



Standards in Public Office Commission
Coimisiún um Chaighdeáin in Oifigí Poiblí

Annual Report 2009

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PRN: A10/0224

ISSN: 2009-3217



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Contents

Foreword	5
The Members	6
Introduction by the Chairman	7
Chapter 1 - The Work of the Standards Commission	10
Ethics Acts	10
Electoral Acts	14
Party Leaders' Allowance Act	15
Chapter 2 - Ethics	17
Ensuring Integrity in Public Service	17
Whistleblowing	17
Inquiry Officer	20
Overlapping Ethics Frameworks	22
High Level Statement of Ethical Principles	23
Complaints	24
Killarney Town Council Investigation	24
Use of Oireachtas Facilities	25
Connected Persons	25
Scope of the Ethics Acts	27
Ethical Framework for the Local Government Service	28
Codes of Conduct	28
Disclosure of Liabilities	29
Chapter 3 - Electoral	32
Transparency of funding of political parties	32
GRECO Evaluation of transparency of political parties	35
Disclosure of Donations in respect of 2009	36
Donations disclosed by TDs, Senators and MEPs	36
Donations disclosed by individual donors	37
Donations disclosed by political parties	37
Supervision of the European Parliament election and the Dáil bye-elections	38
Accounting Unit returns for year ending 31 December 2008	39
Third Parties	40
Exchequer funding of political parties	41
Appendices	42
Appendix 1: Costs in 2009	43
Appendix 2: Publications by the Standards Commission 2009	44
Appendix 3: Glossary of terms	45
Appendix 4: Recommendations for change	49



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 2009 to the Minister for Finance.

Justice M. P. Smith
Chairman
Standards in Public Office Commission

June 2010

The Members



Justice M.P. Smith
Chairman



Michael Smith
Former member of Dáil Éireann



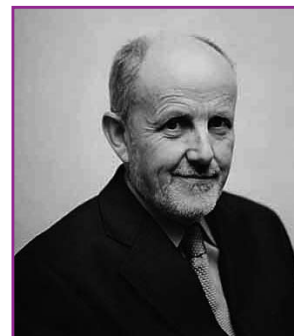
Deirdre Lane
Clerk of Seanad Éireann



John Buckley
Comptroller and Auditor
General



Emily O'Reilly
Ombudsman



Keiran Coughlan
Clerk of Dáil Éireann

Introduction by the Chairman

The year 2011 will mark the tenth anniversary of the enactment of the Standards in Public Office Act and the establishment of the Standards Commission. It is timely, therefore, that the Commission take a critical look at its work and its effectiveness. This is one of the tasks we have set ourselves for the coming year.

Two studies on attitudes to corruption published in November 2009 showed apparently contradictory results. While the rest of the world appeared to believe that Ireland had improved its standing on an index measuring perception of corruption, Irish people themselves apparently held a very different view. In past reports, I have stressed the importance of international perceptions of Ireland and the Standards Commission is pleased that we appear to be improving on this corruption perception index. Also of vital importance, however, is the trust of citizens in our institutions but this seems to have taken a battering in the past couple of years with examples of governance failures in both our public and private sectors.

Transparency International reported that its Corruption Perceptions Index showed that Ireland's score had risen from 7.7 the previous year to 8 out of 10 in 2009 and that our ranking had improved from 16th place on the index to become the 14th least corrupt country in the world in a survey of 180 countries. This places Ireland on an equal footing to Germany on the index and is the highest ranking achieved by Ireland since 1998.

The second study in November 2009 was the European Commission's Eurobarometer 72.2 survey on Attitudes of Europeans towards Corruption. In a comprehensive survey of the 27 member states, 78% of those interviewed tended to agree with the proposition that corruption was a major problem in their individual countries. 85% of Irish people surveyed agreed with this; an increase of six percentage points on the previous survey in 2007. 87% of Irish people agreed that there was corruption in our national institutions, a worrying 12 percentage

point increase on 2007. In 2007, 63% of Irish surveyed believed that the giving and taking of bribes and the abuse of power for personal gain was widespread among politicians at national level. This figure had increased to 71% in the 2009 survey.

These statistics underline the need to avoid complacency in relation to our anti-corruption activities and to continue to strengthen both our legal and regulatory frameworks. A number of other very useful studies were published during the year to which we refer in this report. These include the Council of Europe GRECO report on transparency of political party funding in Ireland, an area within the purview of the Standards Commission, and the GRECO report is dealt with later in this report. Other international studies were also published - Transparency International's National Integrity System Study and that organisation's study "Alternative to Silence", a report on whistleblower protection in 10 European countries, including Ireland.

As well as reporting briefly on the Standards Commission's activities in 2009, this report focuses on a number of areas which we believe must be tackled in order to ensure integrity in our public services. These include reform of political party funding, whistleblower protection and the powers of the Standards Commission itself.

Finally, I would like to thank my fellow Commissioners for their contributions during the year. I would also like to thank the staff of our secretariat and our secretary for their work during 2009.



Chapter 01

Chapter I - The Work of the Standards Commission

The Standards Commission has a supervisory role under -

- the Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001, (the Ethics Acts);
- the Electoral Act 1997, as amended, (the Electoral Acts);
- the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001, (the Party Leaders' Allowance Act).

This chapter provides a brief description of the main features of the legislation and of the functions performed by the Standards Commission.

Ethics Acts

Overview of the Ethics Acts

The broad focus of the Ethics Acts is to provide for disclosure of interests, including any material factors which could influence a Government Minister or Minister of State, a member of the Houses of the Oireachtas or a public servant in performing their official duties. The principal objective of the legislation is to demonstrate that those who are participating in public life do not seek to derive personal advantage from the outcome of their actions. To meet this objective, a statutory framework has been put in place to regulate the disclosure of interests and to ensure that other measures are taken to satisfy the broad range of obligations arising under the legislation. The legislation is founded on the presumption of integrity but recognises that specific measures should exist to underpin compliance.

Evidence of tax compliance must also be furnished to the Standards Commission by all members of both Houses of the Oireachtas, the Attorney General and appointees to senior office in public bodies. The legislation also requires the

drawing up of codes of conduct for ordinary members of the Houses, for office holders (see definition in Appendix 3) and for public servants.

The Standards Commission also has a role in relation to the Ethical Framework for the Local Government Service provided for in Part 15 of the Local Government Act 2001. The Commission must be consulted by the Minister for the Environment, Heritage and Local Government in relation to the codes of conduct for local authority members or for local authority employees. It can also examine complaints about contraventions of Part 15 by local authority members or employees.

Functions of the Standards Commission under the Ethics Acts

The main functions of the Standards Commission are to provide advice and guidelines on compliance with the Ethics Acts, to administer the disclosure of interests and tax clearance regimes and to investigate and report on possible contraventions of the legislation. These functions of the Standards Commission apply to office holders and to public servants and, in relation to tax compliance measures, to all members of the Houses. Apart from matters relating to tax clearance, the Committees on Members' Interests of both Houses have functions similar to those of the Standards Commission in relation to members of the Houses who are not office holders.

Statements of Interests

Under the disclosure of interests provisions of the Ethics Acts, the Standards Commission provides annual statement of registrable interests forms to members of the Oireachtas, who are required to furnish a statement of any registrable interests to the Commission. The Commission forwards these statements to the Clerk of Dáil Éireann or the Clerk of Seanad Éireann as appropriate, who publish registers of members' interests.

The Ethics Acts also require statements of interests to be furnished to the Standards Commission by office holders (in relation to the interests of a spouse, a child or a child of a spouse), the Attorney General, designated directors (see definition in Appendix 3) and special advisers. The Standards Commission receives in excess of 3,000 statements each year. The secretariat administers the receipt and retention of these statements, including returning incorrectly completed statements to individuals for amendment.

Codes of Conduct

The Standards Commission is consulted on proposed Codes of Conduct under the Standards in Public Office Act 2001 and is required to publish any such codes adopted under the legislation.

Tax Clearance

Members of the Oireachtas on election, senior public servants and directors on appointment to 'senior office' are required to provide a statutory declaration and either a tax clearance certificate or an application statement to the Standards Commission within 9 months of election or appointment. The secretariat administers the tax clearance provisions, informs elected members and appointees to senior office notified to it by public bodies of their obligations under the legislation and ensures compliance with the requirements. The legislation provides for investigation and report in relation to contraventions.

Guidelines

The Standards Commission publishes statutory guidelines on compliance with the provisions of the Ethics Acts for persons who have obligations under the legislation. Such persons are required to act in accordance with the guidelines unless by so doing, the act concerned would constitute a contravention of another provision of the Ethics Acts. The guidelines are revised periodically to take account of amended legislative provisions or to clarify matters which have arisen since the previous edition. The Standards Commission has published guidelines for office holders and for public servants. These are available on its website. Guidelines for members of the Oireachtas who are not office holders are published by the relevant Committee on Members' Interests.

