction given under this Act shall apply, subject to any necessary modifications, in relation to any investigation and report by virtue of subsection (2) as they apply in relation to an investigation and report into a complaint made to the Commissioner.

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11 Withdrawal of a complaint

- (1) At any time after a complaint has been made to the Commissioner and before a report is made to the Parliament under section 9, the complaint may be withdrawn by the complainer by notice in writing to the Commissioner^{F4}....
- (2) When a complaint has been withdrawn as mentioned in subsection (1) during Stage 1, the Commissioner shall—
 - (a) cease to investigate that complaint; and
 - (b) inform the member of the Parliament concerned that the complaint has been withdrawn, that the investigation into the complaint has ceased and of the reasons given by the complainer for withdrawing the complaint.
- (3) When a complaint has been withdrawn as mentioned in subsection (1) during Stage 2, the Commissioner shall—
 - (a) inform the member of the Parliament concerned that the complaint has been withdrawn and of the reasons given by the complainer for withdrawing the complaint;
 - (b) invite that member to give the Commissioner any views upon whether the investigation should nevertheless continue; and
 - (c) after taking into account any relevant information, including any reasons given by the complainer for withdrawing the complaint and any views expressed by that member, determine whether to recommend to the Parliament that the investigation into the complaint should nevertheless continue.
- (4) If the Commissioner determines not to make any such recommendation as is mentioned in subsection (3), the Commissioner shall—
 - (a) cease to investigate that complaint;
 - (b) inform the complainer and the member of the Parliament concerned the investigation into the complaint has ceased; and
 - (c) report to the Parliament that the complaint has been withdrawn, that the investigation into the complaint has ceased and the reasons given by the complainer for withdrawing the complaint.
- (5) If the Commissioner determines to make any such recommendation as is mentioned in subsection (3), the Commissioner shall report to the Parliament—
 - (a) that the complaint has been withdrawn, the reasons given by the complainer for withdrawing the complaint and the views, if any, expressed by the member concerned as mentioned in subsection (3)(b); and
 - (b) that the Commissioner recommends that the complaint should nevertheless continue to be investigated, together with the reasons for that view.
- (6) After receiving a report under subsection (5), the Parliament shall give the Commissioner a direction under this section either to continue the investigation into the complaint or to cease that investigation; and the Commissioner shall comply with that direction and inform the member of the Parliament concerned and the complainer accordingly.
- (7) Where the Commissioner is required under this section to inform the member of the Parliament concerned of, or to report to the Parliament, the reasons given by the complainer for withdrawing the complaint, the Commissioner may do so by providing a summary of those reasons.

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- (8) In any case where the member of the Parliament concerned has not been named in the complaint or the complainer has not given any reasons for withdrawing the complaint, subsections (2) to (7) shall apply only to the extent that they are capable of applying.

Textual Amendments

- F4** Words in s. 11(1) repealed (21.10.2021) by [Scottish Parliamentary Standards \(Sexual Harassment and Complaints Process\) Act 2021 \(asp 12\)](#), ss. 3(3), 4(2) (with s. 4(3))

12 Investigation into excluded complaints

- (1) The Parliament may direct the Commissioner to undertake an investigation into any excluded complaint specified in the direction.
- (2) Any such direction may direct the Commissioner to take into account any information in connection with the excluded complaint which is specified in the direction.
- (3) Any such direction may direct the Commissioner to treat an excluded complaint as being admissible and, if so, shall specify the relevant provision or provisions which is or are to be treated as having been identified by the Commissioner for the purposes of the first test.
- (4) Subject to any such direction, any excluded complaint which the Commissioner is directed to investigate shall be treated in the same way as any other complaint made to the Commissioner.
- (5) Subject to any such direction, the provisions of this Act and of any other direction given under this Act shall apply, subject to any necessary modifications, in relation to any investigation and report by virtue of this section as they apply in relation to a complaint made to the Commissioner.

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