



**Standards in Public Office Commission**  
**Coimisiún um Chaighdeán in Oifigí Poiblí**

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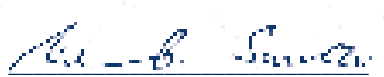
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# FOREWORD

## Foreword

In accordance with the provisions of section 27(2)(a) of the Ethics in Public Office Act 1995, I am pleased to furnish the Annual Report of the Standards in Public Office Commission for 2004 to the Minister for Finance.



Justice Matthew P. Smith  
Chairman  
Standards in Public Office Commission

June 2005

## Members



Justice Matthew P. Smith  
Chairman



Deirdre Lane  
Clerk of Seanad Éireann



Liam Kavanagh  
Former member of Dáil Éireann



John Purcell  
Comptroller and Auditor General



Kieran Coughlan  
Clerk of Dáil Éireann



Emily O'Reilly  
Ombudsman

# **INTRODUCTION BY THE CHAIRMAN**

## Introduction by the Chairman

The supervisory role of the Standards in Public Office Commission (Standards Commission) covers the Ethics in Public Office Acts 1995 and 2001 (Ethics Acts), the Electoral Act 1997, as amended, (Electoral Acts) and the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001. In what was its third full year of operation, the remit of the Standards Commission in the public service was expanded significantly in 2004. Also, very importantly, codes of conduct for the civil service and the local authority service were published. These developments are described more fully later in this Annual Report. As well as matters arising under the Ethics Acts, a number of events took place during the year which were relevant to the functions of the Standards Commission under the Electoral Acts. These were additional to its normal activities connected to that legislation and focused on the European Parliament election in June 2004 and the presidential election in October 2004. Further details are provided in Chapter 2 of the report.

The legislation which is supervised by the Standards Commission has now been in place for the best part of ten years. In my view, together with initiatives relating to freedom of information, it has had a hugely beneficial effect in terms of its impact. However, there is no room for complacency in what is an area of vital public importance. In that regard I was very interested in work being done by the Paris based think-tank, the Organisation for Economic Co-operation and Development (OECD). A particular comment in one of its recent reports was that *“Countries in the last decade made substantial efforts to develop institutions, systems and mechanisms for promoting integrity and preventing corruption in the public service. Growing demand for evidence of impact requires public institutions to shift their focus toward verifying the effectiveness of these efforts.”* The report went on to say that *“Governments are under growing pressure from civil society to show progress made in promoting integrity and preventing corruption.”* There is no doubt that Ireland is one of those countries where such pressure is still evident. Part of the response has been the setting up of a number of Tribunals of Enquiry dealing with matters which include planning and payments to politicians. I have commented previously on the valuable work being done by the Tribunals while, at the same time, also remarking on the downside which is the real potential for damage to the reputation of a country where past actions are being revealed and examined in a very public manner.

In my view, the time is now right to take a lead from the OECD by carrying out an assessment as to whether, and to what extent, the legislative and other developments which have taken place in the past decade have impacted on the behaviour of public representatives and public servants in general. As pointed out by the OECD, it is critically important that an exercise of this nature be firmly grounded. This requires ensuring that the purpose is clearly defined; that the subject matter is specific; that the assessment is well planned and organised, including the selection of the assessor; that the methodology is agreed; that the results are integrated into the policy cycle. The Standards Commission would at all times be happy to make available its experience and otherwise to assist and facilitate the process in whatever way it could, should it be decided to proceed with such an assessment.

An issue which arose again in 2004 is the apparent misunderstanding on the part of some employees and directors of public bodies covered by the Ethics Acts of the position in relation to meeting the annual disclosure and other requirements of that legislation. In most public bodies procedures are in place whereby certain steps must be taken in the event that a conflict of interests arises. There is no difficulty with this once it is clearly understood that strict compliance with the obligations set down in the Ethics Acts is an absolute requirement which is separate and distinct from any other action that might be taken. Based on enquiries received by the Standards Commission, it is a matter of concern that, in some public bodies, there appears to be a view that discharging internal disclosure obligations is sufficient and can be construed as meeting the statutory duties which are imposed by the Ethics Acts. The importance of public bodies engaging with the Ethics Acts is referred to later in this report.

In the Annual Reports of the Standards Commission for 2002 and 2003 I drew attention to Ireland's position on the Corruption Perception Index published by the body Transparency International. The Index ranks countries in terms of *“experts' perception of corruption”* in the country. In the 2003 Annual Report I noted that an improvement was recorded in that Ireland's ranking had moved from 23rd in 2002 to 18th in 2003 out of a total sample of 133 countries. In 2004, although its score remained the same, Ireland's ranking improved again, to 17th out of a total sample of 146 countries. The sources used

to measure “*experts’ perception of corruption*” in Ireland were Columbia University (USA), the Economist Intelligence Unit, the International Institute for Management Development, Market International Group, World Markets Research Centre and the World Economic Forum. The Corruption Perception Index is a very important instrument which has world-wide prominence and can affect decision making in areas such as inward investment. I fully appreciate and commend Transparency International’s efforts to raise awareness of issues of corruption on a global scale. A Chapter of the organisation has now been established in this country. I am hopeful that this development will help those of us who are interested in the subject to better understand where the outside experts see that the main threat of corruption lies, and what further steps need to be taken to deal with the matter. It would also be of great assistance if the national Chapter would use its good offices to elaborate on the methodology applied in constructing the Corruption Perception Index and, in particular, would set out clearly the criteria, including the content of questionnaires, used in eliciting information from experts in relation to this country and the measures, if any, undertaken to validate their perceptions.

Finally, as in previous years, I want to thank my fellow members of the Standards Commission who have applied themselves diligently to its work notwithstanding the already heavy burden on those who have other, demanding, full-time positions.

I also want to thank again the Commission Secretary, Brian Allen, and his dedicated and highly motivated staff who continued to deliver a quality service during the year. A significant part of the ongoing work associated with the ethics and electoral legislation is carried out by the Secretariat. Although managing a much increased workload, the Secretariat succeeds in discharging its duties both efficiently and effectively and in a manner which contributes greatly to the very good working relationships that exist between the Standards Commission and its broad spectrum of clients.



# CHAPTER 1

## Ethics Acts

During 2004, the Standards Commission continued its supervision of the Ethics in Public Office Act 1995 (the 1995 Act) and the Standards in Public Office Act 2001 (the 2001 Act), collectively known as the Ethics in Public Office Acts 1995 and 2001 (the Ethics Acts). Its work in this area is primarily concerned with providing guidelines and advice to clients, overseeing their disclosure of interests, administering the tax compliance obligations attaching to members of both Houses of the Oireachtas and senior public servants, publication of codes of conduct and, where necessary, investigating alleged contraventions of the Ethics Acts.

In this chapter of the report, the Standards Commission gives an account of its activities under the Ethics Acts in 2004 which included making arrangements for the publication of the *Civil Service Code of Standards and Behaviour* drawn up by the Minister for Finance.

The chapter also includes comment on the scope of the Ethics Acts and in particular the extension of the application of the Ethics Acts to a large number of public bodies in the semi-state sector. The Standards Commission provided guidance and advice to designated directors and occupiers of designated positions in these bodies setting out their obligations under the legislation. Information is provided on the complaints mechanisms of the Ethics Acts and on the powers available to the Standards Commission to deal with alleged contraventions of the legislation. Summarised accounts are given of inquiries conducted by the Standards Commission in cases where facilities paid for out of public funds were used in contravention of the *Code of Conduct for Office Holders*. Also included is commentary on developments relating to other codes of conduct applying to the public service.

### Scope of the Ethics Acts

In the annual report of the Standards Commission for 2003 concern was expressed at the delay on the part of the Minister for Finance in introducing revised regulations prescribing designated directorships and designated positions of employment in public bodies for the purposes of the Ethics Acts. Regulations which had been introduced in 1996 covering the civil service, and in 1997 in respect of the wider semi-state sector, had been overtaken by considerable structural change within the public service.

The Standards Commission welcomes the introduction of two sets of regulations which were signed by the Minister for Finance on 3 November 2004 under the 1995 Act. These regulations are the *Ethics in Public Office (Designated Positions in Public Bodies) Regulations 2004 (S.I. No. 698 of 2004)*, which prescribe designated positions in civil service Departments and Offices and the *Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) Regulations 2004 (S.I. No. 699 of 2004)*, which prescribe public bodies, designated directorships and designated positions in the wider public service. The regulations came into effect on 1 January 2005.

The new regulations increase the number of prescribed bodies in the wider public service which are within the scope of the Ethics Acts from the original approximately 100 to almost 400. Also, in many cases, the number of designated positions within public bodies which, prior to the making of the new regulations, were already covered by the legislation has increased as a result of specific additions to the list of designated positions and by virtue of a provision in the new regulations whereby all positions with a salary maximum equal to or greater than the maximum of the salary of a civil service Principal Officer (General Service, Class B PRSI) are now designated. It is a notable omission that, while certain posts in the 35 City and County Enterprise Boards, including that of Chief Executive Officer, have been prescribed as designated positions for the purposes of the Ethics Acts, members of those Boards have not been prescribed as designated directors and are not, therefore, covered by the legislation.

In anticipation of new regulations being made, the Standards Commission commenced the task of updating its *Guidelines on Compliance with the Provisions of the Ethics Acts*, which were last published in January 2003. The updated guidelines could not be published until the Minister for Finance had determined the persons to whom statements of interests should be furnished by those covered in the new regulations. In the case of designated directors, the person concerned must be an officer of the public body. With some exceptions, the same applies in the case of designated positions. The determinations are critical to the operation of the legislation and details of same must be included as an appendix in updated guidelines. In addition, prior to publication of guidelines, the Standards Commission is required

to consult in relation to the contents with the Committees on Members' Interests of both Dáil and Seanad Éireann. This consultation can only take place when the determinations are made.

The Department of Finance has indicated that the regulations will be reviewed on a regular basis. The Standards Commission welcomes this decision, which will ensure that coverage of the Ethics Acts is kept up to date. The Standards Commission would, however, be concerned that determinations, as referred to above, would be in place to coincide with the making of any future regulations. A consequence of this not happening would be that a designated director or employee in a public body who had a conflict of interest in regard to an official function falling to be performed, would not be in a position to identify the person to whom the required statement of a material interest should be furnished. It has been explained to the Standards Commission that a major factor in the delay in making the determinations in the case of the 2004 regulations was a failure on the part of a number of Government Departments and Offices to co-operate in a timely manner with the Department of Finance. As well as the determinations being made in time, the Standards Commission would see it as desirable that the regulations would be made as far as possible in advance of the date on which they come into operation to allow for any necessary updating of the guidelines on compliance and to facilitate appropriate consultation with the Committees on Members' Interests.

It is crucial that all prescribed public bodies should take seriously the obligations attaching to designated directors and employees under the Ethics Acts. It is important to note that primary responsibility for discharging those responsibilities rests with the individuals concerned. However, it would be extremely useful if public bodies were to include relevant briefing as part of induction training and to have structured follow-up contact, at least once a year, with personnel, including directors, to remind them of the steps which are required to be taken to ensure compliance with the legislation. In addition to the general information material which it supplies on a regular basis, the Standards Commission is available to assist in this process and to provide direct guidance and advice on any issue relating to the provisions of the Ethics Acts as they may apply to individual designated directors and employees.

## Relevance of the Ethics Acts in relation to public bodies and gifts

In the context of the Ethics Acts, an issue which came to be considered by the Standards Commission during the year was the appropriateness of public bodies bestowing gifts on persons who were connected to the body. Under the legislation, a gift can be money or other property.

Designated directors of prescribed public bodies are required to disclose any interests (including gifts received valued at more than €650) which could materially influence them in relation to the performance of their functions *“by reason of the fact that such performance could so affect those interests as to confer or withhold from the person or a spouse or child a substantial benefit”*.