Advice

Designated members of the staff of the secretariat have responsibility delegated to them by the Standards Commission to provide advice to persons who request it in relation to their statutory obligations under the Ethics Acts. Such persons are required to act in accordance with advice given unless by so doing, the act concerned would constitute a contravention of another provision of the Ethics Acts. Where requested, advice must be provided within 21 days or, alternatively, it may decline to give advice. Normally, all advice of a substantive nature will be provided in writing.

Complaints

The Standards Commission may receive complaints about a contravention of the Ethics Acts by an office holder, the Attorney General, a designated director, a designated employee or a special adviser. It can receive complaints about a 'specified act' by a 'specified person' (see definitions in Appendix 3). It can also receive complaints about a contravention of Part 15 of the Local Government Act 2001 by a local authority member or employee. It cannot accept complaints about a member of the Oireachtas who is not an office holder, as the legislation provides

that such a complaint must be made to either the Clerk of Dáil Éireann or the Clerk of Seanad Éireann as appropriate, who will consider whether the complaint should be referred to the relevant Committee on Members' Interests.

Any person may make a complaint to the Standards Commission under the above headings, although the legislation makes particular provision for complaints by certain categories of persons, such as members, Ministers or heads of bodies.

On receipt of a complaint, the Standards Commission may consider whether an investigation is warranted under the legislation. It may do so on the basis of the evidence available to it. It may also appoint an Inquiry Officer to assist it in its consideration by carrying out a preliminary inquiry. The Inquiry Officer can seek a statement from and/or interview the complainant and/or the person against whom the complaint has been made or from any other person whose evidence would or might, in the opinion of the Inquiry Officer, be relevant to the inquiry. He or she may also request the production of any documents considered to be relevant to the inquiry. Following such an inquiry, the Officer is required to prepare a report of the results of the inquiry and to furnish that report, together with any statements and other documents furnished to the officer in the course of the inquiry. The report must not contain any "determination or findings" but, if the Commission so requests, it shall contain an expression of the opinion of the officer as to whether there is *prima facie* evidence to sustain the complaint.

Own Initiative Inquiries

In addition to receiving complaints, the Standards Commission can decide to initiate an investigation into a contravention of the Ethics Acts or of Part 15 of the Local Government Act or a 'specified act', where it considers it appropriate to do so. While the legislation is not specific in this regard, it would only do so if it considered that there was *prima facie* evidence of a contravention or a 'specified act'. When considering whether an investigation is warranted in the absence of a complaint, the Standards Commission does not have the power to appoint an Inquiry Officer to assist it in its deliberations.

Investigations

Where it decides to do so, the Standards Commission will carry out an investigation in accordance with the provisions of the Ethics Acts. The legislation provides that it shall hold sittings for the purpose of an investigation and that it may receive submissions and evidence as it thinks fit at such sittings. Provision is made for cross-examination of witnesses. At the conclusion of an investigation, the Standards Commission prepares a report of the result of the investigation, which is provided to the relevant parties and others specified in the legislation.

Electoral Acts

Overview of the Electoral Acts

Among the purposes of the Electoral Acts are to make provision for disclosure of donations for political purposes, to regulate spending by candidates and political parties at elections, and to provide for payments to political parties and candidates.

Functions of the Standards Commission under the Electoral Acts

The Electoral Acts require the Standards Commission to monitor and, where it considers it appropriate to do so, report to the Chairman of Dáil Éireann on matters relating to -

- the acceptance and disclosure of donations received by political parties, members of both Houses of the Oireachtas and of the European Parliament and candidates at Dáil, Seanad, European Parliament and presidential elections;
- the opening and maintenance of political donations accounts;
- the limitation, disclosure and reimbursement of election expenses;
- State financing of qualified political parties;
- the registration of “third parties” (i.e., campaign/lobby groups or individuals which accept a donation for political purposes which exceeds €126.97 in value) and other persons.

The Standards Commission may conduct whatever inquiries are necessary in the discharge of its statutory functions under the Electoral Acts.

The Standards Commission is required, from time to time, to draw up and publish guidelines and provide advice on compliance to persons who are covered by the provisions of the Electoral Acts. A person must act in accordance with guidelines published or advice given by the Standards Commission, unless, by doing so, he or she would be contravening another provision of the Electoral Acts.

The Standards Commission is also required to facilitate the inspection and copying, by any person, of Donation Statements, Election Expenses Statements, etc., furnished to it under the legislation.

Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 (the Party Leaders' Allowance Act)

Overview of the Party Leaders' Allowance Act

The Party Leaders' Allowance Act provides for the payment of an annual allowance to the leaders of parliamentary parties in relation to expenses arising from the parliamentary activities, including research, of the party. The amount paid is based on the party's representation in Dáil and Seanad Éireann. The allowance is reduced where a party forms part of the government. The "parliamentary activities" to which the funding may be applied are set out in the Act. The funding may not be used for electoral or referendum purposes.

The Party Leaders' Allowance Act requires the party leader to prepare, or cause to be prepared, a statement of expenditure from the allowance received in respect of the preceding year. The statement must set out, under specific headings, the items on which the funding was spent. The statement must be audited by a public auditor and must be furnished together with the auditor's report to the Standards Commission within 120 days of the end of the financial year for which the allowance has been paid (i.e., by 30 April). Failure to furnish the statement within this timeframe can result in a suspension of the Allowance.

Functions of the Standards Commission under the Party Leaders' Allowance Act

The Standards Commission must consider each statement and auditor's report furnished to it and, if necessary, consult with the party leader on any matter contained in the statement. The Standards Commission is also required to furnish a report to the Minister for Finance indicating whether the statement and auditor's report have been submitted within the specified period. It must also indicate whether any unauthorised expenditure is disclosed and whether the statement is adequate or inappropriate.

The Standards Commission must cause a copy of the report to the Minister for Finance to be laid before each House of the Oireachtas.

A copy of the statements and auditors' reports must be retained by the Standards Commission for 3 years and must be made available for public inspection and copying.



Chapter 02

Chapter 2 - Ethics

Ensuring Integrity in Public Service

The Irish people are entitled to expect that decisions taken in our name are based on the merits of the case and do not favour any private interest. Among the elements required to ensure that this is the case is a strong and effective integrity framework for public servants and public representatives. Such a framework depends on the existence of a clear statement of ethical principles, elaborated where required by appropriate rules and on a strong commitment by political leaders and by the public service to ensuring adherence to the highest ethical standards. Finally, there must be effective investigation of any failure to abide by those standards.

Whistleblowing

An effective investigation framework relies on the availability of evidence of wrongdoing. For that reason, investigative bodies such as the Standards Commission are given wide powers in relation to discovery of evidence, the taking of witness statements, etc. However, such powers can only be legitimately used where there is cause to use them. The Standards Commission has in previous annual reports considered the question as to why it continues to receive a small number of complaints under the Ethics Acts. It speculated that this may be due to -

- the complexity of the legislation, especially the provisions relating to complaints about a “specified act”,
- a low level of awareness of the principles of the various codes of conduct,
- the lack of publicly available evidence of non-compliance, in view of the restricted disclosure provisions applicable in many cases under the Ethics Acts, or
- a possibility that there may be a low level of contravention of the Ethics Acts.

However, it is also the case that a major factor in the low level of complaints is fear on the part of potential whistleblowers of the consequences of reporting wrongdoing. It may also be that the piecemeal approach to introducing protection

for whistleblowers has created confusion as to whether protection is available or indeed whether there is a real commitment to encouraging whistleblowers to come forward. There is a strong public interest in ensuring that persons who are aware of wrongdoing are encouraged to report it to the appropriate authorities.

Successful law enforcement and anti-corruption strategies are largely dependent upon the willingness of individuals to provide information and/or to give evidence. Whistleblowers are people who inform the public or the authorities about corrupt transactions they have witnessed or uncovered. These individuals often require protection from those they expose. Whistleblower protection, therefore, refers to the measures (administrative or legislative) taken to shield the whistleblower from physical, social and economic retaliation. (Corruption glossary, www.u4.No)

*Transparency International defines whistleblowing as -
The disclosure of information about a perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to effect action.*

The Standards Commission notes that in response to allegations of wrongdoing in FÁS, the government introduced whistleblower protection under the Labour Services (Amendment) Act 2009. It also notes the publication in March 2010 by the Minister for the Environment, Heritage and Local Government of the scheme of a Bill to establish a Dublin Mayor and Regional Authority which, inter alia, would introduce whistleblower protection for persons who report alleged contraventions of the Ethical Framework for the Local Government Service to an ethics registrar. These provisions were first called for by the Standards Commission in its observations on the draft code of conduct for local authority employees in 2004. While these developments are to be welcomed in themselves, they do not go far enough in addressing the culture whereby whistleblowing is seen in some quarters as an unacceptable activity.

