

2012

ANNUAL REPORT



Coimisiún um Chaighdeán in Oifigí Poiblí
Standards in Public Office Commission

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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 2012 to the Minister for Public Expenditure and Reform.

A handwritten signature in black ink, which appears to read "M. P. Smith". The signature is written in a cursive style.

Justice M. P. Smith
Chairman
Standards in Public Office Commission
June 2013

The Members



Justice M.P. Smith
Chairman



Michael Smith
Former member of Dáil Éireann



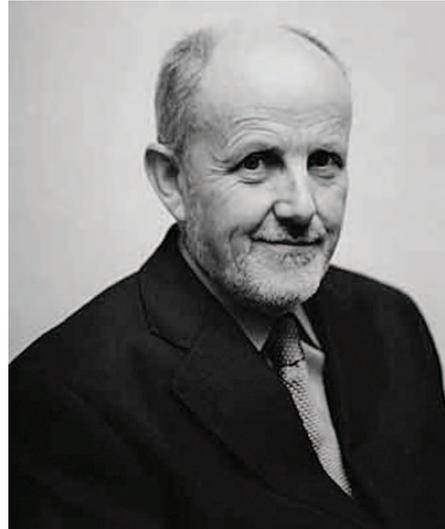
Deirdre Lane
Clerk of Seanad Éireann



Seamus McCarthy
Comptroller and Auditor General
(from May 2012)



John Buckley
Comptroller and Auditor General
(until February 2012)



Kieran Coughlan
Clerk of Dáil Éireann



Emily O'Reilly
Ombudsman

Introduction by the Chairman

2012 saw some very welcome developments in so far as the Standards in Public Office Commission is concerned. For many years, the Commission has highlighted glaring deficiencies in the laws governing political funding and disclosure of donations. The Commission has also frequently drawn attention to the fact that political parties in this country were not obliged to maintain accounts nor to submit them to an independent authority. As a result, there was little transparency surrounding the financing of political activity. While parties were obliged to disclose details of expenditure for a period of weeks before elections, there was no information available to the public on how these election campaigns were financed.

The Tribunals had highlighted instances of corrupt practices in the past and public confidence and trust in our public institutions was declining, resulting in a most unhealthy situation for our democracy. This was and continues to be a source of grave concern to the Standards Commission. In report after report, the Commission highlighted what it saw as necessary changes to both our electoral and ethics legislation if public trust was to be restored and if the Commission was to have the capacity to function effectively.

The enactment of the Electoral (Amendment) (Political Funding) Act 2012 brought into law several of the Commission's recommendations for change in the area of political funding. Donation limits and disclosure thresholds have been revised. Provision has been made for the regulation of corporate donors. The Standards Commission is currently drafting guidelines for political parties on keeping proper books of account. These guidelines will be the subject of a public consultation exercise during 2013 and will be published by the Commission once the Minister for Environment, Community and Local Government consents to their publication.

The new legislation is not perfect and the Commission is sure that once in operation other defects may be highlighted. But it is a start and a highly significant one. Other changes are promised. Regulation of campaign financing at referendums, extension of the election period for which election expenditure must be disclosed and other electoral reforms are just some examples.

Change is also promised in our ethics legislation, and a law to regulate lobbying activity is being drafted. Public interest disclosure legislation is in the pipeline; the Standards Commission has long called for comprehensive protection for "whistleblowers" who in good faith report wrongdoing to the authorities.

The Commission will continue to highlight necessary changes and will continue to provide a summary of its recommendations in its reports.

Finally, I would like to thank my fellow Commissioners for their contributions during the year. I would particularly like to thank Mr John Buckley who retired as Comptroller and Auditor General in February 2012. John had served on the Standards Commission since 2008 and made a significant and highly valued contribution. His successor, Mr Seamus McCarthy, is very welcome indeed and he has already had a considerable and positive impact on our work. I would also like to thank the staff of our secretariat and our secretary for their efficiency, dedication and commitment to their work during 2012.

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CHAPTER

Chapter 1 - 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 the functions of 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 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 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 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, Community 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 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 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 and 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 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 maintenance of the Register of Corporate Donors;
- 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 - note that this amount has been reduced to €100 with effect from 1 January 2013) 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 required to facilitate the inspection and copying, by any person, of Donation Statements, Election Expenses Statements, etc., furnished to it under the legislation.

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 legislation. 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 time frame 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 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 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.

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CHAPTER

Chapter 2 - Ethics

Complaints

The number of complaints received by the Standards Commission under the Ethics Acts increased markedly in 2012. A total of 427 complaints were received, of which 334 were valid. This was up from 38 in 2011 (of which 22 were valid). However, the increase was due entirely to multiple complaints about the same subject matter - alleged contraventions by Michael Lowry TD of the provisions of the Ethics Acts regarding his ownership of lands at Wigan, United Kingdom. 388 complaints were referred for investigation to the Commission by the Committee on Members' Interests of Dáil Éireann, of which 70 were deemed to be invalid as the identity of the complainant was not provided to the Commission by way of a sufficient address or any return address.