The Ethics Acts also provide that where a function of a directorship (including Chairman) of a prescribed public body falls to be performed and the person performing the function knows that he or she or a *“connected person”* (which includes a fellow director) has a material interest in the matter (i.e. the consequence or effect of performing the function would be to confer a significant benefit on the person or the *“connected person”*), the person proposing to perform the function must inform the other directors in writing and must not perform the function unless there are compelling reasons which must be notified in writing to the other directors **and to the Standards Commission.**

A *“specified act”* under the Ethics Acts is an act or omission that is, or the circumstances of which are, such as to be inconsistent with the proper performance by the specified person (including the Chairman and directors of a public body) of the functions of the position or with the maintenance of confidence in such performance by the general public and the matter is one of significant public importance. If guidance is needed on the meaning of *“significant public importance”*, a benefit accruing to the specified person or a *“connected person”* with a value of at least €12,697 is stated.

Later in this report, the Standards Commission outlines its concern at inappropriate use by office holders (i.e. Ministers and Ministers of State) of facilities paid for out of public funds. This matter is also relevant in the case of public bodies who would consider using public funds to reward directors, over and above their agreed remuneration, by bestowing on them expensive gifts, either when their term of office expires or otherwise. The rationale giving rise to a decision of this nature might be that there is inadequate recognition of the service

provided by directors. Whether or not that is the prevailing view, and regardless of its merits, the Standards Commission considers, as in all cases, that the proper course for dealing with compensation of directors of public bodies is through officially sanctioned remuneration agreements and not by way of ad-hoc arrangements which constitute inappropriate use of public funds. Where issues arise for a public body in relation to remuneration of its directors, these should be notified to the parent Department and, if necessary, to the Department of Finance, which has overall responsibility in this policy area.

The possibility of occurrences as described above demonstrates the urgent need to finalise the proposed code of conduct for State bodies which is being drawn up by the Minister for Finance and will complement the codes already in place for members of both Houses, for office holders and for civil servants. In the event that there is likely to be a delay in introducing this code, the Standards Commission would recommend that, as an immediate step, consideration would be given to amending the already published (by the Minister for Finance in October 2001) *Code of Practice for the Governance of State Bodies* to provide appropriate guidelines in relation to gifts.

## Complaints to the Standards Commission

The Ethics Acts provide for the making of a complaint to the Standards Commission where it is considered that a contravention of the legislation may have occurred. Section 22 of the 1995 Act details the sources from which the Standards Commission can receive complaints. Section 4 of the 2001 Act broadened the circumstances in which complaints can be made to the Standards Commission. For example, any person may complain to the Standards Commission if they consider that a specified person<sup>1</sup> or a connected person<sup>2</sup> may have done an act which is inconsistent with the proper performance of the functions of the office or position held or occupied by the specified person. Full details of the scope of the complaints provisions are outlined in the table across.

In the first instance, complaints against members of Dáil Éireann who are not office holders would be made to the Committee on Members' Interests of Dáil Éireann while complaints against members of Seanad Éireann who are not office holders would be made to the Committee on Members' Interests of Seanad Éireann, via the Clerk of the Dáil or Seanad, as appropriate. The Clerk will pass on the complaint to the relevant Committee provided there is sufficient evidence to establish a *prima facie* case in relation to a complaint.

Who can complain	Subject of the complaint
<b>Any person</b>	<ul style="list-style-type: none"> <li>Office Holder<sup>3</sup></li> <li>Specified Person</li> <li>Connected Person</li> </ul>
<b>TD or Senator</b>	<ul style="list-style-type: none"> <li>Public Servant</li> <li>Office Holder</li> </ul>
<b>Minister for Finance</b>	<ul style="list-style-type: none"> <li>Public Servant</li> </ul>
<b>Any Minister (with the permission of Minister for Finance)</b>	<ul style="list-style-type: none"> <li>Public Servant in a body where that Minister has charge or has functions conferred on him/her</li> </ul>
<b>A Public Body</b>	<ul style="list-style-type: none"> <li>Designated director of the body</li> <li>Occupier of a designated position in the body</li> </ul>
<b>Appropriate Authority<sup>4</sup></b>	<ul style="list-style-type: none"> <li>Civil Servant</li> </ul>
<b>Committee on Members' Interests of Dáil/ Seanad Éireann</b>	<ul style="list-style-type: none"> <li>TD or Senator</li> </ul>

Note <sup>1</sup>:

- (i) is or, at the time to which the complaint concerned relates, was an office holder or the holder of the office of Attorney General but not a member;
- (ii) is or, at the time aforesaid, was a special adviser or held a designated directorship of, or occupied a designated position in, a public body; or
- (iii) holds or occupies or, at the time aforesaid, held or occupied a directorship or a position of employment in a public body.

Note <sup>2</sup>: a person is connected with an individual by means of a family or business relationship.

Note <sup>3</sup>: a Minister of the Government, a Minister of State, a Chairman/Deputy Chairman of Dáil/ Seanad Éireann.

Note <sup>4</sup>: generally the Government as the appointing authority for the majority of civil servants.

## Own initiative inquiries

In addition to the provisions outlined above whereby complaints can be made, the Standards Commission can, of its own initiative, decide to carry out an investigation to determine if a specified person, or a connected person, has done a specified act or if the Ethics Acts have been contravened. However, while the Standards Commission can appoint an Inquiry Officer where a complaint is made in relation to a specified act or a contravention of the Ethics Acts, it cannot do so if it is acting on its own initiative and has not received a complaint. The role of an Inquiry Officer in the case of a complaint is to make a preliminary inquiry into the matter complained of. The Ethics Acts give the Inquiry Officer powers to:

- procure the evidence of the complainant or of any other relevant person;
- put it before the person the subject of the complaint;
- allow the person the subject of the complaint to make a statement;
- conduct interviews with the complainant and the person the subject of the complaint;
- request the production by a person of any relevant document in the possession or control of the person; and
- report in writing to the Standards Commission.

Such a report would not contain any determinations or findings, but would, if the Standards Commission so requested, include an expression of the opinion of the Inquiry Officer as to whether there was *prima facie* evidence to sustain the complaint.

The introduction of the provision in the 2001 Act which permits the appointment of an Inquiry Officer by the Standards Commission was a significant development as it allows a preliminary examination of a complaint to be carried out without the necessity to invoke the full and very formal investigative procedures of the legislation from the very outset. However, where there is no complaint and the Standards Commission decides of its own initiative to consider whether an investigation is warranted in any specific circumstance, the lack of a provision allowing for the appointment of an Inquiry Officer is an inhibiting factor. Under section 18 of the 2001 Act, the Chairman of the Standards Commission can direct any person to make discovery on oath of documents that are, or have been, in the control or possession of the person relating to any matter relevant to the functions of the Standards Commission. In addition, the Standards Commission can consider any other evidence which it may have in its possession. However, in the absence of a complaint, it cannot appoint an Inquiry Officer to carry out a preliminary examination. The Standards Commission considers

that the legislation should be amended so that an Inquiry Officer can be appointed in cases where it wishes to pursue a matter under the legislation but has not received a complaint.

## Office holders

In a number of instances during the year it came to the attention of the Standards Commission that certain office holders had used facilities paid for out of public funds for electoral purposes. The matter of use of such facilities in relation to the European Parliament election of 2004 is dealt with in Chapter 2 of this report.

This issue centred on the failure of the office holders concerned to observe the provisions of the *Code of Conduct for Office Holders* regarding the appropriate use of official facilities paid for at the expense of the taxpayer. The Standards Commission wrote to each of the office holders, and in certain cases to the Secretary General of the relevant Government Department, requesting a full account of the activities involved and details of the costs incurred. All of the office holders co-operated fully with the Standards Commission.

Section 4 of the 2001 Act provides that complaints can be made to the Standards Commission that a specified person acted in a way which was inconsistent with the proper performance of the functions of their office or with the maintenance of confidence in that performance by the general public and the matter was one of significant public importance. The legislation also provides that, in the absence of a specific complaint, the Standards Commission can determine that an investigation is appropriate into an alleged specified act by a specified person, including an office holder. In light of the circumstances of the cases before it and of the statutory criteria outlined, the Standards Commission decided not to carry out a formal investigation. However, the Standards Commission did take account of the *Code of Conduct for Office Holders* which was drawn up by the Government, in particular paragraphs 1.5 and 2.2.3 thereof, and decided to raise the matter with the office holders in question.

Paragraph 1.5 of the code provides that office holders should “*at all times observe the highest standards of behaviour and act in good faith with transparency, fairness and impartiality to promote the common good in the performance of their official functions.*” and “*act only by reference to and dedicate the resources of their offices in furtherance of the public interest.*”

Paragraph 2.2.3 of the code provides that office holders “*are provided with facilities at public expense in order that public business may be conducted effectively. The use of these*

*facilities should be in accordance with this principle. Holders of public office enjoy an enhanced public profile and should be mindful of the need to avoid use of resources in a way that could reasonably be construed as an inappropriate raising of profile in the context of a General Election\*. Official facilities should be used only for official purposes. Office holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which, undoubtedly, are attached to office."*

*\*The same principle applies to any election as has been pointed out to office holders.*

Having considered the response from one office holder, the Standards Commission decided that no cost would have been borne by the taxpayer arising from his actions and that there were no grounds on which to pursue the matter further.

In relation to the other office holders, the Standards Commission considered that they did not have regard to, and were not guided by, the terms of the code of conduct in regard to the use of Departmental facilities. The office holders concerned accepted the position and indicated that they intended to refund the costs to the Department/Office in question. The Standards Commission concluded that this was a satisfactory response. Having regard to the fact that the code of conduct was drawn up by the Government, the Standards Commission considered that it was appropriate to advise the Taoiseach of the position in each case.

It is a feature of our democratic system that office holders have, in addition to their ministerial functions, representational rights and duties. They also have entirely legitimate party political interests. Office holders, in common with other members of the Houses of the Oireachtas, are provided with facilities paid for out of public funds to assist them in their role as public representatives. These include allowances to acquire and staff a constituency office, use of telephones, postage, stationery, etc. In addition, Ministers are provided with resources within their Departments to deal with constituency matters. These facilities are provided at taxpayers' expense so that Ministers can effectively carry out their representational duties. In the cases which were examined in 2004, while the actual expense involved was not extravagant, damage could have been done to public confidence in the fair and proper performance of the functions of office. The Standards Commission would again emphasise that office holders, together with heads of Government Departments and Offices, should ensure that procedures are in place which are clear and which discourage and prevent any inappropriate use of public funds for personal, electoral or party political gain.

## Position in relation to Deputy Michael Collins

In its annual report for 2003, the Standards Commission set out the position in regard to Deputy Michael Collins and the steps taken by him arising from the requirements of the 2001 Act relating to evidence of compliance with the Tax Acts. In summary, Deputy Collins provided a Tax Clearance Certificate and a Statutory Declaration to the Standards Commission on 14 June 2002 in fulfilment of these requirements. Subsequently, on 26 September 2003, his name was published in *Iris Oifigiúil* as the holder of a bogus non-resident account. The Standards Commission considered this development and sought legal advice in relation to the evidence of tax compliance which it had received from Deputy Collins pursuant to section 21 of the 2001 Act. The Standards Commission was advised that neither the 1995 Act nor the 2001 Act gave it any authority, in the absence of a complaint, to investigate the actions of Deputy Collins, as a member of Dáil Éireann. The powers of the Standards Commission, in relation to the initiation of an investigation without a complaint, do not extend to a member of a House of the Oireachtas who is not an office holder. The Standards Commission also considered whether the 2001 Act would permit an investigation of the validity of the evidence of tax compliance provided by Deputy Collins and, having regard to legal advice, concluded that it would not.

In these circumstances, the Standards Commission decided on three courses of action:

1. it drew the attention of the Minister for Finance, as sponsor of the enabling legislation, to the limitations of the Ethics Acts which had been brought to light in these particular circumstances;
2. it brought the matter to the attention of the Committee on Members' Interests of Dáil Éireann as the body which, under the Ethics Acts, is charged with the supervision of the Ethics Acts relating to members of Dáil Éireann who are not office holders;
3. it referred the matter to the Director of Public Prosecutions (DPP) for his consideration of whether any offence had been committed by Deputy Collins.

The matter was still under consideration at the time of writing of the 2003 Annual Report.

Subsequently, and pursuant to section 22(2)(5)(b) of the 1995 Act (as inserted by Schedule 1 of the 2001 Act), the Committee

on Members' Interests of Dáil Éireann determined by resolution that an investigation should be carried out by the Standards Commission. The Chairman of the Committee made a complaint in writing to the Standards Commission in relation to the matter. Investigation of the complaint by the Standards Commission commenced and Deputy Collins was notified accordingly. In addition, the Office of the DPP indicated to the Standards Commission that it had referred the matter to An Garda Síochána for investigation.