It should be noted that complainants to the Standards Commission under the Ethics Acts are afforded immunity. Where a complainant in good faith makes a complaint under the Ethics Acts or reasonably believes that the complaint has been made to the appropriate person and is one that falls to be investigated under the Ethics Acts, the legislation provides -

no cause of action shall lie against the person, and no disciplinary action shall be taken against him or her, in respect of, or of any matter arising from-

- (i) the complaint,*
- (ii) the furnishing of information to the Commission, a Committee, a Clerk or an inquiry officer in relation to the complaint,*
- (iii) the performance by the Commission, a Committee, a Clerk or an inquiry officer of a function of it or of his or hers under [the Ethics Acts] in relation to the complaint.*

However, the Standards Commission considers that the immunity provided needs to be strengthened in the context of a comprehensive law providing immunity for whistleblowers and for disclosure in the public interest of wrongdoing to the appropriate authorities.

Transparency International (TI) Ireland, as part of a European Commission-funded study of whistleblower protection in ten European countries, published a national study in January 2010. It found that the Irish approach is deeply flawed. It referred to the piecemeal approach and noted marked variation between the protections afforded by different Acts. It stated -

A serious criticism of the more restrictive provisions is that they do not appear on the face of it to capture a significant portion of the range of actions and omissions seen in whistleblower reprisal. The provision in the Ethics Acts is the weakest, it protects the whistleblower against only [formal] “disciplinary action.” Others forbid the employer from penalising the employee: this level of protection is at least open to a narrow interpretation as being limited to the formal sanction of the employee. The protections afforded by the Safety, Health and Welfare at Work Act and the Communications Regulation (Amendment) Act should be seen as the model as they are drawn widely enough to capture immediately many of the tactics used against whistleblowers such as “white-walling” (giving no work to the employee) or the denial of previously available overtime and benefits which it could be argued are not captured by the more restrictive definitions. (Transparency International Ireland - Whistleblower Protection Assessment Ireland)

The Standards Commission welcomes the TI report and endorses its recommendation that a comprehensive public interest disclosure and whistleblower protection law be introduced as a matter of urgency. As well as the specific protections which would be afforded, such a step would send out a clear signal that wrongdoing is not to be tolerated and that reporting in good faith of wrongdoing is to be strongly encouraged.

Inquiry Officer

A related issue is the capacity of investigative bodies to conduct their investigations in a manner which elicits the facts in order that wrongdoing can be uncovered.

One of the strengths of the Ethics Acts is the power given to the Standards Commission, in the 2001 Act, to appoint an Inquiry Officer to assist it, by carrying out a preliminary examination, when it is considering whether a complaint provides a basis for initiating a formal investigation.

The Ethics Acts provide for a two stage process for the examination of complaints -

- (a) consideration by the Standards Commission as to whether an investigation is warranted and
- (b) if it is warranted, a full, formal investigation involving public hearing of evidence and consideration of relevant documentary evidence.

Prior to the 2001 Act, the Commission itself had to gather relevant evidence and statements from relevant persons and base its consideration on initiation of an investigation on the evidence or statements gathered. The 2001 Act provided for the appointment of an Inquiry Officer who would assist the Commission in its initial consideration of whether a complaint warranted investigation and provide a firm evidential basis for such a decision.

The 2001 Act gives the Inquiry Officer powers to -

- procure the evidence of the complainant or of any other relevant person;
- put such evidence 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 Commission would then be in a position to decide if an investigation of the complaint was warranted.

The power to appoint an Inquiry Officer is important in order to ensure that complaints are the subject of a full formal investigation by the Commission only where that is truly warranted.

In annual reports since 2004, the Standards Commission has pointed out that it can appoint an Inquiry Officer only when it has received a complaint. It has recommended that it be granted the power to appoint an Inquiry Officer to assist it in considering whether an investigation is warranted where no complaint has been received.

While the Standards Commission has set out its recommendation and the basis for it in its annual reports, there has been a persistent and unfortunate misunderstanding of the position in public comment on the matter. In Dáil debates concerning this issue, it has been discussed on the basis that the Commission was proposing that it be granted the power to initiate investigations in the absence of a complaint. Since the Ethics in Public Office Act 1995 was enacted, the Commission has had the power to investigate both where it has received a complaint and also where “the Commission considers it appropriate to do so...”. Thus, the Oireachtas has already granted the Commission the power to commence an investigation on its own initiative in the absence of a complaint.

The Standards Commission recognises the responsibility that the Acts place upon it in this respect and the effect that the initiation of a formal investigation could have on a person who is accused of contravening the Ethics Acts. It would only do so were there was *prima facie* evidence to warrant the initiation of the investigation. This could be provided by the Inquiry Officer. Where there is such evidence, it is clearly in the public interest for the matter to be fully investigated, regardless of whether a complaint has been made. Contrary to claims that, if a matter is of sufficient public importance, a complaint will be made by an affected or third party, the Commission is satisfied that this may not always be the case.

The capacity to appoint an Inquiry Officer would allow a matter of significant public importance to be examined in an efficient, economic and effective manner which would provide clarity as to the issues involved and which would provide a firm basis for any Commission decision to initiate an investigation. The process which must be followed at present is for all the members of the Commission to consider a matter, to decide at each stage on the next course of action, to decide to seek information, evidence, etc., from a person or body, to order discovery of documents if that is considered warranted and to then make a determination as to whether a person may have contravened the ethics legislation or have done a ‘specified act’.

With four *ex-officio* members, the make up of the Commission does not lend itself to carrying out this process in a speedy manner. Where it has appointed an Inquiry Officer to conduct a preliminary inquiry into the facts of a complaint, the process is much more efficient and the Inquiry Officer's report provides a firm basis on which to decide whether there is *prima facie* evidence of a contravention or a 'specified act'. The Commission's proposal is merely to replicate that efficient process to assist it in its existing statutory duties to consider whether an investigation may be appropriate, notwithstanding the absence of a complaint.

Previous cases have highlighted the fact that the Commission is hindered in the exercise of the functions given to it to initiate an investigation on its own initiative as compared with its powers where a complaint has been made. The Commission continues to believe that this anomaly should be removed as a matter of urgency.

Overlapping Ethics Frameworks

The Standards Commission is concerned at the proliferation of statutory provisions relating to disclosure of interests in legislation relating to individual public bodies, which are also subject to the separate provisions of the Ethics Acts. It has noted that since the enactment of the Ethics in Public Office Act 1995, legislation has been introduced to provide separate disclosure of interests obligations in over fifty public bodies. The intention of the Ethics Acts is to provide a clear and comprehensive framework for the disclosure of interests by public officials. This is not served by the enactment of legislation applying to some but not all public bodies which overlaps with the provisions of the Ethics Acts. The implication may be that the Oireachtas considers the provisions of the Ethics Acts to be inadequate if they must be supplemented by separate legislation in certain public bodies. In addition, there is considerable scope for confusion on the part of persons who are obliged to comply with separate disclosure provisions. There is also the possibility that a person may be found to have contravened the provisions of the Ethics Acts, but to have complied with other statutory disclosure provisions arising from the same circumstances.

The Standards Commission considers that there is a clear public interest in the adoption of a single comprehensive Act which applies equally across all public bodies to ensure that private interests are appropriately disclosed and that conflicts of interests are properly dealt with. It recommends that the Department of Finance should draft new legislation to be based on best practice for dealing with conflicts of interests and would consolidate the provisions of the Ethics Acts, all other relevant legislation and the relevant provisions of the Code of Practice for the Governance of State Bodies.

High Level Statement of Ethical Principles

The issue of whether a rules-based approach or a principles-based approach should be followed in matters of corporate governance has been much discussed since the onset of the banking and financial crises. The same issue arises in respect of ethics frameworks. The Ethics in Public Office Act 1995 introduced a set of clear rules to be followed in relation to conflicts of interests. The Standards in Public Office Act 2001, while revising those rules in the light of early experience of the 1995 Act, shifted the emphasis in that it also introduced provisions in relation to codes of conduct, which would set down the standards of conduct and integrity to be followed by public servants and public representatives in the performance of their functions. Codes were subsequently published for office holders, TDs, Senators and civil servants.

In following this approach, the Oireachtas determined that neither a simple rules-based or principles-based approach was appropriate. The Standards Commission is of the view that the combination of both approaches provides a sound basis on which any ethics framework relies. Any rules that are laid down should be derived from general principles of ethical behaviour. It is also strongly of the view that the emphasis must be on adherence to the spirit of ethics laws rather than simply compliance with the letter of the statute. It considers however, that the adoption of codes of conduct for specific sectors in themselves is an inadequate expression of the standards by which all public servants and public representatives should abide.