When the complaints concerning Deputy Lowry are excluded, 39 other complaints were received, of which 21 were valid, which is almost identical to the figures for 2011. The Standards Commission found that one of the complaints (relating to Senator Brian Ó Domhnaill, former member of Donegal County Council) provided a basis on which to initiate an investigation.

Dublin City Council Investigation

The Standards Commission reported in its Annual Report for 2011 about a complaint received from Mr Michael Smith and Councillor Cieran Perry, about Councillor Oisín Quinn, Dublin City Council. The complaint centred on alleged contraventions of Part 15 of the Local Government Act 2001 in relation to Councillor Quinn's participation in motions and amendments before meetings of the council regarding the draft Dublin City Development Plan. The Commission found that Councillor Quinn had contravened the provisions of section 177(1) on four occasions.

The Standards Commission furnished its report to the Lord Mayor and the City Manager in accordance with the provisions of section 180(3)(a)(iii) of the Local Government Act 2001. Where such a report is furnished to a local authority, the legislation requires that it be

considered by the elected council, which shall decide on such action to be taken as may be considered appropriate in all the circumstances. To date, no such consideration has taken place, as the City Council and Councillor Quinn have initiated judicial review proceedings in the matter against the Commission. At the time of writing, the proceedings had yet to be concluded.

Michael Lowry TD Investigation

In November 2012, Mr Kieran Coughlan, Clerk of Dáil Éireann, referred 388 complaints to the Committee on Members' Interests of Dáil Éireann concerning alleged contraventions by Michael Lowry TD of the provisions of the Ethics Acts regarding his ownership of lands at Wigan, United Kingdom. The Committee, by resolution, determined that the complaints should be investigated by the Standards Commission. The Committee decided that the Commission is better placed to conduct an investigation into the complaints by virtue of the fact that the legislation provides for an Inquiry Officer to assist the Commission in its work by, *inter alia*, carrying out a preliminary inquiry into the complaints. The Ethics Acts do not make any provision for a Committee to appoint an Inquiry Officer.

Of the 388 complaints, it was found that 70 were invalid within the meaning of the Ethics Acts as the identity of the complainant in each case was not known to the Standards Commission because no address or an insufficient address was provided.

The Standards Commission subsequently appointed an Inquiry Officer to conduct a preliminary inquiry into the matters complained of. The report of the Inquiry Officer was awaited at the time of writing.

Senator Brian Ó Domhnaill Investigation

The County Manager and Mayor of Donegal County Council complained in May 2012 to the Standards Commission about a number of expense claims made by Senator Brian Ó Domhnaill in his former capacity as a member of the Council and of Údarás na Gaeltachta. They also complained that he had not properly attended the whole of some conferences which he was delegated to attend. In their complaint, the Manager and Mayor alleged that he may have done specified acts within the meaning of the Ethics Acts in this regard.

The Standards Commission appointed an Inquiry Officer to conduct a preliminary enquiry into the complaint. Following consideration of the Inquiry Officer's report, the Commission decided that it was appropriate to carry out an investigation under section 23 of the Ethics Act to determine whether Senator Brian Ó Domhnaill had contravened provisions of Part 15 of the Local Government Act or had done a specified act or acts. At the time of writing, the investigation was ongoing.

Complaint against Minister Ruairi Quinn

The Standards Commission received a complaint concerning claims by Mr Ruairi Quinn TD, Minister for Education and Skills, in respect of use by him of his own private car while on official business in July and August 2011. The complainant alleged that from the information published in newspapers, the Minister's mileage claim for both months appeared to far exceed what he could have travelled given his business appointments during those months. The complaint also concerned claims by the Minister in respect of the use by civil servants of the Minister's private car on official business in the absence of the Minister.

The current Government took a decision when it came into office that senior Ministers (with the exception of the Taoiseach, the Tánaiste and the Minister for Justice and Equality and for Defence) would no longer be provided with a state car and Garda drivers. In line with arrangements for Ministers of State which have been in place since 1983, Ministers have to provide their own vehicle and can appoint civilian drivers to drive them on official business. Mileage travelled is claimed on a monthly basis by Ministers up to a maximum of 60,000 miles per annum.