In June 2004, having considered views expressed in correspondence from the DPP and also observations made to it by Deputy Collins, the Standards Commission decided to suspend its investigation into the complaint until such time as the matter has been dealt with by the DPP. At the time of writing, the matter is still under consideration by the DPP and An Garda Síochána.

## Awarding of public relations contracts

In December 2004, the Standards Commission considered matters which had been the subject of media coverage concerning the alleged involvement of Mr. Martin Cullen, TD, Minister for Transport, in the awarding of public relations contracts to Ms. Monica Leech and Monica Leech Communications by the Office of Public Works in 2002 and by the Department of the Environment and Local Government in 2003.

In order to determine if an investigation under the Ethics Acts should be carried out, the Standards Commission decided that, pursuant to section 18 of the 2001 Act, the Chairman should direct the Secretary General of the Department of the Environment, Heritage and Local Government and the Chairman of the Office of Public Works to make discovery on oath of all documents in their possession or control relating to the award of the contracts concerned.

In February 2005, the Standards Commission completed its preliminary examination into these matters. The examination focused on the provisions of section 14 of the 1995 Act and sections 4 and 7 of the 2001 Act. The evidence before the Standards Commission consisted of the report prepared by Mr. Dermot Quigley for the Government and the documentation furnished to the Standards Commission by the Office of Public Works and the Department of the Environment, Heritage and Local Government on foot of the orders for discovery. The Standards Commission also considered legal advice which it had received from Senior Counsel.

The evidence before the Standards Commission did not establish a *prima facie* case which would have warranted an investigation within the terms of the legislation in question. In that regard, the grounds for possible investigation by the Standards Commission could not extend beyond the scope of the relevant legislation. Minister Cullen was informed of the outcome of the Standards Commission's deliberations and the matter was closed.

## Codes of conduct

Section 10 of the 2001 Act provides for the introduction of codes of conduct for the following categories, following consultation with the Standards Commission:

- members of both Houses of the Oireachtas;
- office holders;
- public servants.

All codes of conduct published in accordance with the 2001 Act set out standards of conduct and integrity expected to be observed by the persons to whom they relate in the performance of their official duties. Codes of conduct under the 2001 Act are admissible in any proceedings before a Court or other tribunal, the Committees of Members' Interests of Dáil and Seanad Éireann or the Standards Commission and any provision of a code that appears to the tribunal, the Committee or the Standards Commission to be relevant to a question in the proceedings may be taken into account in determining the question.

### Codes of conduct for members

Codes of conduct for members of both Houses of the Oireachtas, as drawn up by the Committees on Members' Interests of Dáil Éireann and Seanad Éireann, were published by the Standards Commission in 2002.

### Code of conduct for office holders

On 3 July 2003, the *Code of Conduct for Office Holders*, as drawn up by the Government, was published by the Standards Commission.

### Codes of conduct for public servants

By way of Circular 26/04, issued on 9 September 2004, the Minister for Finance announced the *Civil Service Code of Standards and Behaviour*. The code was subsequently published by the Standards Commission. It contains provisions relating to a number of areas, including:

- Impartiality
- Civil servants and politics
- Respect for the law

- Disclosure of information
- Dealings with the public
- Criminal convictions
- Attendance and performance
- Regard for state resources
- Relations with colleagues
- Improper influence
- Conflicts of interest
- Disclosure of conflicts of interest
- Gifts
- Hospitality
- Payment for work on behalf of outside bodies
- Contracts with, purchases from or sales to Government Departments/Offices
- Acceptance of outside appointments and of consultancy engagement following resignation or retirement

The code makes provision for the establishment of an Outside Appointments Board. This Board will consider applications made to it by civil servants, at or above Assistant Secretary level, who intend to be engaged in or connected to any outside business with which the person had previous official dealings or where the outside business might gain an unfair advantage as a result of the employment. The Board will also consider applications from such civil servants who held “designated positions” for the purposes of the Ethics Acts who, within twelve months of resigning or retiring from the service, wish to accept an offer of appointment from an employer outside the civil service or to accept an engagement in a particular consultancy project, where the nature and terms of the appointment or engagement could lead to a conflict of interest.

The 2001 Act provides that the Standards Commission may, at the request of an office holder, give advice to the office holder in relation to the application or non-application of the *Code of Conduct for Office Holders*. Similar provision is made for the giving of advice by the relevant Committee on Members’ Interests to a member of either House of the Oireachtas. However, no such provision is made in respect of civil or public servants. Accordingly, where an individual civil servant has a query as to the application of the *Civil Service Code of Standards and Behaviour*, they should request advice from the Personnel Section in their own Department/Office and not from the Standards Commission.

The 2001 Act also provides that codes of conduct shall be published by the Standards Commission in such form and manner as it may determine. The Standards Commission decided that it would be appropriate to publish the *Civil Service Code of Standards and Behaviour* in the form of a durable

booklet to be circulated to all existing civil servants and to new entrants. Braille and audio versions were also made available. Arrangements for distribution of the code to approximately 37,000 civil servants were in train at the end of 2004.

In its Annual Report for 2003, the Standards Commission referred to its consultations with the Department of Finance regarding codes of conduct for the wider public service. In particular, it noted a concern at the possibility of a proliferation of codes of conduct across the state-sponsored sector and set out its view that it might be possible to develop a single code which would have universal application in the sector and would operate in tandem with the existing *Code of Practice for the Governance of State Bodies* which was approved by the Government in October 2001. The Standards Commission is not aware of any progress in 2004 in regard to the development of such a code.

### Codes of conduct for local authorities

Part 15 of the Local Government Act 2001 provides for an ethical framework for the local government service. In that context, section 169 of that Act provides for the issue by the Minister for the Environment, Heritage and Local Government of codes of conduct for local authority employees and for councillors. These codes set out conduct and standards of integrity which are expected of councillors and employees and are intended as a measure to enhance public confidence in the discharge of local authority functions.

The Local Government Act 2001 also provides that the Minister may issue such codes after consultation with the Standards Commission and the Minister for Finance. Accordingly, in December 2003, the Department of the Environment, Heritage and Local Government sought the views of the Standards Commission on draft codes for councillors and employees which it had drawn up.

The Standards Commission supplied its observations in 2004. In relation to the codes for both employees and councillors, the Standards Commission suggested the possibility of provision being made whereby protection against reprisal would be guaranteed in any circumstances where a *bona fide* report or complaint was made by an employee or a councillor who believed that s/he was being required to act in a manner which:

- was illegal, improper, or unethical;
- was in breach of constitutional convention or a professional code;
- may involve possible maladministration; or
- was otherwise inconsistent with the relevant code.

The Standards Commission informed the Department that section 5 of the Standards in Public Office Act 2001, which provides immunity for complainants under that legislation, might serve as a model in this respect.

The Standards Commission had other reservations about the draft code for employees where it dealt with "Attendance and Outside Employment". Further consultation with the Department was requested in that regard. In particular, the Standards Commission indicated that it would not be satisfied with the position whereby if an outside business, occupation or activity was being carried on contemporaneously with the local authority employment, and could reasonably be regarded as weakening public confidence, the matter would be referred to a supervisor for a judgement on its propriety. The Standards Commission felt that there should be a general prohibition on any such business, occupation or activity while the person was in the employment of a local authority, with the proviso that the matter should be referred to a supervisor in the event of uncertainty.

The Standards Commission also considered that it would be appropriate to include a provision in the code which would bring some element of control to the situation whereby local authority employees could leave their employment and take up consultancies or other employments in the private sector to which they could bring access/information/contacts gained in the course of their local authority employment. In such circumstances, it was felt that the imposition of a moratorium for a specified period would not be unreasonable. Observations were also supplied on a number of minor textual matters.

In June 2004, the Minister for the Environment, Heritage and Local Government issued the two codes of conduct, one for local authority employees and the other for councillors. The Standards Commission was disappointed to note that, while a small number of its suggested minor textual amendments had been included in the codes, its observations on other more important issues, including those outlined above, were not reflected. It was surprised that the Department had not engaged in further consultation in advance of issuing the codes, particularly given that such consultation had been sought regarding the provisions relating to outside business.

Amongst the statutory functions of the Standards Commission (section 4 of the Standards in Public Office Act 2001) is the investigation of complaints in regard to a specified action by a specified person where the action is such as to be inconsistent with the proper performance by the specified person of the functions of the office or position or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance. A specified person in this case could include a local authority employee. The specified act could be that the employee failed to discharge obligations set down in the code of conduct and that the failure gave rise to serious consequences. In view of the possible role of the Standards Commission in examining such a complaint, and given that the code of conduct would be central to those proceedings and could be taken into account in determining the outcome, it is regrettable that its views in relation to the content of the code were not accepted or, at least, discussed in more detail.



## CHAPTER 2

## Electoral Acts

The Electoral Act 1997 provides a framework for disclosure and limiting of political donations made to TDs, Senators, MEPs, political parties and candidates at elections. It also regulates spending by political parties and candidates at Dáil, Seanad, European Parliament and presidential elections. It provides for reimbursement of election expenses to qualified candidates and allows for State financing of political parties (dealt with in Chapter 3).

As a result of early experience of operating the legislation on the part of the former Public Offices Commission, the need for amendments in a number of respects was identified. This was achieved by the enactment of the Electoral (Amendment) Act 1998. The Electoral (Amendment) Act 2001 brought about further changes, including the introduction of limits on the values of donations which could be accepted and a prohibition on acceptance of foreign donations. The 2001 Act also sets down rules covering the registration and funding of third parties involved in political activity and provides for the recording of monetary donations received by branches of political parties. In 2002, the legislation was amended on two further occasions. On the eve of the Dáil general election, the Electoral (Amendment) Act 2002 clarified what is to be regarded as a donation by a political party to its candidates. After the election, the Electoral (Amendment) (No. 2) Act 2002 put back the date by which election expenses statements were required to be furnished to the Standards Commission until such time as proceedings in the Supreme Court, on the question of what constituted election expenses, had been finalised. To give effect to the judgment of the Supreme Court in that case, the Electoral (Amendment) Act 2004 was enacted. Section 33 of the 2004 Act is discussed later in this report.

During 2004, the Standards Commission supervised compliance with the above legislation across its wide body of clients who have statutory obligations to discharge. These included TDs, Senators, MEPs, political parties, third parties, accounting units of political parties and candidates at the European Parliament and presidential elections. Unlike the position under the Ethics Acts, where disclosure of certain of the information obtained under that legislation is prohibited, the vast bulk of the material furnished to the Standards Commission under the Electoral Acts is in the public domain in the form of reports to the Ceann

Comhairle which are laid before the Houses of the Oireachtas. The material is also made available to the public for inspection and copying, including, in summary form, on the website of the Standards Commission. In compliance with the terms of the legislation, details of bank accounts and certificates of monetary donations are not published. The Standards Commission considers it to be of the utmost importance that information furnished to it under the Electoral Acts should be widely available. Access to the material will be further improved during 2005 when upgrading of the Standards Commission website is expected to be completed.

Information from various statutory returns made to the Standards Commission in respect of 2003 and 2004 is set out in tabular form in Appendix 1 to this report.

### Donations Donations disclosed by TDs, Senators and MEPs in respect of 2003 and 2004

By 31 January 2004, TDs, Senators and MEPs were required to furnish their Donations Statements and accompanying documentation relating to donations they received in the calendar year 2003. Similar information relating to the year 2004 was required to be provided by 31 January 2005. Donations with a total value of €41,828.96 were disclosed in respect of 2003. This is the lowest value since disclosure obligations were introduced in 1998 and represents a 90% decrease compared with the figure of €468,760.17 for 2002 when the Dáil general election was held. It is also well below the figure of €166,793.79 for 2004 when the European Parliament election took place.

The disclosed donations included money, property, goods and services. In accordance with the legislation, only donations with a value exceeding €634.87 were required to be disclosed. The maximum value of donations that could be accepted from the same donor in the same year was €2,539.48. TDs, Senators and MEPs are prohibited from accepting foreign donations of any value. Neither can they accept a donation exceeding a value of €126.97 if they do not know the name and address of the donor. If the same donor made more than one donation to the same TD, Senator or MEP during a calendar year, the values of the donations must be aggregated and disclosure made if the total value is greater than €634.87.