The Standards Commission therefore proposed that a clear high level statement of the ethical principles to be followed by public servants and public representatives should be adopted, either in primary legislation or in each of the relevant statutory codes of conduct. It considers that the UK Committee on Standards in Public Life's Seven Principles of Public Life might provide a good starting point for discussion as to the fundamental principles that each public servant or public representative should know they must follow. The ultimately agreed principles should be incorporated into the Ethics Acts as public service values. Failure to abide by these principles could be cited in any complaint under the relevant ethics legislation. The provision in section 4 of the Standards in Public Office Act 2001 where a complaint may be made about a 'specified act' by a 'specified person' should be amended to provide that the Standards Commission may have regard to the principles when considering whether a person has done a 'specified act'.

The Standards Commission again notes that almost a decade after the enactment of the Standards in Public Office Act 2001, the adoption of a code of conduct for the wider public service under that Act is still awaited. It has been made aware

that the Department of Finance, which has responsibility in this regard, is actively pursuing the issue and expects that a draft code will be provided to the Standards Commission for consultation in accordance with the provisions of the legislation. It trusts that this important document will be expedited in order that directors and employees of all public bodies will have a clear statement of the standards they are expected to follow in performing their duties.

Complaints

The number of complaints received by the Standards Commission remains low. In 2009, it received a total of 32 complaints, six of which were valid within the terms of the Ethics Acts. The Standards Commission found that none of the complaints provided a basis on which to initiate an investigation.

Killarney Town Council Investigation

The Standards Commission has reported in previous annual reports on its investigation of alleged contraventions of the Ethical Framework for the Local Government Service by two members of Killarney Town Council, one of whom was found to have contravened those provisions in a number of respects. In the annual report for 2008, it reported that following an investigation hearing in 2007, it referred a report to the Director of Public Prosecutions about alleged breaches of the Local Government Ethical Framework by Councillor Patrick O'Donoghue. He was subsequently charged with offences under the Local Government Act 2001 and at a hearing in the Circuit Criminal Court in Tralee on 12 March 2009, Councillor O'Donoghue pleaded guilty to a charge that he "being a member of Killarney Town Council and being a person with actual knowledge of his beneficial interest in certain lands at Killarney on dates between January 1, 2006 and March 6, 2006, at Killarney - sought to influence a decision of Killarney Town Council in respect of a matter regarding the performance by that authority of its functions under the Planning Act 2000, namely the rezoning of those lands". A charge that he failed to withdraw from the Council meeting on the night of 6 March 2006, when the motion was considered, was withdrawn.

On 30 June 2009, a fine of €5,000 was imposed on Councillor O'Donoghue. This was the first occasion in which an offence under Part 15 of the Local Government Act 2001 was found to have been committed.

Use of Oireachtas Facilities

In March 2009, the Chairman of the Standards Commission wrote to the Taoiseach setting out its view that resources, such as Oireachtas envelopes, provided to TDs and Senators at public expense in order to facilitate the performance of their functions as public representatives should not be passed on to others who have no entitlement to use them. The Standards Commission is strongly of the view that such a practice is an abuse of public resources and is entirely inappropriate. It issued a press release on the matter in April 2009.

The Standards Commission subsequently received no complaints about members of the Oireachtas passing on publicly-funded facilities to candidates at the local or European elections. It did receive a number of complaints about a member using Oireachtas facilities himself to campaign on behalf of a candidate. However, the member concerned was not an office holder and the matter was therefore outside the remit of the Standards Commission.

Connected Persons

The Standards Commission is concerned at the narrow definition of a ‘connected person’ in the Ethics Acts in the context of a person who has an interest as a company director. The full definition of a ‘connected person’ is set out in Appendix 3, but includes the following -

- (iv) a company (see definition in Appendix 3) is connected with another person if that person has control (see definition in Appendix 3) of it or if that person and persons connected with that person together have control of it,
- (v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

The Standards Commission is of the view that the definition of a ‘connected person’ is unduly restrictive in relation to whether a company is connected to a person and to whether another person connected to a company is connected to a person. This question rests on the concept of “control” which in this context has the meaning assigned to it by section 157 of the Corporation Tax Act 1976, which in turn refers to section 102 of that Act, which has subsequently been re-enacted in section 432 of the Taxes Consolidation Act 1997. It provides -

a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire-

- (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or
- (b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or
- (c) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators.

This gives rise to circumstances where, for example, a member of a board of a public body, who is closely involved with a company (e.g., Chairperson, CEO, etc.) but who does not “control” that company and who is called upon to perform a function as a member of the board of the public body, the effect of which would be to benefit significantly that company, the company may not necessarily be regarded as a connected person with a material interest in the function to be performed, in which case, the board member would be entirely within his/her rights to participate in the function, notwithstanding the close connection that exists between that person and the company.

An example of this was reported by the Standards Commission in its Annual Report for 2007. It received a complaint about the actions of two members of the Dublin Docklands Development Authority, Mr Lar Bradshaw and Mr Sean Fitzpatrick, in view of their interests in Anglo Irish Bank which was providing funding for a number of schemes in the docklands area. The complainant alleged, inter alia, that the two members had each failed to make a statement of a material interest as required by section 17 of the 1995 Act on a number of occasions arising from decisions taken by the Authority relating to a series of developments for which Anglo Irish Bank provided funding.

The Standards Commission decided that there was no basis on which to find that Mr Fitzpatrick and Mr Bradshaw were, as between themselves, connected persons. In addition, there was no basis on which to find that Anglo Irish Bank was, in relation to either Mr Fitzpatrick or Mr Bradshaw, a connected person. While it may be that both held substantial shareholdings in the bank, the decision rested on the fact that there was no evidence that either held ‘control’ of the bank. Accordingly, the Standards Commission decided that there were no grounds on which to initiate an investigation into a contravention by either Mr Fitzpatrick or Mr Bradshaw of section 17 of the 1995 Act.

The Standards Commission considers that Section 2(2) of the Ethics in Public Office Act 1995 should be amended to provide also that a person is a “connected person” to a company of which he or she is a director and that the other directors of that company are also “connected persons” to that person.

Scope of the Ethics Acts

The Standards Commission has reported in each of its annual reports since 2004 on the large increase in the scope of the Ethics Acts in terms of the numbers of public bodies in the public service in which the Minister for Finance has prescribed designated directorships and designated positions of employment (see definition in Appendix 3). In its report for 2008, it stated that over 670 public bodies were covered in 2009.

This number has been increased on three occasions since that time. On 24 July 2009, the Minister for Finance signed regulations prescribing directorships and positions of employment in Anglo Irish Bank Corporation Limited and in 31 of its subsidiaries. The Bank had been brought into public ownership in January 2009. The Standards Commission had called for regulations to be introduced on the occasion of the establishment of a public body in order that the ethics obligations be applied as early as possible. It welcomes those regulations as the first occasion on which its recommendation was acted upon.

Further regulations were introduced with effect from 1 January 2010 which brought the total number of bodies, including subsidiaries to around 860. Regulations were subsequently made on 19 March 2010 which prescribed as designated directors the members of the board of the National Asset Management Agency (NAMA), of NAMA committees established under section 32(1) or 33(1) of the National Asset Management Agency Act 2009 and of NAMA group

entities as defined in section 4 of that Act (including any Special Purpose Vehicles established under that section).

The Standards Commission welcomes these regulations and trusts that the Minister for Finance will ensure that the scope of the Ethics Acts is applied to all new public bodies in a timely manner.

Ethical Framework for the Local Government Service

The Standards Commission welcomes the intention of the Minister for the Environment, Heritage and Local Government to extend the scope of the Ethical Framework for the Local Government Service provisions of Part 15 of the Local Government Act 2001 to the proposed Dublin Mayor and Regional Authority. However, the Commission remains of the view that the procedures for examination and investigation under the framework are inadequate and that an explicit statutory procedure for complaints about local authority members and employees should be introduced as a priority.

Codes of Conduct

The Civil Service Code of Standards and Behaviour sets out, *inter alia*, the prohibition on all civil servants above clerical grades from engaging in political activity. The code states that civil servants at or above clerical level may not engage in public debate (e.g., letter writing to newspapers, contributions to television or radio programmes, etc.) on politics, except if required to do so as part of their official duties.

The Department of Finance drafted a circular dealing with civil servants and politics during 2009. It consulted the Standards Commission with particular reference to engagement in politics by ministerial appointees who are not subject to the general restrictions of the code on such activity. The Standards Commission provided observations on the draft circular regarding advice given to election candidates on expenditure and on candidates' use of publicly-funded facilities in the course of an election. The circular was redrafted accordingly. The Department also consulted the Standards Commission concerning advice to be given to civil servants regarding the provision of briefings to Oireachtas members. The Standards Commission had reported on this issue in the annual report for 2006. The Standards Commission was pleased to note that the draft circular reflected the Commission's view that civil servants should not give briefings to parliamentary party meetings, but that briefings to parliamentary party subcommittees on technical matters such as draft legislation was acceptable.