The Standards Commission sought and received correspondence in relation to the complaints from Minister Quinn and from Mr Seán Ó Foghlú, Secretary General of the Department of Education and Skills. It considered the matter in light of the provisions of section 4(1)(a) of the Standards in Public Office Act 2001, i.e. as to whether the Minister's actions as complained of constituted a 'specified act' or acts. It decided that there was no basis on which to pursue the matter. The Standards Commission noted that the rules as set out in a letter dated 7 February 1984 from the Secretary to the Government to Secretaries of Government Departments allow for the use by officials of the Ministers' car on official business.

Having examined the complaint, the Standards Commission had concerns that the system of expense claims by Ministers was not sufficiently transparent. It considered that claims for travelling expenses whether by Ministers or by public servants should be made only in respect of travel undertaken on official business. It wrote to the Minister for Public Expenditure and Reform to express those concerns and to request that claims made by Ministers would be made on the basis of details of journeys undertaken, in line with arrangements in place for civil servants. The Commission informed the Minister that it considered that the amendments it proposed would provide transparency which would enhance public confidence in the expenditure of scarce public resources.

The Minister's Private Secretary replied stating that the Department would be reviewing the Ministerial Transport arrangements and that the Minister would have regard to the views of the Standards Commission during the forthcoming review. Following that review,

the Minister wrote to the Commission to inform it that the Government had decided to apply a 10% reduction from Ministers' travel claims to take account of non-official travel undertaken by Ministers. The Minister stated that in his view this met the core problem identified by the Commission while avoiding the need for a significant administrative overhead to disaggregate personal travel and the opportunity for confusion in application which such a system would occasion. The Minister also cited security concerns which would arise were the Commission's proposal for detailed claims to be implemented.

The Standards Commission replied to the Minister noting the 10% reduction but expressing continued concern about the arrangements. It stated that it considered that claims by Ministers in respect of private travel are unacceptable and that it remained of the view that Ministers should account for all expenses claimed from the public purse in order to clearly demonstrate that no abuse of the privileges of office have taken place. It informed the Minister that it arrived at this view in light of its examination of the complaint concerning Minister Ruairi Quinn and of the provisions of the Code of Conduct for Office Holders.

The Secretary General to the Government, Mr Martin Fraser, wrote to the Commission expressing concern at its recommendations on grounds of practicality and security and requesting that the Commission reconsider the matter. Following consideration of the Secretary General's letter by the Standards Commission, the Chairman met Mr Fraser to discuss the Commission's concerns. The Secretary General subsequently wrote to the Commission to state that having considered the matter further the current system might be amended to provide that instead of an automatic 10% reduction, each Minister would provide an estimate of the amount of personal travel undertaken in the period of the claim and that a reduction in the mileage expenses payable would be made on that basis. The Commission replied stating that the proposal met its concerns.

Dún Laoghaire-Rathdown County Council Complaint

The Standards Commission received a complaint concerning about alleged 'specified acts' by three specified persons, Councillors Barry Ward and Cormac Devlin and Mr Owen Keegan, County Manager, Dún Laoghaire-Rathdown County Council. The complaints concerned the claiming of expenses by the two councillors for degree courses; the payment by the Council of expenses to the two councillors for degree courses; the failure to obtain proper approval for these payments and the failure to report these payments properly. The payments were made under the Local Government Act 2001 (Section 142) Regulations 2010 (SI. No. 37 of 2010). The complainant had raised the matter with the Council, pointing out that approval for payment of expenses in relation to conferences, training etc. was a reserved function and must be approved by the elected members. The County Manager brought the matter to the Council where approval was granted by the elected members retrospectively.

The complainant maintained that there was no legislative provision for payment of fees incurred in degree courses; that notwithstanding the retrospective approval by the elected members, the councillors should not have claimed the refunds; that the manager should not have provided verbal approval and that he should have reported the payments in April 2011 when answering a question on payments regarding conferences etc. at a Council meeting in April 2011.

Having considered the complaint in light of the provisions of section 4(1)(a) of the Standards in Public Office Act 2001 which concerns complaints about a 'specified act' or acts, the Standards Commission decided that there was no basis on which to pursue the matter.

The Standards Commission wrote to the Minister for the Environment, Community and Local Government, drawing his attention to the circumstances of the complaint and indicating its view that the regulations did not provide a basis for the payments. The Commission informed the Minister that it considered that claims by councillors in respect of degree courses should not be facilitated. It requested that the Minister review the guidelines with a view to ensuring that councillors cannot claim expenses in relation to fees for degree courses in future. The Minister was also requested to consider whether to request the Local Government Audit Service to examine the procedures used within Dún Laoghaire-Rathdown County Council to approve the payments.

A reply was received from the Minister's Private Secretary in which he stated that there was a legal basis for the payment of expenses for degree courses and that the Local Government Auditor had no difficulty with the subsequent approval of the payments. The Private Secretary stated that under the recently published document on local government reform ('Action Programme for Effective Local Government – Putting People First'), there would be a review of the structures for and levels of all payments, to reduce overall costs and levels of payments to individual councillors. The Private Secretary stated that the review, which would take into account the views of the Standards Commission, would be completed to provide for the revised payments for councillors elected in 2014, at the latest.