A total of 241 Donation Statements were received in respect of 2003 (166 TDs; 60 Senators and 15 MEPs) while 244 Donation Statements were received in respect of 2004 (164 TDs; 2 former TDs; 60 Senators and 18 current and former MEPs).

The donations disclosed in respect of 2003 and 2004 can be broken down as follows:

	2003	2004*
<b>TDs</b>	€32,828.48 (78.5%)	€127,427.76 (76.4%)
<b>Senators</b>	€6,500.48 (15.5%)	€6,500.00 (3.9%)
<b>MEPs</b>	€2,500.00 (6%)	€32,866.03 (19.7%)
<b>TOTAL</b>	<b>€41,828.96 (100%)</b>	<b>€166,793.79 (100%)</b>

\* The figures for 2004 include, in respect of TDs, donations disclosed by TDs who are also MEPs; in respect of Senators, donations disclosed by a Senator who is also an MEP; in respect of MEPs, donations disclosed by former MEPs.

Further details of donations disclosed in respect of 2003 and 2004 are provided in Appendix 1, Table A.

### Donations made by multiple donors in 2003 and 2004

An important aspect of the electoral legislation is the obligation attaching to individual donors to furnish a Donation Statement in certain circumstances. The Donation Statement must be accompanied by a Statutory Declaration. Section 24(1A) of the 1997 Act, as introduced by section 6 of the Electoral (Amendment) Act 1998, provides that a person who makes donations in a calendar year, the aggregate value of which exceeds €5,078.95, to:

- (i) two or more persons who, when the donations were made, were members of the same political party, or
- (ii) one or more persons and to the political party of which such person or persons were members when the donations were made to them,

must furnish a Donation Statement to the Standards Commission showing the aggregate value of the donations, the political party concerned and the name, description and address of each recipient. The donor is required to furnish the statement irrespective of whether the donations are also required to be disclosed by the recipient.

This provision is intended to achieve the disclosure of multiple donations made by a person to different members and/or organs (e.g. headquarters and branches) of the same political party

which might not otherwise fall to be disclosed because the value of the individual donations might be below the disclosure thresholds applying to the particular recipients. A related amendment to the 1997 Act removed the obligation which had attached to Appropriate Officers of political parties to enquire of every organ and member of the party (elected and unelected) to establish if they had received a donation of any kind or value, to aggregate the values of all donations received from the same donor and to make a disclosure if the total value of donations received from the same donor exceeded €5,078.95 in a calendar year.

It remains the case, however, that, as well as providing details of donations valued at more than €5,078.95 received by party headquarters, Appropriate Officers are required to make the necessary enquiries and to disclose any single donation, exceeding a value of €5,078.95, received by a subsidiary organisation of the party. If the same person makes a donation valued at more than €5,078.95 to a subsidiary organisation and also makes a donation to party headquarters, the values of the donations should be aggregated by the Appropriate Officer for disclosure purposes.

In relation to 2003, donations with a total value of €6,348.00 were disclosed by one person who made donations to members of a political party and to the party itself. No such disclosure statement was received by the Standards Commission in relation to 2004.

Further details of the donations made in 2003 and disclosed in 2004 are provided in Appendix 1, Table B.

### Donations disclosed by political parties in respect of 2003 and 2004

By 31 March 2004, each of the 13 registered political parties was required to furnish a Donation Statement to the Standards Commission indicating whether any donations exceeding €5,078.95 in value were received by them during 2003. Similar information relating to the year 2004 was required to be provided by 31 March 2005. Parties are not required to disclose donations valued at €5,078.95 or less. If a donor makes more than one donation to the same political party during a year, the donations must be aggregated and disclosed if the total value is greater than €5,078.95. The maximum value of donations which a political party can accept from the same donor in the same year is €6,348.69. Statements received in 2004 showed that, in 2003, political parties received disclosable donations with a total value of €162,007.56 (of which €2,300 was refunded). The equivalent figure disclosed by parties in respect of 2002, which was an

election year, was €265,799.52 (of which €10,450 was refunded). In relation to 2004, another election year, the value of donations disclosed by political parties was €186,910.64.

Details of the donations disclosed are contained in Appendix 1, Table C. In the case of the Green Party, the Labour Party and the Socialist Party, all of the disclosed donations were made by party TDs or MEPs. In the case of Sinn Féin, all of the donations were made by party TDs, MPs or MLAs.

## European Parliament election of June 2004

Polling for the European Parliament election took place on 11 June 2004. Donation Statements completed by unsuccessful candidates and Election Expenses Statements completed by all election agents were required to be furnished to the Standards Commission not later than 6 August 2004 (the 56th day after polling day). Most unsuccessful candidates and election agents complied with this requirement. It was necessary, however, to refer files to An Garda Síochána in relation to:

- 1) Mr. Gerard Hannan, 13 Salmon Weir, Annacotty, Limerick, who failed to furnish a Donation Statement - which is an offence under the legislation; and
- 2) Mr. David Williams, Bindon Street, Ennis, Co. Clare, who failed to furnish an Election Expenses Statement - which is also an offence under the legislation. (Mr. Williams acted as election agent for Ms. Madeleine Taylor Quinn (FG) at the election).

An Election Expenses Statement was subsequently received from Mr. Williams on 27 October 2004. A Donation Statement was received from Mr. Hannan on 17 November 2004. The matter of whether or not prosecutions are proceeded with in such cases is determined by An Garda Síochána in consultation with the Office of the Director of Public Prosecutions. The Standards Commission is not a prosecutory body.

### Donations

Donations totalling €121,453.43 were disclosed by 16 of the 30 unsuccessful candidates who furnished Donation Statements indicating that they had received a donation valued in excess of €634.87 in relation to the election. Summary details of the donations disclosed are contained in Appendix 1, Table D. The 13 successful candidates did not have to disclose their donations until January 2005, which is an annual requirement for MEPs.

### Election expenses

In excess of €4m (€4,007,978) was spent at the election by candidate's election agents and the national agents of political parties. The Standards Commission found no evidence of any election agent or national agent having overspent at the election. Summary details of the expenses incurred are provided in Appendix 1, Table D.

Two people (*Mr. Jim O'Brien, Head of Office, European Parliament Office, European Union House, 43 Molesworth Street, Dublin 2* and *Mr. Alan McPartland, 21 Grange Court, Rathfarnham, Dublin 16*) having, in accordance with the legislation, notified the Standards Commission, in advance, of their intention to incur election expenses, were requested to furnish details of the expenses to the Standards Commission. Mr. O'Brien completed and returned an Election Expenses Statement within the statutory deadline and disclosed expenses incurred of €55,476. Mr. McPartland informed the Standards Commission that he had not, in fact, incurred any expenditure. He was not, therefore, required to complete an Election Expenses Statement.

The Standards Commission also deemed that expenses incurred at the election by Ennis General Hospital Development Committee (EGHDC) (€980) and by Nenagh Hospital Action Group (NHAG) (€692.35) were election expenses. An Election Expenses Statement was subsequently received from Senator Kathleen O'Meara on behalf of NHAG and from Mr. Joe Arkins on behalf of EGHDC. While both groups had contravened the legislation by failing to notify the Standards Commission in advance of their intention to incur election expenses, the Standards Commission took no further action in the matter as both groups had otherwise complied with the legislation by furnishing an Election Expenses Statement.

### Reimbursement of election expenses

Twenty seven candidates qualified for a reimbursement of their election expenses by either being elected or achieving a quarter of the quota at the election. Twenty six candidates qualified for the maximum reimbursement (€38,092.14) while the remaining candidate qualified for a reimbursement of €28,307.52 (the total amount of election expenses incurred on his behalf). The total amount reimbursed to qualified candidates was €1,018,703. Appendix 1, Table D provides a breakdown of the reimbursements.

### Use of facilities where the cost is met out of public funds

During the course of the European Parliament and local elections, the Standards Commission received a number of inquiries/complaints from members of the public regarding the appropriateness of candidates at the elections using facilities for electoral purposes which were paid for out of public funds. This matter is also referred to in Chapter 1. For the most part, the complaints related to use of pre-paid Oireachtas envelopes.

Arising from the High Court and Supreme Court judgments in the case of *Desmond Kelly and the Minister for the Environment and Local Government, Ireland and the Attorney General (the Kelly Case)*, where election expenses were incurred at the European Parliament election and the costs were met from public funds, such expenses were subject to the expenditure limits applying at the election and were required to be accounted for. The election agents of six candidates accounted for use of property, goods or services where the costs were met out of public funds as did the national agent of the Labour Party.

The Standards Commission has a supervisory role under the Ethics Acts where that legislation applies to office holders (e.g. members of the Government and Ministers of State). This includes compliance with the *Code of Conduct for Office Holders*, which was drawn up by the Government and published by the Standards Commission in July 2003.

As already outlined in Chapter 1, section 2.2.3 of the code refers to the fact that office holders “are provided with facilities at public expense in order that public business may be conducted effectively”. The section goes on to say that “use of these facilities should be in accordance with this principle”. Section 2.2.3 further states that “official facilities should be used only for official purposes” and that “office holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which, undoubtedly, are attached to office”.

Having regard to the terms of the code of conduct, the Standards Commission is of the view that it is not appropriate that office holders should use facilities paid for out of public funds for electoral purposes. Neither is it appropriate that office holders should allow such facilities, which are provided to assist them in discharging their official and representational duties, to be used by others. In the context of the European Parliament election, the Chairman of the Standards Commission wrote to office holders on 5 May 2004 drawing their attention to the relevant provisions of the code of conduct and reminding them of the need to comply in all respects with their obligations under the code.

Two of the candidates at the election, whose election agents accounted for use of facilities paid for out of public funds, were office holders at the time of the election. It was explained to the Standards Commission that the facilities used by one of them related to certain inquiries concerning the election which were replied to by constituency office staff during working hours. The estimated cost involved (€350) has been reimbursed to the relevant Government Department.

In the other case, the expenses met out of public funds, which were accounted for by the election agent, related to costs associated with two ministerial drivers and a constituency secretary. It was subsequently clarified to the Standards Commission that the involvement (if any) of these people in the election campaign was on a voluntary basis and took place outside of their normal working hours. The costs, therefore, should not have been included as election expenses. An amended Election Expenses Statement was subsequently received and was laid before the Houses of the Oireachtas.

Provisions similar to those contained in the *Code of Conduct for Office Holders* are contained in the separate codes of conduct for members of the Houses of the Oireachtas who are not office holders. Supervision of adherence to these codes is a matter for the Committee on Members’ Interests of each House. The Chairman of the Standards Commission wrote to the Chairman of each Committee on 11 May 2004 drawing attention to the advice given by the Standards Commission to office holders. Three of the candidates whose election agents accounted for the use of facilities paid for out of public funds were members of the Houses who were not office holders (two Deputies and a Senator). The Chairman wrote again to the Chairman of each Committee on 5 November 2004 notifying them of this fact.

The Standards Commission also wrote to the national agent of the Labour Party concerning the election expenses accounted for by him which were shown to have been met out of public funds. It had been indicated to the Standards Commission that the expenses incurred had been paid for from funds received under the Party Leaders Allowance. Section 1(10)(5) of the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 provides that the Party Leaders Allowance shall not be used for, or to recoup, election or poll expenses. Having clarified the matter with the Labour Party, the Standards Commission was satisfied that the expenses accounted for were not election expenses and that it was appropriate for the party to meet the expenses concerned from funding provided under the Party Leaders Allowance.

## Presidential election of October 2004

The Minister for the Environment, Heritage and Local Government made an order on 13 September 2004 appointing 22 October 2004 as the day on which the poll (if any) at the presidential election would take place. There was no poll as only one candidate, Mrs. Mary McAleese, was nominated at the election. However, the terms of the Constitution and the provisions of statute law support the position that a presidential election takes place whether or not there has been a poll. Once an election takes place, the rules apply relating to limitation and disclosure of donations and election expenses and the furnishing of certain statutory returns to the Standards Commission.