The circular also elaborated on the provisions of the code in regard to civil servants engaging in political activity. It provides -

Civil servants may engage in voluntary, local, community or sporting affairs, where that activity is not connected to, or does not conflict with, their official duties, or is not connected to politics; and does not conflict with the need for civil servants to behave, and to be seen to behave, in a politically impartial manner. However officers should adopt a precautionary approach when dealing with the media or making any public comment about their activities. Officers must notify the Personnel Officer of their Department/Office in advance of making any public comment about those activities and must comply with any restrictions required by the Personnel Officer.

In the event that the Standards Commission receives a complaint about a civil servant engaging in political activity, it may have regard to the terms of the circular as well as the provisions of the code of conduct.

Disclosure of Liabilities

The Ethics Acts provide for annual disclosure of 'registrable interests'. The legislation provides for disclosure of the following categories of interests -

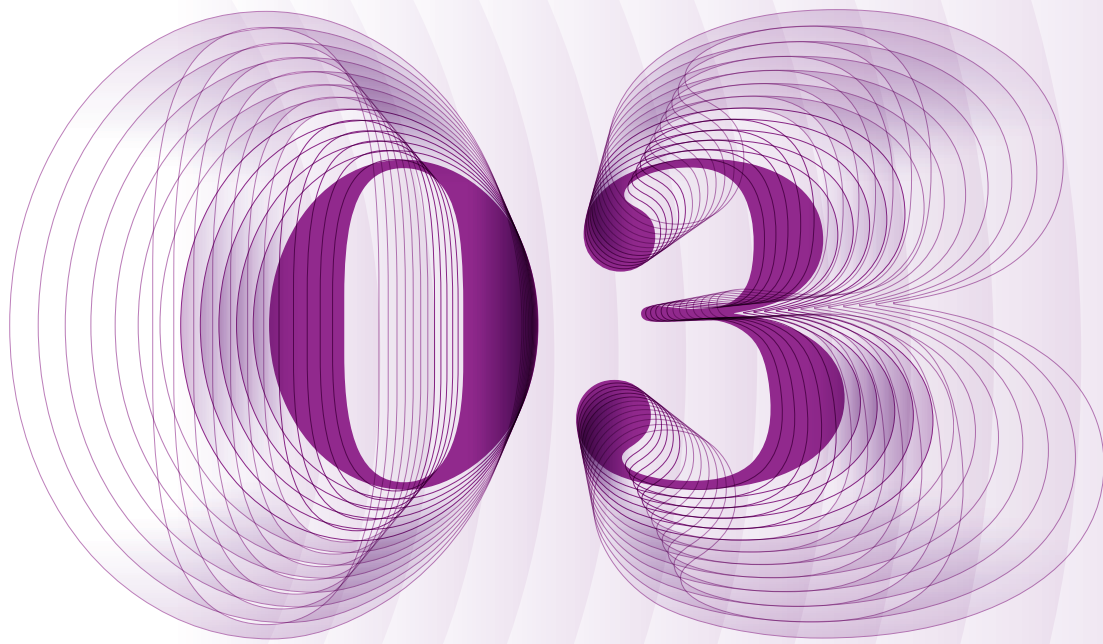
- Occupational income, etc
- Shares, etc.
- Directorships
- Land (including premises)
- Gifts
- Property and services
- Travel facilities, living accommodation, meals or entertainment
- A remunerated position as a political or public affairs lobbyist, consultant or adviser
- Contracts to supply goods or services to the public service

The Ethics Acts do not require disclosure of a person's liabilities. The intention of the Ethics Acts is to provide for appropriate disclosure of any interests which could materially influence a public official in the performance of his or her official functions. It is clear to the Standards Commission that a public representative or public servant who has significant liabilities to, e.g., a financial institution, could be materially influenced in the course of performing their duties where such duties involve dealing with that financial institution and where the actions of the public servant could conceivably affect their own interests. It is therefore in the public interest that such liabilities be appropriately disclosed.

The Standards Commission notes that, in providing guidance to member states on managing conflicts of interests, the OECD has recommended that current liabilities, loans, mortgages, etc., other than minor debts be disclosed (Managing Conflict of Interest in the Public Sector - A Toolkit, OECD, 2005).

The Standards Commission also notes that the National Asset Management Agency Act 2009 requires a member of the staff of the National Treasury Management Agency who is under consideration for assignment to the National Asset Management Agency to provide a statement of his or her interests, assets and liabilities to the CEO of NAMA. The Standards Commission considers the disclosure of liabilities in that context to be entirely appropriate. It is clear that similar considerations apply to other public officials dealing with financial institutions. It is of the view that all public officials should be required to make similar disclosures under the Ethics Acts.

Accordingly, the Standards Commission recommends that the Second Schedule to the Ethics in Public Office Act 1995 be amended to provide that a liability above a certain threshold be regarded as a registrable interest for the purposes of the Ethics Acts.



Chapter 03

Chapter 3 - Electoral

The preamble to the Electoral Act 1997 states that the Act is, among other things, “An Act to ... make provision for payments to political parties and candidates, to make provision for disclosure of donations for political purposes, to regulate expenditure at elections by political parties and candidates ...”. Political parties and candidates benefit from the provisions relating to funding from the Exchequer. However, the provisions aimed at ensuring transparency and openness in relation to disclosure of donations and expenditure at elections remain ineffective.

Transparency of funding of political parties

While the current system of regulation of political funding has some strong features, there are other fundamental measures which are yet to be developed in order to increase transparency and enhance control over political finances. There is a need to minimise corruption risks and to strengthen public trust in political parties and political representation.

Party Accounts

There is no requirement under the Electoral Acts for political parties to keep proper books and accounts, to specify all donations received in these accounts or to make the accounts public. It is not currently possible to know the annual income of political parties nor to have a full picture of how elections are funded. The various statements submitted to the Standards Commission by political parties show details of donations exceeding the statutory disclosure thresholds, details of expenditure of exchequer funding and details of expenditure by the party at Dáil and European elections. There is no requirement to furnish a full set of income and expenditure statements, listing of debts and assets nor additional details as to how campaigns are funded. A mandatory legal requirement to maintain proper books of account and to present and make public these accounts would be in line with Articles 11, 12 and 13 of the Council of Europe Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. The transparency of party funding would be enhanced if the relevant

financial reports of political parties were to follow a common accounting format and if the information included (or a summary) were made publicly available in a timely fashion.

Donation Disclosure

Identifying the sources of income is a key aspect of the transparency of party funding. At present, donations from an individual donor in a year are capped at €6,348.69 for political parties and €2,539.48 for individual members of the Houses of the Oireachtas and of the European Parliament. Donations over €5,078.95 to political parties and €634.87 to individual members must be disclosed. Donations below the disclosure thresholds need not be disclosed. The relatively small difference between the maximum donation which can be accepted by a political party (€6,348.69) and the amount that must be disclosed (€5,078.95) may encourage parties and donors to accept/make donations which are below the threshold values. In June 2009, figures released by the Standards Commission show that political parties disclosed donations worth €96,523 for 2008 which was the lowest figure disclosed since the introduction of the disclosure requirement in 1997. Of this amount, €11,800 was disclosed by Fianna Fáil and neither Fine Gael or the Labour Party disclosed any donations. In respect of 2009, €76,617.05 was disclosed. Neither of the three main political parties disclosed any donations in 2009, even though this was an election year (European, local and bye-elections).

Furthermore, anonymous donations are only possible where the threshold of €126.97 is not exceeded but anonymous donations below €126.97 neither have to be registered nor disclosed. In theory, therefore, large donations could be split into amounts below €126.97 to avoid the registration and disclosure requirement.

Campaign Spending

Some restrictions apply to spending during election campaigns. However, election expenditure limits only apply from the date on which the election is announced, usually some three weeks before the actual election date. Campaign spending before the stipulated period is therefore not accounted for. This means that there is not a level playing field for all candidates and political parties at elections. Parties with greater access to funding can thus “front-load” campaign expenditure in the period prior to the official announcement of the relevant election.

Use of Public Funds

To ensure a level playing field between candidates, and a degree of transparency in the use of public funds for electoral purposes, the Standards Commission has recommended that any provision for such use should form part of the electoral

code rather than other legislation which patently has quite a separate purpose. This recommendation was made in its report on the 2007 General Election. If the recommendation was implemented, this would involve a consequential repeal of the provisions dealing with the provision of services and facilities following a dissolution of Dáil Éireann by the Houses of the Oireachtas Commission [Section 4(4A) of the Houses of the Oireachtas Commission Act 2003 (as inserted by the Houses of the Oireachtas Commission Act 2006) which was further substituted by Section 4(c) of the Houses of the Oireachtas Commission (Amendment) Act 2009]. This point was also taken up in the GRECO report's recommendation for legislation to be consolidated within the electoral code and is referred to later in this report.

Third Parties

There is some lack of transparency in relation to third parties (i.e., bodies or individuals, not connected to a political party, which campaign for political purposes). They are not required to disclose donations or expenditure. Although third parties must maintain a political donations account and furnish a bank statement and a certificate of monetary donations to the Standards Commission, these documents are not open to public inspection. The Standards Commission has in the past highlighted difficulties encountered in the supervision of the provisions of the Electoral Acts as they relate to the activities of third parties and has put forward suggestions for possible legislative improvements.

The National Integrity System Country Study

The National Integrity System Country Study, published in March 2009, by anti-corruption group Transparency International is a wide ranging analysis conducted on safeguards against corruption and the abuse of power in Ireland. The study examined the risk of corruption and abuse of power in sixteen sectors including government, politics, business, civil society and the media. It also examined the role these sectors have to play in promoting integrity in public life. The recommendations in the report include -

- reduction of the threshold for the disclosure of donations to political parties, and
- political parties to be obliged to publish audited accounts of all income and expenditure in the same way that limited liability companies are required to.

GRECO Evaluation of transparency of funding of political parties

Ireland became a member of GRECO (Council of Europe Groups of States Against Corruption) in May 1999. GRECO is responsible for monitoring observance of the Guiding Principles for the Fight against Corruption and implementation of the international legal instruments adopted in pursuit of the Programme of Action against Corruption. GRECO decided that one of the provisions to be evaluated in the framework of the third evaluation round of GRECO is the transparency of party funding.

The GRECO Third Evaluation Round was carried out in 2009. The Evaluation Report on Ireland - Transparency of Party Funding was published on 25 January 2010 and is available on the web site - www.coe.int/greco.

Its recommendations include -

- that all legislation be consolidated in a comprehensive, clear and up-to-date manner within the electoral code;
- that all political parties be legally required to publish independently audited annual accounts. These accounts should also report on income and expenditure of local branches;
- that the current disclosure threshold of €5,078.95 (donations received by political parties) be lowered to an “appropriate level” and the registration of all political donations;
- a call for reform to bring “greater clarity” to electoral and anti-bribery codes and laws together with their enforcement (this includes a recommendation that party finance legislation be consolidated in a comprehensive, clear and up-to-date manner within the Electoral Code);
- the extension of the period during which political parties have to report election spending. Currently political parties and candidates only have to report on how much they spent for about three weeks prior to the election, i.e., from the date the election is called to polling day;
- to ensure that all violations of political funding rules are “coupled with effective, proportionate and dissuasive sanctions”;
- to allow that the Standards Commission (or the yet-to-be created Electoral Commission) will have additional oversight of donations and spending in local government elections.

The Standards Commission welcomes these recommendations.

Disclosure of Donations in respect of 2009

Donations disclosed by TDs, Senators and MEPs

A person who was a TD, Senator or MEP during 2009 was required to furnish a Donation Statement to the Standards Commission by 31 January 2010. Donations (see definition in Appendix 3) received during 2009 which exceeded a value of €634.87 were required to be disclosed. Donations from the same person in the same year must be aggregated for the purposes of observing the disclosure threshold and the maximum acceptance limit (€2,539.48).

242 Donation Statements were received for 2009. This total comprised -

- 165 Donation Statements from TDs (there were 165 TDs at the beginning of the year as the vacancy caused by the death of Mr Seamus Brennan TD, RIP, had not been filled. During 2009, Mr Tony Gregory TD, RIP, died and accordingly there was no Donation Statement due in respect of him. Mr George Lee and Ms Maureen O’Sullivan were elected to the vacancies caused by the deaths of Deputies Brennan and Gregory. Mr Pat the Cope Gallagher TD was elected as MEP and his return is accounted for as an MEP. His vacancy was not filled during 2009.)
- 59 from Senators (there were 60 Senators at the beginning of the year. During the year Senator Peter Callanan, RIP, and Senator Tony Kett, RIP, died. The bye-election for Senator Kett’s vacancy was held on 14 December 2009 and his replacement is Senator James Carroll. The bye-election for Senator Callanan’s vacancy was not held until 19 January 2010. His replacement, Senator Paschal Mooney, was not required to provide a Donation Statement in respect of 2009. Senator Alan Kelly was elected as an MEP and his return is accounted for as an MEP. His replacement, Niall Ó Brolcháin, was elected in the bye-election held on 14 December 2009.)
- 12 from MEPs and
- 6 from former MEPs.

Donations totalling €182,438 were disclosed. Donations disclosed included money, property, goods and services. A refund of €2,500 was made to a donor by Mr. Proinsias de Rossa MEP as the donation received exceeded the maximum prescribed limit.

Details of the donations disclosed in respect of 2009 are available in a report to the Ceann Comhairle which was published on 25 March 2010. The report is also available on the Standards Commission website.

Donations disclosed by individual donors

Section 24(1A) of the 1997 Act provides that an individual must furnish a Donation Statement/Statutory Declaration to the Standards Commission, if he/she, in a particular year, makes donations exceeding €5,078.95 in aggregate value to two or more persons who were members of the same political party when the donations were made, or to a political party, and to one or more of its members. The Donation Statement/Statutory Declaration, must give details of the donations and the persons to whom they were made and must be furnished by 31 January of the following year.

Donation Statements were received from Mr Michael Madden, Ballyvaughan, Portroe, Nenagh, Co. Tipperary on 28 January 2010 and from Mr Declan Kelly, Castletown, Portroe, Nenagh, Co Tipperary on 2 February 2010.

Mr Madden's Donation Statement disclosed 3 separate donations totalling €5,800 which were made to the Labour Party and its members during 2009. Mr Kelly's Donation Statement disclosed 3 separate donations totalling €6,260 which were made to the Labour Party and its members during 2009.

Donations disclosed by political parties

15 political parties were registered in the Register of Political Parties during 2009 to contest a Dáil or European election. Each of these parties was required to furnish a Donation Statement to the Standards Commission by 31 March 2010. Donations received during 2009 which exceeded an aggregate value of €5,078.95 were required to be disclosed. The maximum value of donations which a political party can accept from the same person in the same calendar year is €6,348.69. Donations received from the same donor in the same calendar year must be aggregated for the purposes of observing the disclosure and maximum acceptance limits. The total value of donations disclosed by parties during 2009 was €76,617.05 the lowest amount disclosed since the introduction of the disclosure requirement 13 years ago. Neither of the three main political parties disclosed any donations in 2009, even though this was an election year (European, local and bye-elections). Details of the donations disclosed by political parties in respect of 2009 are available in a report which the Standards Commission furnished to the Ceann Comhairle on 18 May 2010. The report is also available on the Standards Commission website.

Supervision of the European Parliament election and the Dáil bye-elections

Two reports, published by the Standards Commission on 23 December 2009, show that candidates at the European Parliament elections disclosed total election spending of almost €4M (€3,991,629) and candidates in the two Dáil bye-elections, Dublin Central and Dublin South, disclosed spending of €259,760. Unsuccessful candidates at the European elections disclosed donations of €86,432 and unsuccessful Dáil bye-election candidates disclosed donations of €16,571. The successful candidates at the elections, who were not required to furnish their donation statements to the Standards Commission until 31 January 2010, disclosed donations of €64,379.67 (European) and €3,539.48 (Maureen O’Sullivan in the bye-election; George Lee did not disclose any donations). The reports are available on the Standards Commission’s website.

Four European Parliament election candidates - Mr Raymond O’Malley (East), Mr Jim Tallon (East), Mr John Francis Higgins (North West) and Mr Thomas King (North West) - failed to return donation statements by the statutory deadline of 31 July 2009. Two European Parliament election candidates - Mr John Francis Higgins and Mr Jim Tallon - failed to return election expenses statements. Following the issuing of a number of reminders, these individuals were warned by the Standards Commission that it would consider referring their cases to the DPP if their returns were not received by 4 January 2010. Subsequently, Mr John Francis Higgins returned the required documentation and the remaining three cases were referred to the Gardaí/DPP on 12 January 2010. Mr Raymond O’Malley returned the required documentation on 18 February 2010.

The Standards Commission has previously made a number of recommendations as to how the Electoral Acts might be improved. In particular it has recommended a review of the duration of the election period to avoid the “frontloading” of election expenditure. The Commission has noted that the use of public funds for electoral purposes is a major issue which requires to be re-evaluated in consideration of future changes to the electoral law. It has also suggested that the proposed establishment of an Electoral Commission, as set out in the current programme for government, affords an ideal opportunity for a complete review of the legislation.