The Standards Commission was notified by the Presidential Returning Officer on 30 September 2004 that Mr. Sean Barrett had been appointed by Mrs. McAleese as her presidential election agent. As presidential election agent, Mr. Barrett was required to furnish to the Standards Commission, within 56 days after polling day, i.e. by 17 December 2004, a Donation Statement and an Election Expenses Statement. He was also required to furnish a Certificate of Monetary Donations and accompanying bank statement(s) in relation to any political donations accounts opened in respect of the presidential election.

### Donations

A Donation Statement was received from Mr. Barrett on 15 December 2004. The Donation Statement showed that donations in the amount of €137,492.81 were received. Refunds (which in each case represented 66% of the original value of the donation received) were made to the donors after the payment of election expenses. In his Donation Statement, Mr. Barrett gave details of donations which were received from individuals who are not resident in the island of Ireland. In each case Mr. Barrett confirmed that the donor is an Irish citizen. It is understood that no anonymous donations, foreign donations or donations in excess of the prescribed limit (€2,539.48) were received in relation to the presidential election. Details of the total amount of donations received by Mrs. McAleese and the total amount returned to donors are contained in Appendix 1, Table E.

Where a monetary donation exceeding €126.97 was received by the candidate **before** the appointment of the presidential election agent, the candidate was required to open a political donations account and lodge to the account that donation and any further monetary donations (of whatever value) received. As donations in both £Sterling and Euro amounts were received by Mrs. McAleese prior to the appointment of the presidential election agent, Mrs. McAleese opened a £Sterling political donations account and a Euro political donations account.

Where a monetary donation exceeding €126.97 was received by the candidate or the presidential election agent **after** the appointment of the presidential election agent, the presidential election agent was required to open a political donations account and lodge to the account that donation and all further monetary donations, of whatever value, received by the candidate or the presidential election agent. After his appointment Mr. Barrett also opened a £Sterling political donations account and a Euro political donations account.

Mr. Barrett was required to furnish statements from the financial institution in which his and Mrs. McAleese's political donations accounts were opened. He was also required to furnish a Certificate of Monetary Donations/Statutory Declaration confirming that all monetary donations received during the period from the opening of the accounts up to polling day were lodged to the accounts and that all amounts debited from the accounts were used for promoting the election of the candidate or to otherwise affect the outcome of the election. The Certificate of Monetary Donations/Statutory Declaration and statements from the financial institution were received from Mr. Barrett within the statutory deadline.

### Election expenses

The election period at the election was from 13 September 2004 to 22 October 2004. The presidential election agent was required to account for all expenses incurred on goods, property or services (including benefits-in-kind) which were for use at the election during this period. He was also required to account for any election expenses incurred by the candidate prior to the appointment of the presidential election agent and any election expenses incurred by a political party which supported the candidate.

An Election Expenses Statement/Statutory Declaration, together with all relevant supporting invoices/receipts, was received from Mr. Barrett on 15 December 2004. These showed that election expenses of €45,470.76 had been incurred, which was well within the spending limit for the presidential election (€1,300,000 inclusive of VAT). Summary details of the election expenses disclosed in Mr. Barrett's Election Expenses Statement are provided in Appendix 1, Table F.

### Reimbursement of election expenses

A reimbursement of €260,000, or the actual amount of the election expenses incurred on the candidate (whichever is the lesser), may be paid to a candidate who is elected at a presidential election. Although qualified to receive a reimbursement of the election expenses incurred at the election, the Standards Commission was informed by Mr. Barrett that Mrs. McAleese would not be claiming a reimbursement of election expenses because all her expenses had been covered by the donations received by her or her election agent.

### Inquiries concerning spending at the 2002 Dáil general election

Arising from claims in a newspaper report in November 2003 of inaccuracies in the election expenses accounted for on behalf of Councillor Nicky Kelly at the May 2002 Dáil general election, the Standards Commission reviewed the Election Expenses Statements furnished by his election agent and by the national agent of the Labour Party. Following a meeting with the agents concerned and other representatives of the Labour Party, the Standards Commission found that while the agents had omitted certain election expenses from their Election Expenses Statements, they had not knowingly furnished Election Expenses Statements which were false or misleading in a material respect. Amended Election Expenses Statements, furnished by the agents at the request of the Standards Commission, were laid before the Houses of the Oireachtas on 22 June 2004. For an offence to have been committed under the legislation, it would be necessary to show that a statement furnished to the Standards Commission was knowingly false or misleading in a material respect. The penalty, on conviction, for such an offence is a fine not exceeding €25,394 and/or up to three years imprisonment.

In July/August 2004 further submissions concerning the accuracy of the election agent's Election Expenses Statement were received. Questions relating to the number of posters used and the poster expenses accounted for by the agent were raised as were issues concerning expenditure incurred on the rental of a campaign office and on campaign vehicles. It was also claimed that certain invoices/receipts supplied by the agent were not *bona fide*.

The Standards Commission wrote to the agent, Councillor Kelly and the Labour Party requesting their comments on the specific issues raised. Contact was also made by the Standards Commission with those suppliers whose invoices/receipts had been called into question and with other suppliers who were known to have provided services to any candidate or political party involved in the election in the Wicklow constituency.

Given that more than two years had elapsed since the election took place, it was not possible for the Standards Commission to determine definitively the nature and quantity of election material used by Councillor Kelly at the election. The findings of the Standards Commission were based on the submissions made to it and by the responses it received from the election agent, Councillor Kelly and the Labour Party as well as from suppliers of election material in the constituency. Its conclusions were arrived at on the balance of probabilities as adduced from the evidence available to it. In reaching its conclusions, the Standards Commission was mindful of its obligation to be satisfied that an offence under the legislation had been committed before it could refer a case to the prosecuting authorities.

The Standards Commission found that while it was arguable that some items of expenditure should have been accounted for by the election agent, the amounts concerned would not have caused her to exceed the candidate's spending limit. Despite conflicting views as to the level of posterage carried out by Councillor Kelly at the election, there was no evidence available to the Standards Commission to suggest that the agent's Election Expenses Statement was knowingly false or misleading **in a material respect**. The Standards Commission could not, therefore, make such a finding, the consequences of which would have necessitated referral of the matter to the Director of Public Prosecutions.

In addition to issues raised regarding the agent's Election Expenses Statement, it was also claimed that Councillor Kelly had organised an "illegal" raffle during the election and that individual contributions to the raffle had exceeded a net value of €126.97. If such contributions were received, Councillor Kelly would have been required to open a political donations account. The legality, or otherwise, of the raffle was not a matter to be determined by the Standards Commission. The issue for the Standards Commission was compliance by Councillor Kelly with the provisions of the legislation concerning donations.

As his records relating to the purchase of tickets for the raffle were no longer available, Councillor Kelly was unable to state whether any individual contribution had exceeded a net value of €126.97. The Standards Commission found that it was probable that Councillor Kelly had been required to open a political donations account and did not do so. In writing to Councillor Kelly, the Standards Commission advised him of the need to be aware of the requirements of the legislation relating to donations when accepting contributions to fund-raising events. In this regard, it should be noted that failure to open a political donations account is not an offence under the legislation.

In reporting on this case, the Standards Commission is anxious to draw attention to the difficulties encountered in examining allegations that statutory returns are inaccurate or misleading, if such allegations, and supporting evidence, are not put to it within a reasonable time after an event such as a Dáil general election. Notwithstanding the delay in material being presented in this case and the evidential value of that which was presented, the Standards Commission took all reasonable steps to satisfy itself that an offence had not been committed. In that respect, it is important to point out that the persons against whom accusations were made, and others, co-operated fully with the enquiries. It would, however, be far more appropriate that, for those who have concerns about returns made to the Standards Commission, such concerns would be acted upon in a timely manner after the material has been put on public display.

### Section 33 of the Electoral (Amendment) Act 2004

The judgment of the High Court, affirmed by the Supreme Court, in the Desmond Kelly case, which is referred to earlier at page 24, determined that paragraph 2(c) of the Schedule to the Electoral Act 1997, as amended, was invalid. Paragraph 2(a) of the Schedule, **insofar as it applied to section 22(2)(b)(ii) of the Act**, was also declared to be invalid. Neither Court made any reference to paragraph 2(a) of the Schedule as it applied to section 46(2)(b) of the 1997 Act (which are the relevant provisions applying to a presidential election).

Section 33 of the Electoral (Amendment) Act 2004 (the 2004 Act) commenced with effect from 19 May 2004. It was understood from discussions with the Department of the Environment, Heritage and Local Government that the purpose of section 33 was to amend paragraph 2(a) of the Schedule to reflect the Court judgments. Section 33 of the 2004 Act, however, deleted paragraph 2(a) of the Schedule entirely. This meant that all of the matters referred to at section 22(2)(b)(i - v) of the 1997 Act were no longer specifically excluded from what were defined as election expenses. Technically, therefore, the matters referred to at section 22(2)(b)(i - v) could be regarded as election expenses if they were captured by the definition of election expenses as provided for in section 31 of the 1997 Act and paragraph 1 of the Schedule to the 1997 Act. The items referred to in section 22(2)(b)(i - v) include:

- free post service provided by An Post to candidates at elections;
- a free service provided by an individual;
- a service provided by an employee of a political party;
- normal media coverage; and
- the transmission on radio or television of a broadcast on behalf of a candidate or a political party.

The Standards Commission wrote to the Department of the Environment, Heritage and Local Government on 17 June 2004 setting out its concerns regarding the deletion of paragraph 2(a) of the Schedule. It also drew the Department's attention to specific items of expenditure which the Standards Commission had stated (in its guidelines for the European Parliament election) would not be regarded as election expenses but which, following the deletion of paragraph 2(a) to the Schedule, could now be captured by the definition of election expenses.

The explanation given by the Department for the deletion of paragraph 2(a) of the Schedule was, essentially, that the items referred to therein are not included, either directly or indirectly, in paragraph 1 of the Schedule, i.e. the list of matters which, and only which, are to be regarded as election expenses. On that basis, in its view, there was no need for the items to be specifically excluded from the definition of election expenses. The argument was also advanced that had the Oireachtas intended such matters to be regarded as election expenses, it would have made specific reference to them in paragraph 1 of the Schedule to the 1997 Act.

The Standards Commission took legal advice on the matter. The advice suggested that its interpretation was the more correct one and that the matters referred to under sections 22(2)(b)(i - v) and 46(2)(b)(i - v) of the 1997 Act could no longer be regarded as not being election expenses.

The Standards Commission wrote to the Minister for the Environment, Heritage and Local Government on 16 August 2004 informing him of the position. The Minister was advised that the Standards Commission did not intend to apply its interpretation of the effects of the deletion of paragraph 2(a) of the Schedule to the recording of election expenses at the European Parliament election. Had the items referred to above been required to be accounted for as election expenses a large number of candidates' election agents and the national agents of political parties would almost certainly have exceeded their expenditure limits. The Standards Commission proceeded on the basis that, as election agents and national agents had conducted their campaigns in accordance with the rules as set out in its guidelines (which were published prior to the enactment of section 33 of the 2004 Act) and as this enactment occurred during the election period (7 May - 11 June 2004 inclusive), it was not reasonable to require them to account for their election expenses on an entirely different basis.

The Standards Commission informed the Minister that it was in the process of preparing guidelines for the presidential election later in 2004 and that it was of the view that the guidelines should reflect its interpretation of the legislative position. The Minister was informed that this would also apply in relation to any Dáil by-elections which might take place. The Minister was asked to inform the Standards Commission if it was intended to introduce amending legislation to address the matter.

In his reply dated 15 September 2004, the Minister agreed that doubt had been introduced by the terms of section 33 of the 2004 Act. He indicated that he intended bringing forward, at an appropriate opportunity, legislative proposals which would address the position by confirming that the relevant items are not to be regarded as election expenses. He requested that his intention to bring legislative clarity to the matter might be reflected in any guidelines to be published by the Standards Commission.

The Standard Commission acceded to the Minister's request and, in its guidelines for the presidential election (and the Dáil by-elections of 11 March 2005), reflected the position as it applied prior to the introduction of section 33 of the 2004 Act. The Standards Commission was satisfied that the undertaking in relation to legislation would be acted upon at the earliest opportunity. At the time of going to print, an amending Bill has been introduced in the Dáil.