Accounting Unit returns for year ending 31 December 2008

As highlighted in previous Annual Reports, the Standards Commission continues to experience difficulties in supervising the provisions of the legislation relating to accounting units (see definition in Appendix 3).

It is an offence for the responsible person of an accounting unit to fail to furnish, by 31 March each year, a Certificate of Monetary Donations and Bank Statement to the Standards Commission. Only a small percentage of accounting units comply with their statutory requirements in this regard, as the following table shows. (The other political parties do not have accounting units.) The documentation was required to be furnished to the Standards Commission by 31 March 2009.

Party	Number of Accounting Units	Returned on time
Fianna Fáil	61	6
Fine Gael	46	18
Green Party	45	10
Labour	28	11
Progressive Democrats	27	4
Sinn Féin	15	4

Following many reminders to the remaining accounting units, the following accounting units, that still had not furnished the required statutory documentation, were referred to the Gardaí on 28 October 2009.

Party	Accounting units
Fine Gael	Cork South West; BallyMcElligott (Kerry North/Limerick West); Waterford
Green Party	Cork South Central; Wicklow
Progressive Democrats	Dublin North (Malahide); Meath East
Sinn Féin	Delaney/O'Rahilly (Wicklow); Clarke/McVerry/O'Neill Cumann (Ballybrack)

Four accounting units furnished the relevant documents after the intervention of the Gardaí and are not being pursued further. The remaining 5 units, listed below, furnished the documentation on the dates shown - almost one year late.

Party	Outstanding accounting units	Documentation furnished
Fine Gael	Cork South West; Waterford	11 and 12 February 2010
Green Party	Wicklow	3 March 2010
Progressive Democrats	Meath East	19 March 2010
Sinn Féin	Delaney/O’Rahilly (Wicklow)	5 March 2010

It is a cause of concern to the Standards Commission that our major political parties do not seem to have much regard to an Act of the Oireachtas that sets out how donations to units of their parties are reported to the Standards Commission. It is also a concern that, as well as the efforts of the secretariat of the Standards Commission, scarce Garda resources have had to be called upon to ensure that routine documentation is returned to the Standards Commission. The Standards Commission intends referring non-compliant accounting units to the Gardaí at an earlier stage in future and regrets that this may result in even greater Garda resources being deployed to ensure compliance by the political parties with the legislation.

Third Parties

On receipt of a donation exceeding €126.97 in value, a third party (see definition in Appendix 3) must register with the Standards Commission and is subject to the same rules about acceptance of donations as political parties.

A third party must, by 31 March each year, furnish the Standards Commission with -

- a bank statement from the financial institution where its political donations account is held, and,
- a Certificate of Monetary Donations/Statutory Declaration confirming that all donations were lodged to that account and that payments from the account were used for political purposes.

One of the main differences between a third party and a political party, insofar as donations are concerned, is that a third party is not obliged to submit a Donation Statement/Statutory Declaration, whereas a political party is obliged to submit one.

In March 2009, the Standards Commission wrote to the nine third parties that had been in existence in 2008 (Pro Life Campaign; Immigration Control Platform; PANA and Campaign Against EU Constitution; CÓIR; Democratic Alliance; Irish Alliance for Europe; The National Platform; Libertas and Tipperary Against The Lisbon Treaty) seeking a Certificate of Monetary Donations/Statutory Declaration and a

bank statement in relation to their political donations accounts.

Six third parties furnished the Standards Commission with a Certificate of Monetary Donations/Statutory Declaration and bank statements. Two third parties confirmed in writing that there had not been any activity on the political donations accounts in 2008.

One third party, The Irish Alliance for Europe, was referred to the Director of Public Prosecutions (DPP) on 28 May 2009 for failure to furnish a Certificate of Monetary Donations/Statutory Donations by 31 March 2009. Mr Brendan Kiely was the “responsible person” (i.e., the person responsible for the organisation, management or financial affairs of that third party). Following referral to the DPP, Mr Kiely furnished a Certificate of Monetary Donations/Statutory Declaration and bank statements to the Standards Commission on 31 August 2009. The Standards Commission subsequently wrote to the DPP advising that the documentation had been received. The Garda Síochána confirmed in a letter dated 4 March 2010 that the DPP directed that there should be no prosecution in this case.

35 new Third Parties registered for the second referendum on the Treaty of Lisbon which was held on 2 October 2009. The statutory returns from these Third Parties were due to be furnished to the Standards Commission by 31 March 2010.

Exchequer funding of political parties

The Electoral Acts and the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 (Party Leaders’ Allowance Act) provide for the Exchequer funding of qualified political parties. In 2009, total funding of €13,603,262.56 was paid to qualified political parties under the Electoral Acts and the Party Leaders’ Allowance Act. Reports on the funding received by parties under both pieces of legislation are available on the Standards Commission’s website.



Appendices

Appendix I: Costs in 2009

The table below outlines the expenditure attributed to the Standards Commission in 2009. The figures for 2008 are also shown for comparison purposes. The expenditure is provided for in Subhead B of Vote 18 [Ombudsman].

The subhead for Consultancy Fees was split in 2009 to show Legal Fees and other Consultancy Fees separately.

	2009 € ,000	2008 € ,000
Staff Salaries	685	691
Travel and Expenses	3	5
Incidental Expenses	65	132
Postal Telecommunications	19	21
Office Machinery and Other		
Office Supplies	39	86
Office Premises	30	61
Consultancy Fees	8	37
Legal Fees	6	N/A
Total	855	1,033

Appendix 2: Publications by the Standards Commission 2009

1. Report - Donation Statement furnished by an individual donor (Mr. Patrick O'Meara) **(March 2009)**
2. Report - Third Parties and the Referendum on the Treaty of Lisbon **(March 2009)**
3. Report - Donations disclosed by TDs, Senators and MEPs for 2008 **(April 2009)**
4. Guidelines for European Elections 2009 **(May 2009)**
5. Explanatory Note - Spending at European Elections 2009 **(May 2009)**
6. Guidelines for Dáil Bye-Elections in Dublin Central and Dublin South **(May 2009)**
7. Explanatory Note - Spending at Dublin Central and Dublin South Dáil Bye-Elections 2009 **(May 2009)**
8. Explanatory Note - Third party involvement at the European Elections and Dáil Bye-Elections of 2009 **(May 2009)**
9. Annual Report 2008 **(June 2009)**
10. Report to Ceann Comhairle regarding disclosure by political parties of donations received in 2008 **(June 2009)**
11. Report - Exchequer Funding received by political parties for 2008 **(June 2009)**
12. Guidelines on compliance with the provisions of the Ethics in Public Office Acts 1995 and 2001 Public Servants (7th Edition) **(October 2009)**
13. Report to Ceann Comhairle on European Elections of 5 June 2009 **(December 2009)**
14. Report to Ceann Comhairle on Dublin Central and Dublin South Bye-Elections of 5 June 2009 **(December 2009)**
15. Guidelines for Seanad Bye-Elections 2009 **(December 2009)**

Appendix 3: Glossary of terms

Accounting unit

an “accounting unit” of a political party is a branch or other subsidiary organisation of the party which, in any particular year, receives a donation the value of which exceeds €126.97. The appropriate officer of a political party is required to provide the Standards Commission with the name and address of each accounting unit of the party, including the name of its “responsible person”. (The responsible person is the treasurer or any other person responsible for dealing with donations to the unit.) (Section 22(2)(aa) of the Electoral Act 1997, as amended)

Company

“means any body corporate” (Section 2(1) of the Ethics in Public Office Act 1995)

Connected person

“Any question whether a person is connected with another shall be determined in accordance with the following provisions of this paragraph (any provision that one person is connected with another person being taken to mean also that that other person is connected with the first-mentioned person) -

- (i) a person is connected with an individual if that person is a relative of the individual,
- (ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust,
- (iii) a person is connected with any person with whom he or she is in partnership,
- (iv) a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it,
- (v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company”. (Section 2(2)(a) of the Ethics in Public Office Act 1995)

Control

“has the meaning assigned to it by Section 157 of the Corporation Tax Act 1976, as amended, and any cognate words shall be construed accordingly” (section 1, Ethics in Public Office Act 1995). Section 157 of the Corporation Tax Act 1976, as amended, in turn refers to section 102 of that Act, which has subsequently been

re-enacted in section 432 of the Taxes Consolidation Act 1997, which provides -

“a person shall be taken to have control of a company if he exercises, or is able to exercise or is entitled to acquire control, whether direct or indirect, over the company’s affairs, and in particular, but without prejudice to the generality of the preceding words, if he possesses or is entitled to acquire-

- (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company; or
- (b) such part of the issued share capital of the company as would, if the whole of the income of the company were in fact distributed among the participators (without regard to any rights which he or any other person has as a loan creditor), entitle him to receive the greater part of the amount so distributed; or
- (c) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle him to receive the greater part of the assets of the company which would then be available for distribution among the participators. (Section 2(2)(b) of the Ethics in Public Office Act 1995)

Designated directorship

“in relation to a public body, means a prescribed directorship of that body” (Section 2(1) of the Ethics in Public Office Act 1995)

Designated position

“in relation to a public body, means a prescribed position of employment in that body” (Section 2(1) of the Ethics in Public Office Act 1995)

Director

“means a director within the meaning of the Companies Acts 1963 to 1990, but includes, in the case of a public body that is not a company (within the meaning of the Companies Act 1963) and is specified in subparagraph (8), (9), (10), (11) or (12), or stands prescribed for the purposes of subparagraph (13), of paragraph 1 of the First Schedule, a person who is a member of it or a member of any board or other body that controls, manages or administers it, and any cognate words shall be construed accordingly”. (Section 2(1) of the Ethics in Public Office Act 1995)

Donation

a donation means “any contribution given for political purposes by any person, whether or not a member of a political party....” [A “person” means an individual, a body corporate or an unincorporated body of persons. An unincorporated body of persons includes a political party and any of its subsidiary organisations.] A

donation can include -

- (i) a donation of money (including money given by a political party to a TD, Senator or MEP or a candidate at an election);
- (ii) a donation of property or goods;
- (iii) the free use of property or goods;
- (iv) a free supply of services;
- (v) the difference between the commercial price and the (lower) price charged for property, goods or services;
- (vi) a donation received by way of a contribution made to the net profit from a fund-raising event organised for the benefit of a candidate. (Section 22(2)(a) of the Electoral Act 1997, as amended)

Material interest

“A person or a connected person has a material interest in a matter if the consequence or effect -

- (a) of the performance by the person of a function of his or her office, directorship, designated position, or position as a special adviser, as the case may be, or
- (b) of any decision made in relation to or in the course or as a result of the performance of such a function by the person,

concerning that matter may be to confer on, or withhold from, the person, or the connected person, a significant benefit without also conferring it on, or withholding it from, persons in general or a class of persons which is of significant size having regard to all the circumstances and of which the person or the connected person is a member”. (Section 2(3) of the Ethics in Public Office Act 1995)

(NB. this definition applies other than in relation to a material interest of a member of the Oireachtas in Oireachtas proceedings where the provisions of section 7(3) of the Ethics in Public Office Act 1995 apply.)

Office Holder

A Minister of the Government; a Minister of State; the Attorney General; the Ceann Comhairle; the Leas Ceann Comhairle; the Cathaoirleach of Seanad Éireann and the Leas Cathaoirleach of Seanad Éireann (Section 2(1) of the Ethics in Public Office Act 1995)

Specified act

an act or an omission that is, or the circumstances of which are, such as to be inconsistent with the proper performance by the specified person of the functions

of the office or position by reference to which he or she is such a person or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance. (Section 4(1)(a) of the Standards in Public Office Act 2001)

Specified person

an office holder or the holder of the office of Attorney General who is not a member of the Oireachtas; a special adviser; a designated director or a designated employee of a public body; a director or an employee of a public body. (Section 4(6)(a) of the Standards in Public Office Act 2001)

Third party

a “third party” is defined as any person, other than a political party or a candidate at an election, who accepts, in a particular year, a donation, the value of which exceeds €126.97. (A contribution given in support of a campaign at a referendum is regarded as a contribution for political purposes.) (Section 22(2)(aa) of the Electoral Act 1997, as amended)

Appendix 4: Recommendations for change

In previous Annual Reports, the Standards Commission summarised its recommendations for changes to ethics and electoral legislation. The major proposals are summarised in this Appendix, along with updates on any progress which may have taken place in the meantime. Minor proposals, such as technical amendments, are referred to in previous annual reports.

Proposed amendments to the Ethics Acts and related legislation

- a comprehensive act consolidating the Ethics Acts and all other legislation providing for disclosure of interests and related provisions for public officials (Annual Report 2009);
- a comprehensive public interest disclosure and whistleblower protection law (Annual Report 2009);
- amendment of the provisions for complaints about a ‘specified act’ to allow reference to a high level statement of the ethical principles to be followed by public servants and public representatives (Annual Report 2009);
- amendment of the definition of ‘connected person’ to provide that a person is a “connected person” to a company of which he or she is a director and that the other directors of that company are also “connected persons” to that person (Annual Report 2009);
- requirement that liabilities be disclosed as ‘registrable interests’ (Annual Report 2009);
- power to appoint an Inquiry Officer to conduct a preliminary enquiry into a matter in the absence of a complaint under the Ethics Acts (Annual Report 2004);
- provision for a quorum of not less than three members (including in all cases, the Chairman) be provided for the hearing of an investigation under the Ethics Acts (Annual Report 2008);
- proposal that motions be initiated in the Houses of the Oireachtas to designate the Chairpersons of Oireachtas Committees as office holders for the purposes of the Ethics Acts (Annual Report 2005); The Minister for Finance decided not to move the resolutions. (Annual Report 2008);
- amendments to the time limits within which statutory declarations, tax clearance certificates and application statements are to be made or issued and furnished to the Standards Commission by elected members and by appointees to senior positions and directorships in the public service. The Civil Law (Miscellaneous Provisions) Act 2008 amends the deadline for the making of a statutory declaration by a person recommended for appointment

to judicial office from one month to three. A similar provision for elected members and senior public servants is required. (Annual Report 2003);

- adoption of a code of conduct for public servants and members of state boards in the wider public service (Annual Report 2003).

Proposed amendments to the Electoral Acts

- As the body with responsibility for supervising the Electoral Acts, the Standards Commission should have a statutory basis on which to review the legislation and report on its findings. (Review of the Electoral Acts, 2003);
- Certain sections of the Act need to be amended to take account of the fact that members of local authorities and candidates at local elections have their own reporting requirements under the Local Elections (Disclosure of Donations and Expenditure) Act 1999, as amended (Review of the Electoral Acts, 2003);
- Consideration should be given to imposing some accountability, in the context of the spending limits, in respect of a specified period prior to commencement of the legally defined election period (i.e., that the election period might be extended to include a period prior to the dissolution of the Dáil or moving of the writ at an election). (Review of the Electoral Acts, 2003);
- The definition of what constitutes a “third party” should not be determined on the basis of whether an individual/group has received a donation but should focus on spending by individuals/groups and to regard them as third parties if they intend to incur expenditure over a certain threshold, say €5,000, in relation to a campaign which is for political purposes as defined in the legislation. (Review of the Electoral Acts, 2003; and, 2009 Report on third parties at the Referendum on the Treaty of Lisbon);
- The registration process for “third parties” and for “other persons” (who intend to incur election expenses) should be amalgamated. (There should be no need for a individual/group to register as a “third party” and to also register as an “other person”.) (Review of the Electoral Acts, 2003);
- Consideration should be given to imposing a limit on the amount of expenditure which may be incurred by a “third party”/“other person” at an election. For example if a “third party”/“other person” is opposing a particular candidate at an election the amount of expenditure which can be incurred by the “third party”/“other person” should not exceed the statutory spending limit applicable to that candidate. (Review of the Electoral Acts, 2003);
- To ensure a level playing field between candidates, and a degree of transparency, the use of public funds for electoral purposes should form part of the electoral code rather than other legislation which patently has quite a separate purpose.

This would involve a consequential repeal of the provisions dealing with the provision of services and facilities following a dissolution of Dáil Éireann by the Houses of the Oireachtas Commission [Section 4(4A) of the Houses of the Oireachtas Commission Act 2003 (as inserted by the Houses of the Oireachtas Commission Act 2006) (now Section 4(c) of the Houses of the Oireachtas Commission (Amendment) Act 2009)]. (Report on the Dáil general election of 2007);

- Registration of third parties should be allowed for a particular campaign or on an on-going basis. (2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008);
- To provide for transparency in funding and expenditure on referendum campaigns, third parties and political parties should be required to disclose details of expenditure on referendum campaigns. Similarly, information should be made available on the sources of funding available to both third parties and political parties. (2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008);
- Sanctions for non-cooperation with the Standards Commission should be reviewed. In particular, failure to cooperate with enquiries made by the Standards Commission under section 4(4) of the Act should constitute an offence. (2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008).

Proposed amendment to the Party Leaders' Allowance legislation

- Either the Standards Commission or the Minister for Finance should be able to publish guidelines or give advice on the appropriate use of the Party Leaders' Allowance and for such guidelines and advice to be legally binding on the persons to whom they apply. (Annual Report 2007)