## Accounting Units

An accounting unit, in relation to a political party, means a branch, including the headquarters of a political party if it is a separate accounting unit, or other subsidiary organisation of the party, which, in any particular year, receives a donation the value of which exceeds €126.97. On receipt of a **monetary** donation in excess of €126.97, the accounting unit must open and maintain an account in a financial institution in the State and must lodge the donation and any further monetary donations received, of whatever value, to the account.

The provisions of the legislation applying to the accounting units commenced on 1 January 2002. The responsible person (usually the treasurer) of each accounting unit of a political party must, by 31 March each year, furnish to the Standards Commission a statement from the financial institution where the accounting unit has opened a political donations account showing the transactions which have taken place on the account during the preceding year. The responsible person is also required to furnish a Certificate of Monetary Donations stating that all monetary donations received during the preceding year were lodged to the account and that all amounts debited from the account were used for political purposes.

The Appropriate Officers of political parties are required to notify the Standards Commission of any change of responsible person for any of the accounting units (including change of contact details), and the name and address of any new accounting units, including the names and contact details of responsible persons.

The Electoral Acts provide that if the responsible person of an accounting unit fails to furnish the relevant documentation, he/she would be liable, on summary conviction, to a fine not exceeding €1,269.70. The person would be guilty of a further offence in respect of every day after a conviction on which the failure continued and for each such offence the person would be liable, on summary conviction, to a fine not exceeding €126.97.

Not all accounting units complied strictly with their statutory obligations during 2003 or 2004. It was clear to the Standards Commission that some political parties and their branches (including branches in third level institutions) were having difficulty putting in place workable procedures which would ensure that the requirements of the legislation were met. Mindful of these difficulties, the Standards Commission allowed some latitude to those concerned which resulted in the reporting requirements eventually being discharged, albeit later than the specified date.

## Third Parties

A third party is any person, other than a political party or a candidate at an election, who or which accepts, in a particular year, a donation for political purposes the value of which exceeds €126.97. The definition of political purposes is extremely broad. As well as referring to elections and referenda, it also covers any campaign which supports or opposes any policy of the Government or a public authority, including a local authority. On receipt of a donation exceeding €126.97 in value, and before incurring any expenses for political purposes, or any further such expenses, a third party is required to register with the Standards Commission by providing:

- the name and address of the third party and the name and address of the person responsible for its organisation, management or financial affairs ("responsible person");
- a statement of the nature, purpose and estimated amount of donations to, and proposed expenses of, the third party during the year;
- an indication of any connection the third party may have with any political party or candidate at an election or referendum or otherwise.

The provisions relating to third parties came into effect on 1 January 2002. While they have on-going effect, they are particularly relevant during political campaigns such as elections or referenda.

Twelve groups registered or continued to operate as third parties during 2003. As well as registering, if a third party received a monetary donation exceeding €126.97 it was required to open a political donations account. In those circumstances, the responsible person of the third party was required to furnish to the Standards Commission, by 31 March 2004, a statement, provided by the financial institution where the third party had opened the account, specifying the transactions that had taken place in relation to the account during 2003. The responsible person was also required to furnish a Certificate of Monetary Donations stating that all monetary donations received by the third party during the preceding year were lodged to the said account and that all amounts debited from the account were used for political purposes. The Certificate had to be accompanied by a statutory declaration that, to the best of the person's knowledge and belief, the Certificate was correct in every material respect and that the person had taken all reasonable action in order to be satisfied as to the accuracy of the Certificate.

Of the 12 third parties referred to above, nine of them furnished the required documentation to the Standards Commission. The remaining three third parties confirmed that they did not have any activity in their political donations account in 2003 and were not, therefore, required to complete a Certificate of Monetary Donations. The Standards Commission was satisfied that the three groups in question met with their statutory obligations under the legislation.

The Standards Commission requested that the responsible person of each of the third parties confirm in writing if the third party was continuing to operate during 2004. Five of the groups advised that they would be operating in 2004.

Outside of election and referendum campaigns, because the requirement to register as a third party applies at all times once a donation of more than €126.97 for political purposes has been received, the Standards Commission continues to be vigilant in relation to the activities of groups which might be covered by the legislation. Such groups are contacted by the Standards Commission for clarification of their position if it appears that the activities they are engaged in may be captured by the definition of political purposes set out in the legislation.

During 2004, 19 groups contacted the Standards Commission, or were contacted by it. The groups concerned were involved in campaigns across a wide range of issues including the ban on smoking in the workplace, bin charges, insurance reform and environmental issues. The majority of these groups indicated that the legislation did not apply to them because they were not in receipt of political donations valued in excess of €126.97. Two new third parties registered in 2004, namely:

- NASC, Irish Immigration Support Group Limited, St Marie's of the Isle, Sharman Crawford Street, Cork
- The Stop Bush Campaign, Pennock Hill, Swords, Co Dublin.

Despite its best efforts to explain the legal position, it is quite obvious to the Standards Commission, based on correspondence and discussions it has had with a wide range of civil society groups, including prominent NGOs, that there is great confusion and uncertainty as to how, and why, the legislative provisions in question would apply to them. The Standards Commission dealt with this matter in some detail in its document *Review of the Electoral Acts, 1997 to 2002*, which it provided to the Minister for the Environment, Heritage and Local Government in December 2003. The review document was circulated to members of both Houses of the Oireachtas and was published on the website of

the Standards Commission. The matter was also referred to in the Annual Report of the Standards Commission for 2003.

Where the Standards Commission has received complaints about the operation of this aspect of the legislation, it has advised complainants to make a submission to the Minister for the Environment, Heritage and Local Government in good time in order that the views expressed might be taken into account in any review of the legislation. The Standards Commission understands that some such submissions may have been made.

The Standards Commission continues to be of the opinion that, rather than receipt of donations being the determining factor, the focus should be on expenditure incurred by third parties for political purposes. The definition of political purposes also needs to be refined. The reasons have already been fully outlined in the

previous publications by the Standards Commission referred to above. Indeed the current position is doubly confusing in that if a third party receives, at any time, a donation valued in excess of €126.97 for political purposes it must register with the Standards Commission; in addition, if, during an election period, the third party intends to incur expenses to promote or oppose a candidate or political party at the election, or to otherwise influence the outcome of the election, it must register separately with the Standards Commission under section 31(7) of the 1997 Act and provide more or less the same information for a second time. It is also the case that, outside an election period, if a donation for political purposes has not been received, there is no statutory limit to spending by an individual or group on any type of political campaign and no requirement to either register or account for such expenditure.



## CHAPTER 3

## Exchequer funding of political parties

Political parties are now extensively funded by the Exchequer under the provisions of the Electoral Act 1997, as amended, and the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001.

### Direct funding under the Electoral Acts

Since 1998 direct general funding has been provided under the Electoral Acts. This coincided with the introduction of statutory obligations whereby political parties, and others, are required to disclose donations over certain values. The level of funding was increased considerably in 2001 at a time when limits were put in place on the values of donations that could be accepted and a ban on foreign donations was introduced.

To qualify for funding under the Electoral Acts, a political party must be included in the Register of Political Parties and must have secured at least two per cent of the first preference votes at the last Dáil general election. Currently six political parties qualify on the basis of the 2002 general election results.

### Payments made to qualified political parties in respect of 2003 and 2004

Each qualified party is now paid a basic amount of €126,974 annually. In addition, each qualified party is entitled to a share of an annual sum which is increased in line with general pay increases in the civil service. The amount of the fund payable to a qualified party is determined by expressing each qualified party's first preference votes at the most recent Dáil general election (May 2002) as a proportion of the total first preference votes received by all qualified parties.

The total funding received by qualified political parties in respect of 2003 was €4,723,424 and in respect of 2004 was €4,890,013.23. The total available to the parties for spending in 2003, which includes carry over of unspent funding from 2002, was €5,256,055 and the total available to the parties for spending in 2004, which includes carry over from 2003, was €5,758,402.23. Details of the funding are provided at Appendix 1, Table G.

### Accounting by political parties for spending of funds in 2003 and in 2004

Qualified political parties must account for their use of the funding on an annual basis. The legislation provides that the funding must be applied to the general conduct and management of the party's affairs and the lawful pursuit by it of any of its objectives and, without prejudice to the generality of the foregoing, any or all of the following purposes:

- general administration of the party;
- research, education and training;
- policy formulation;
- co-ordination of the activities of branches and party members.

The funding is deemed to include provision in respect of the promotion of participation by women and young persons in political activity. It is also provided that the funding must not be "applied to, or to recoup, election or referendum expenses".

The appropriate officer of each qualified political party provides an Exchequer Expenditure Statement to the Standards Commission by 31 March each year which sets out the amount of funding received in respect of the preceding year, as well as any amount brought forward, and the purposes to which it was applied. A public auditor is required to audit the statement and the auditor's report must be submitted with the Statement to the Standards Commission. Payments are not made beyond end-April of any year to a qualified party unless it has furnished a Donation Statement and an Exchequer Expenditure Statement to the Standards Commission in respect of the preceding year.

A breakdown of how the funding available to each of the six qualified political parties, in 2003 and 2004, was spent is provided in Appendix 1, Table H.

## Reimbursement of election expenses

The Electoral Acts also provide for the reimbursement of election expenses to candidates, up to a maximum of €6,348.69 per candidate in the case of a Dáil general election, €38,092.14 in the case of a European Parliament election and €260,000 in the case of a presidential election. To qualify for a refund, candidates must either have been elected or have obtained at least a quarter of the quota in the constituency. In many cases the refunds are passed on to the political party if the party has funded the candidate's election campaign.

As mentioned in Chapter 2, page 23 of this report, 27 candidates qualified for a reimbursement of their election expenses by either being elected or achieving a quarter of the quota at the European Parliament election. Details are provided in Appendix 1, Table D.

## Funding under the Party Leaders Allowance legislation

The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 provides for the payment of an annual allowance to the parliamentary leader of a qualifying political party in relation to expenses arising from the parliamentary activities, including research, of the party. This allowance is known as the Party Leaders Allowance and the legislation is referred to here as the Oireachtas Act 2001.

Although direct Exchequer payments to party leaders have been a feature since 1938, it was not until 2001 that the Standards Commission was given a supervisory role in relation to the Party Leaders Allowance scheme. Payments under this scheme are in addition to funding received by parties under the Electoral Acts.

A qualifying party is defined as a party, registered in the Register of Political Parties, which contested the last preceding general election or any subsequent by-elections and which had at least one member elected to Dáil Éireann or elected or nominated to Seanad Éireann at that general election or at any subsequent bye-election.

The allowance is calculated for each parliamentary leader by reference to the number of members of the party elected to Dáil Éireann at the last preceding Dáil general election or at a subsequent by-election, or elected or nominated to Seanad Éireann at the last preceding Seanad general election or nominated to it after the last preceding general election.

The level of the allowances payable was set by the Oireachtas Act 2001 and is subject to periodic increase in line with civil service general pay increases. In the case of Dáil Éireann, the allowances during 2003 and 2004 were:

	2003	2004
<b>First 10 members</b>	€53,266	€57,080
<b>From 11 to 30 members</b>	€42,612	€45,663
<b>Over 30 members</b>	€21,311	€22,837
<b>Independent members</b>	€30,649	€32,843

In the case of Seanad members, the allowances were:

	2003	2004
<b>First 5 members</b>	€34,829	€37,323
<b>Over 5 members</b>	€17,415	€18,296
<b>Independent members</b>	€17,415	€18,662

If a qualifying party forms part of the Government, the combined allowances, in respect of its members of the Dáil only, will be reduced by one-third. The allowance must not be used for, or to recoup, election or poll expenses and is not liable to income tax.

## Payments made in respect of 2003 and 2004

The parliamentary leaders who qualified for payments in respect of 2003 and 2004 were:

Mr. Bertie Ahern, TD, Taoiseach, Fianna Fáil  
 Mr. Enda Kenny, TD, Fine Gael  
 Mr Pat Rabbitte, TD, The Labour Party  
 Ms. Mary Harney, TD, Tánaiste, Progressive Democrats  
 Mr. Trevor Sargent, TD, Green Party  
 Mr. Caoimhghín Ó Caoláin, TD, Sinn Féin  
 Mr. Joe Higgins, TD, Socialist Party

Each party leader is required to prepare, or cause to be prepared, not more than 120 days after the end of the financial year in which an allowance has been paid (i.e. by 30 April), a statement of any expenditure from the allowance. The statement must be audited by a public auditor and must be submitted with the auditor's report to the Standards Commission within the 120 day period. Details of the allowances available to the parliamentary leaders in relation to 2003 and 2004 are provided in Appendix 1, Table I.

The allowance will not be paid to the parliamentary leader unless the statement of expenditure and auditor's report have been received by the Standards Commission not more than 120 days after the end of the financial year (i.e. by 30 April). The period of 120 days is extended by any period for which the Dáil stands dissolved which coincides with that period.

The Standards Commission must furnish a report to the Minister for Finance indicating whether the statement and auditor's report have been submitted within the specified period, whether any unauthorised expenditure is disclosed and whether the statement is adequate or inappropriate. A copy of the report to the Minister for Finance must be laid before each House of the Oireachtas. A copy of the statements and auditors' reports must be retained by the Standards Commission for three years and must be available for public inspection and copying.

"Expenses arising from the parliamentary activities, including research" include expenditure on the following matters:

- (a) the general administration of the parliamentary activities of a qualifying party,
- (b) the provision of technical or specialist advice likely to be required in connection with legislative proposals or potential parliamentary initiatives,
- (c) research and training,
- (d) policy formulation,
- (e) the provision of consultant services, including the engagement of public relations services,
- (f) polling or public attitude sampling in connection with parliamentary debates or initiatives,
- (g) the purchase of support services for a parliamentary party from the party,
- (h) the payment to a parliamentary leader of any salary or honorarium in respect of duties arising from his or her activities as such leader as distinct from those of a member of Dáil Éireann or a holder of a Ministerial office,
- (i) the payment to another person of any salary or honorarium in respect of duties arising from the person's activities in a parliamentary party,
- (j) the provision for, or recoupment of, transport and personal expenditure incurred by a parliamentary leader, officers or a parliamentary party spokesperson as a result of their parliamentary party function,
- (k) entertainment.

The Standards Commission considered the Statements of Expenditure and Public Auditors' Reports received in respect of 2003 and 2004 and was satisfied that:

- a) they did not disclose any expenditure which did not comply with the Act, and
- b) they were adequate and were not inappropriate.

If funding in respect of a particular year is not spent in that year, it must be accounted for in the Statement of the year(s) in which it is actually spent.

Appendix 1, Table J provides a breakdown of expenditure of the Party Leaders Allowance in 2003 and 2004.

Table K shows the total value of Exchequer funding in 2003 and 2004 under the three different headings, i.e. the Electoral Acts, reimbursements of election spending and the Party Leaders Allowance.

## CHAPTER 4

## Freedom of Information

### Requests for information during 2004

The Standards Commission received two requests for release of records under the Freedom of Information Act 1997 during 2004. In the case of one of the requests, access to records was partially granted. Access to some of the records was refused because they related to meetings of the Standards Commission, disclosure of which is an offence under section 35 of the Ethics in Public Office Act 1995 (see below).

The other request was being dealt with at the end of 2004.

### Prohibition on disclosure of information

Under section 35 of the Ethics in Public Office Act 1995, an offence is committed by disclosing information which is obtained under the Ethics Acts, or which is obtained by attending a meeting of the Standards Commission held in private. This prohibition on disclosure of information extends to requests for records made under the Freedom of Information Acts. Section 35 provides a number of specific exemptions to this absolute rule whereby information may be disclosed in the following circumstances:

- by a person in the performance of his or her functions;
  - by a person, in the public interest, to a Minister, the Secretary General to the Government, a Committee on Members' Interests, the Standards Commission or, in the case of an occupier of a designated position, the relevant authority in the public body;
  - by the Standards Commission in accordance with an order of a court;
  - by, or with the permission of, a person to whom the information relates, of information contained in a report of an investigation by the Standards Commission or a Committee on Members' Interests which has not been laid before either House [e.g. where a report following an investigation of a public servant carried out by the Standards Commission did not conclude there had been a contravention of the Ethics Acts].
- by a Minister of the Government when it is deemed by him or her to be in the public interest;
  - by a person to whom a statement of interest was provided if that person believes that a conflict may exist between an interest disclosed or not disclosed in a statement, and the public interest;

## CHAPTER 5

## Cost in 2004

The table below outlines the expenditure incurred by the Standards Commission in 2004. The figures for 2003 are also shown for comparison purposes. The expenditure is provided for in Subhead B of Vote 17 [Ombudsman].

	2003 €'000	2004 €'000
<b>Staff Salaries</b>	510	574
<b>Travel and Expenses</b>	2	8
<b>Incidental Expenses</b>	112	165
<b>Postal and Telecommunications</b>	15	22
<b>Office Machinery and Other Office Supplies</b>	42	42
<b>Office Premises</b>	33	22
<b>Consultancy &amp; Legal Fees</b>	34	31
<b>Total</b>	<b>748</b>	<b>864</b>

Increased expenditure in 2004 on Travel and Expenses, Incidental Expenses and Postal and Telecommunications was due to additional costs associated with supervision by the Standards Commission of the European Parliament election, e.g. expenses arising from publishing guidelines, placing public notices in newspapers, meetings with candidates and election agents.

# APPENDIX 1

**Table A: Donations disclosed by TDs, Senators and MEPs in respect of 2003 and 2004\***

Political Party	Year	TDs €	Senators €	MEPs €	Totals €
<b>Fianna Fáil</b>	2003	29,268.48	2,961.00	Nil	<b>32,229.48</b>
	2004	**105,507.26	1,500.00	9,004.00	<b>116,011.26</b>
<b>Fine Gael</b>	2003	Nil	1,000.00	Nil	<b>1,000.00</b>
	2004	***7,000.00	5,000.00	3,000.00	<b>15,000.00</b>
<b>The Labour Party</b>	2003	3,560.00	Nil	Nil	<b>3,560.00</b>
	2004	3,920.50	Nil	5,034.55	<b>8,955.05</b>
<b>Green Party</b>	2003	Nil	Nil	Nil	<b>Nil</b>
	2004	Nil	Nil	2,539.48	<b>2,539.48</b>
<b>Progressive Democrats</b>	2003	Nil	Nil	Nil	<b>Nil</b>
	2004	8,000.00	Nil	Nil	<b>8,000.00</b>
<b>Socialist Party</b>	2003	Nil	Nil	Nil	<b>Nil</b>
	2004	Nil	Nil	Nil	<b>Nil</b>
<b>Sinn Féin</b>	2003	Nil	Nil	Nil	<b>Nil</b>
	2004	Nil	Nil	Nil	<b>Nil</b>
<b>Non-Party</b>	2003	Nil	2,539.48	2,500.00	<b>5,039.48</b>
	2004	3,000.00	Nil	13,288.00	<b>16,288.00</b>
<b>TOTAL</b>	<b>2003</b>	<b>32,828.48</b>	<b>6,500.48</b>	<b>2,500.00</b>	<b>41,828.96</b>
	<b>2004</b>	<b>127,427.76</b>	<b>6,500.00</b>	<b>32,866.03</b>	<b>166,793.79</b>

\* The figures for 2004 include, in respect of TDs, donations disclosed by TDs who are also MEPs; in respect of Senators, donations disclosed by a Senator who is also an MEP; in respect of MEPs, donations disclosed by former MEPs.

\*\* €2,152 returned to donors

\*\*\* €2,500 returned to donor

**Table B: Donations made by multiple donors in 2003 and 2004**

2003			2004		
Donor	Value of Donation	Name and Postal Address of Recipient	Donor	Value of Donation	Name and Postal Address of Recipient
Ms. Nuala Ahern, MEP, 80 Heathervue, Greystones, Co. Wicklow	€3,809	Mr. Martin Nolan Treasurer Green Party Headquarters 5A Upper Fownes Street Dublin 2	<b>No such donations were disclosed in 2004</b>		
	€2,539	Clr. Mary White County Councillor Green Party Killedmond Borris Co. Carlow			
<b>Total Value of Donations Disclosed</b>	<b>€6,348</b>				

**Table C: Donations disclosed by political parties in respect of 2003 and 2004**

Political Party	2003	2004
	Total Value of Donations Disclosed €	Total Value of Donations Disclosed €
<b>Christian Democrat Party (The National Party)</b>	Nil	Nil
<b>Christian Solidarity Party</b>	Nil	Nil
<b>Communist Party of Ireland</b>	Nil	Nil
<b>Fianna Fáil</b>	*8,579.00	43,572.00
<b>Fine Gael</b>	Nil	Nil
<b>Green Party</b>	43,296.00	36,258.00
<b>The Labour Party</b>	6,348.69	Nil
<b>Progressive Democrats</b>	Nil	Nil
<b>Sinn Féin</b>	103,583.87	88,559.79
<b>Socialist Party</b>	6,200.00	18,520.85
<b>Socialist Workers Party</b>	Nil	Nil
<b>South Kerry Independent Alliance</b>	Nil	Nil
<b>The Workers Party</b>	Nil	Nil
<b>Total</b>	<b>*168,007.56</b>	<b>186,910.64</b>

\* Of which €2,300 was returned to donor.

**Table D: Total expenditure; donations disclosed by unsuccessful candidates; reimbursement of election expenses at the 2004 European Parliament election**

Political Party	Number of candidates	Expenditure by political parties and candidates at the 2004 European Parliament election (out of public funds)* €	Donations disclosed by the unsuccessful candidates only** €	Reimbursement of election expenses to candidates (max. per candidate €38,092.14) €
<b>Fianna Fáil</b>	8	1,291,065.14 (8,452.74)	67,506.67	304,737.12
<b>Fine Gael</b>	6	1,135,170.78 (5,980.00)	Nil	228,552.84
<b>The Labour Party</b>	5	715,431.70 (7,187.40)	15,207.41	114,276.42
<b>Green Party</b>	3	199,931.97 (265.38)	8,985.45	76,184.28
<b>Sinn Féin</b>	4	313,939.81	1,885.00	152,368.56
<b>Socialist Party</b>	1	28,307.52	Nil	28,307.52
<b>Christian Solidarity Party</b>	1	5,342.00	4,000.00	Nil
<b>Non-party</b>	14	318,789.41	23,868.90	114,276.42
<b>TOTAL</b>	<b>42</b>	<b>4,007,978.33</b> <b>(21,885.52)</b>	<b>121,453.43</b>	<b>1,018,703.16</b>

\* The figures in brackets denote the amount of election expenses incurred out of public funds which is included in the main figure.

\*\* The 13 successful candidates were required to disclose any donations received valued in excess of €634.87 in their annual Donation Statement in respect of 2004 which are included in the figures for 2004 in Table A.

**Table E: Presidential election 2004 - Summary of donations disclosed by the presidential election agent**

Total Amount Disclosed	Number of Donors	Total Amount Refunded	Total Amount Retained
<b>Euro Donations:</b> €92,289.00	47	€60,910.74	€31,378.26
<b>Sterling Donations:</b> £31,600.00 (€45,203.81)	21	£20,856.00 (€29,834.50)	£10,744.00 (€15,369.31)
<b>Total (in Euro):</b> <b>€137,492.81</b>	<b>68</b>	<b>€90,745.24</b>	<b>€46,747.57</b>

**Table F : Presidential election 2004 - Summary of election expenses accounted for by the presidential election agent**

Type of Expenditure	Amount
Advertising	€3,025.00
Publicity	€120.98
Election Posters	Nil
Other Election Material	Nil
Office and Stationery	€20,605.12
Transport and Travel	€36.98
Market Research	€7,932.76
Campaign Workers	€13,749.92
<b>Total</b>	<b>€45,470.76</b>

**Table G: Details of Exchequer funding of qualified political parties under the Electoral Acts in relation to 2003 and 2004**

Political Party	Year	Amount of funding brought forward from the previous year	Total funding received in respect of the year	Overall total funding available for spending	Total expenditure of funding received	Balance of funding carried forward to the following year
		€	€	€	€	€
<b>Fianna Fáil</b>	2003	39.00	1,972,279.00	1,972,318.00	1,481,922.00	490,396.00
	2004	490,396.00	2,049,876.00	2,540,272.00	1,924,000.00	616,272.00
<b>Fine Gael</b>	2003	287,261.00	1,126,877.00	1,414,138.00	1,158,611.00	255,527.00
	2004	255,527.00	1,168,924.23	1,424,451.23	1,333,737.00	90,714.23
<b>The Labour Party</b>	2003	133,326.00	606,324.00	739,650.00	617,184.00	122,466.00
	2004	122,466.00	626,481.00	748,947.00	622,009.00	126,938.00
<b>Progressive Democrats</b>	2003	Nil	303,264.00	303,264.00	303,264.00	Nil
	2004	Nil	310,678.00	310,678.00	310,678.00	Nil
<b>Green Party</b>	2003	112,005.00	298,114.00	410,119.00	410,119.00	Nil
	2004	Nil	305,311.00	305,311.00	305,311.00	Nil
<b>Sinn Féin</b>	2003	Nil	416,566.00	416,566.00	416,566.00	Nil
	2004	Nil	428,743.00	428,743.00	428,743.00	Nil
<b>TOTAL</b>	<b>2003</b>	<b>532,631.00</b>	<b>4,723,424.00</b>	<b>5,256,055.00</b>	<b>4,387,666.00</b>	<b>868,389.00</b>
	<b>2004</b>	<b>868,389.00</b>	<b>4,890,013.23</b>	<b>5,758,402.23</b>	<b>4,924,478.00</b>	<b>833,924.23</b>

**Table H: Breakdown of spending by qualified political parties of Exchequer funding under the Electoral Acts in 2003 and 2004**

Political Party	Year	General Administration	Research, Education and Training	Policy Formulation	Co-ordination of the Activities of the Branches & Members	Promotion of Participation of Women	Promotion of Participation of Young People	Amount of Funding Spent
		€	€	€	€	€	€	€
<b>Fianna Fáil</b>	2003	1,432,496	Nil	Nil	34,849	14,577	Nil	1,481,922
	2004	1,893,820	Nil	Nil	11,250	18,930	Nil	1,924,000
<b>Fine Gael</b>	2003	681,976	25,236	Nil	380,136	12,826	58,437	1,158,611
	2004	586,741	1,069	24,901	583,008	50,961	87,057	1,333,737
<b>The Labour Party</b>	2003	396,692	46,477	56,529	51,231	37,688	28,567	617,184
	2004	415,425	50,575	31,365	51,770	34,235	38,639	622,009
<b>Progressive Democrats</b>	2003	161,632	10,000	15,213	116,419	Nil	Nil	303,264
	2004	235,040	8,360	43,103	24,175	Nil	Nil	310,678
<b>Green Party</b>	2003	332,787	Nil	424	72,398	978	3,532	410,119
	2004	238,923	Nil	484	47,680	3,729	14,495	305,311
<b>Sinn Féin</b>	2003	222,463	30,108	48,437	81,169	27,442	6,947	416,566
	2004	184,541	25,340	30,783	143,677	11,189	33,213	428,743
<b>TOTAL</b>	<b>2003</b>	<b>3,228,046</b>	<b>111,821</b>	<b>120,603</b>	<b>736,202</b>	<b>93,511</b>	<b>97,483</b>	<b>4,387,666</b>
	<b>2004</b>	<b>3,554,490</b>	<b>85,344</b>	<b>130,636</b>	<b>861,560</b>	<b>119,044</b>	<b>173,404</b>	<b>4,924,478</b>

**Table I: Details of Exchequer funding of parliamentary leaders of qualified political parties under the Party Leaders Allowance in relation to 2003 and 2004**

Political Party	Year	Amount of funding brought forward from the previous year	Total funding received in respect of the year	Overall total funding available for spending	Total expenditure of funding received	Balance of funding carried forward to the following year
		€	€	€	€	€
<b>Fianna Fáil</b>	2003	1,292,323	2,257,361	3,549,684	2,325,933	1,223,751
	2004	1,223,751	2,348,308	3,572,059	2,577,401	994,658
<b>Fine Gael</b>	2003	Nil	1,754,506	1,754,506	1,752,750	1,756
	2004	1,756	1,825,203	1,826,957	1,826,957	Nil
<b>The Labour Party</b>	2003	146,218	1,175,537	1,321,755	1,288,547	33,209
	2004	33,209	1,222,907	1,256,116	1,203,017	53,099
<b>Progressive Democrats</b>	2003	228,314	423,401	651,715	270,754	380,961
	2004	380,961	440,463	821,424	285,438	535,986
<b>Green Party</b>	2003	309,644	319,596	629,240	32,730	596,510
	2004	596,510	332,475	928,985	369,839	559,146
<b>Sinn Féin</b>	2003	74,995	266,325	341,320	235,051	106,269
	2004	106,269	277,062	383,331	355,035	28,296
<b>Socialist Party</b>	2003	4,278	53,265	57,543	57,543	Nil
	2004	Nil	55,413	55,413	52,953	2,460
<b>TOTAL</b>	<b>2003</b>	<b>2,055,772</b>	<b>6,249,991</b>	<b>8,305,763</b>	<b>5,963,308</b>	<b>2,342,456</b>
	<b>2004</b>	<b>2,342,456</b>	<b>6,501,831</b>	<b>8,844,285</b>	<b>6,670,640</b>	<b>2,173,645</b>

Table J: Breakdown of spending by the Parliamentary Leaders of qualified political parties under the Party Leaders Allowance in 2003 and 2004

Political Party	Year	General Admin.	Technical Specialist Advice	Research	Policy Formulation	Provision of Consultant Services	Polling	Support Services	Salary or Honorarium to Leader	Salary or Honorarium to other Person	Transport etc.	Entertainment	Totals
		€	€	€	€	€	€	€	€	€	€	€	€
<b>Fianna Fáil</b>	2003	1,450,507	Nil	Nil	188,760	369,387	208,697	Nil	Nil	Nil	103,160	5,422	2,325,933
	2004	1,919,912	Nil	Nil	98,074	173,595	246,055	Nil	Nil	Nil	137,514	2,251	2,577,401
<b>Fine Gael</b>	2003	454,423	Nil	69,745	150,017	18,967	74,052	902,067	48,344	Nil	35,135	Nil	1,752,750
	2004	452,903	Nil	46,455	186,087	2,925	89,569	964,680	48,344	Nil	35,994	Nil	1,826,957
<b>The Labour Party</b>	2003	687,673	161,390	90,606	112,682	127,071	Nil	26,243	15,654	Nil	54,027	13,201	1,288,547
	2004	741,692	189,746	25,428	53,185	81,117	Nil	40,822	16,620	Nil	45,246	9,161	1,203,017
<b>Progressive Democrats</b>	2003	24,290	Nil	49,838	Nil	2,581	Nil	190,162	Nil	Nil	Nil	3,883	270,754
	2004	39,063	Nil	55,875	Nil	782	Nil	184,625	Nil	Nil	Nil	5,093	285,438
<b>Green Party</b>	2003	3,435	Nil	28,059	Nil	Nil	Nil	Nil	Nil	Nil	1,236	Nil	32,730
	2004	Nil	Nil	4,788	Nil	Nil	Nil	361,500	Nil	Nil	3,551	Nil	369,839
<b>Sinn Féin</b>	2003	111,777	57,004	20,951	3,289	10,066	Nil	Nil	Nil	31,964	Nil	Nil	235,051
	2004	131,788	29,443	76,177	78,929	6,656	Nil	Nil	Nil	32,042	Nil	Nil	355,035
<b>Socialist Party</b>	2003	15,051	Nil	40,757	1,735	Nil	Nil	Nil	Nil	Nil	Nil	Nil	57,543
	2004	16,673	Nil	35,850	340	Nil	Nil	Nil	Nil	Nil	Nil	Nil	52,953
<b>TOTAL</b>	2003	2,747,156	218,394	299,956	456,483	528,072	282,749	1,118,472	63,998	31,964	193,558	22,506	5,963,308
	2004	3,302,121	219,189	244,573	416,615	265,075	335,624	1,551,627	64,964	32,042	222,305	16,505	6,670,640

**Table K: Total Exchequer funds received by qualified political parties under the Electoral Acts and the Party Leaders Allowance in 2003 and 2004, and reimbursements of election expenses made to candidates in respect of the 2002 Dáil general election (made in 2003) and the 2004 European Parliament election (made in 2004)**

Political Party	Year	Total Funding Received under the Party Leaders Allowance	Total General Funding Received under the Electoral Acts	Total amount of election expenses reimbursed to candidates under the Electoral Acts	Overall Total Exchequer Funding
		€	€	€	€
<b>Fianna Fáil</b>	2003	2,257,361.00	1,972,279.00	660,264.00	<b>4,889,904.00</b>
	2004	2,348,308.00	2,049,876.00	304,737.00	<b>4,702,921.00</b>
<b>Fine Gael</b>	2003	1,754,506.00	1,126,877.00	463,454.00	<b>3,344,837.00</b>
	2004	1,825,203.00	1,168,924.23	190,460.00	<b>3,184,587.23</b>
<b>The Labour Party</b>	2003	1,175,537.00	606,324.00	241,101.00	<b>2,022,962.00</b>
	2004	1,222,907.00	626,481.00	114,276.00	<b>1,963,664.00</b>
<b>Progressive Democrats</b>	2003	423,401.00	303,264.00	88,882.00	<b>815,547.00</b>
	2004	440,463.00	310,678.00	Nil	<b>751,141.00</b>
<b>Green Party</b>	2003	319,596.00	298,114.00	85,570.00	<b>703,280.00</b>
	2004	332,475.00	305,311.00	38,092.00	<b>675,878.00</b>
<b>Sinn Féin</b>	2003	266,325.00	416,566.00	158,304.00	<b>841,195.00</b>
	2004	277,062.00	428,743.00	152,368.00	<b>858,173.00</b>
<b>Socialist Party</b>	2003	53,265.00	Nil	12,697.00	<b>65,962.00</b>
	2004	55,413.00	Nil	28,307.00	<b>83,720.00</b>
<b>TOTAL</b>	<b>2003</b>	<b>6,249,991.00</b>	<b>4,723,424.00</b>	<b>*1,710,272.00</b>	<b>12,683,687.00</b>
	<b>2004</b>	<b>6,501,831.00</b>	<b>4,890,013.23</b>	<b>**828,240.00</b>	<b>12,220,084.23</b>

\* Does not include €157,639.96 to non-party candidates in 2003

\*\* Does not include €114,276 to non-party candidates in 2004



## APPENDIX 2

## Publications by the Standards Commission in 2004

### Ethics Acts

1. Investigations under the Ethics in Public Office Acts 1995 and 2001 - Statement of Intended Procedures (May 2004)

### Electoral Acts and Oireachtas Act 2001

2. Report relating to Donation Statements and Statutory Declarations, in respect of 2003, furnished to the Standards in Public Office Commission by members and former members of both Houses of the Oireachtas, representatives in the European Parliament and other persons, pursuant to section 24 of the Electoral Act 1997 (March 2004)
3. Guidelines for candidates, election agents and national agents in relation to the European Parliament election 2004 (May 2004)
4. Report relating to Statements of Expenditure and Public Auditors' Reports, in respect of 2003, furnished to the Standards in Public Office Commission, pursuant to section 1.10(11)(a) and section 1.10(11)(d) of the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 (June 2004)
5. Report relating to Annual Donation Statements and Statutory Declarations, in respect of 2003, furnished to the Standards in Public Office Commission by political parties pursuant to section 24 of the Electoral Act 1997 and Annual Statements of Expenditure of Exchequer Funding and Auditors' Reports, in respect of 2003, furnished to the Standards in Public Office Commission by qualified political parties pursuant to section 20 of the Electoral Act 1997 (June 2004)

6. Guidelines on donations and spending at the 2004 presidential election (October 2004)
7. Report relating to Donation Statements and Statutory Declarations received from unsuccessful candidates at the European Parliament election 2004 and Election Expenses Statements and Statutory Declarations received from election agents of candidates, national agents of political parties and other persons at the European Parliament election 2004 (November 2004)

All of the above publications may be viewed on the website of the Standards Commission - [www.sipo.gov.ie](http://www.sipo.gov.ie)