The Standards Commission remains firmly of the view that councillors should not be permitted to claim expenses in relation to fees for degree courses. While there is a strong argument that the public service benefits from highly educated public service employees and that payment for such education is therefore warranted, the fact that the electorate may not return a councillor to membership of the local authority at a subsequent election means that the benefit of such education may not accrue to that authority, while the individual retains the benefit thereafter.

Mayo County Council Complaint

The Standards Commission reported in its Annual Report for 2010 on an investigation which it concluded in 2011, relating to Mr Kieran Lynn, Senior Executive Engineer, Mayo County Council. In April 2012, the Standards Commission received a further complaint concerning Mr Lynn in which it was alleged that he executed a road widening dedication agreement on behalf of Mayo County Council with his wife, Ann Lynn, nee McGreal, in relation to a property owned by him jointly with his wife.

The Standards Commission appointed an Inquiry Officer to conduct a preliminary inquiry into the complaint. Having subsequently received and considered the report of the Inquiry Officer, the Commission decided that there was no *prima facie* evidence on which to sustain the complaint.

Tax Clearance Provisions - Elected Members

In its Annual Report for 2011, the Standards Commission set out the position regarding contraventions by Members elected to Dáil Éireann at the 2011 General Election. The position regarding Members elected to Seanad Éireann in 2011 was under review by the Commission.

Members elected to either House of the Oireachtas were obliged under the 2001 Act to provide evidence of tax compliance to the Standards Commission within nine months of the date on which they were declared elected. In the event of a member failing to comply with the legislation and failing to produce the required evidence (a statutory declaration and either a tax clearance certificate or an application statement), the Commission must then decide whether to investigate the matter and to provide any subsequent report to the relevant Committee on Members' Interests.

As with certain members of Dáil Éireann, some members elected to Seanad Éireann were in breach of the legislation in that they failed either to make their statutory declaration, to have a tax clearance certificate/application statement issued to them by the Collector General, or to furnish the necessary evidence within the time frames set down in the legislation. All outstanding documents were subsequently received from all Senators apart from one member - Senator Pat O'Neill. Accordingly, with the exception of Senator O'Neill, the Standards Commission had a complete set of the required documentation from each Senator elected (including those nominated by the Taoiseach) during 2011 and there were no substantive contraventions of the legislation.

The Standards Commission decided that as the contraventions by Senators (other than those by Senator O'Neill) were technical in nature, rather than substantive, it would be disproportionate to investigate and report on the matter.

Senator O’Neill failed to provide a statutory declaration and either a tax clearance certificate or an application statement to the Standards Commission within nine months of the date of his election. He furnished a statutory declaration 22 days after the expiry of the deadline. He therefore contravened the 2001 Act by furnishing his statutory declaration outside the nine month deadline for doing so. He also contravened the 2001 Act by not furnishing either a Tax Clearance Certificate or an Application Statement.

In accordance with the provisions of the 2001 Act, the Standards Commission investigated the contraventions and requested the Senator to provide an explanation. No explanation was forthcoming. A report of the investigation was forwarded to the Committee on Members’ Interests of Seanad Éireann on 15 May 2012.

Senator O’Neill subsequently supplied his Tax Clearance Certificate on 11 June 2012. The Chairman of the Standards Commission informed the Chairman of the Committee on Members’ Interests of Seanad Éireann on 15 June 2012 that Senator O’Neill had now complied with his obligations under section 21(1) of the 2001 Act.

On 4 July 2012, Seanad Éireann passed a motion which noted the Standards Commission’s investigation report, stated that it was of the opinion that any contravention of the legislation is a serious matter, noted that this was the first occasion such a contravention had been reported to Seanad Éireann by the Commission, that Senator O’Neill was now in compliance with section 21(1) of the Act, that he had apologised for failing to comply with the legislation as of the required date and that it considered that no further action was required.

Final Report of the Mahon Tribunal

The Tribunal of Inquiry into Certain Planning Matters and Payments (the Mahon Tribunal) published its final report in March 2012. It made a significant number of recommendations in a wide range of areas, including the Ethics Acts.

The Tribunal made a number of recommendations to both the Ethics Acts and the Ethical Framework for the Local Government Service set out in Part 15 of the Local Government Act 2001. These included:

- more complete disclosure of interests including relating to:
 - family and corporate interests;
 - non-pecuniary interests;
 - apparent conflicts of interests;
 - electoral donations and
 - interests enjoyed as part of a class of persons;

- disclosure of interests within 30 days of taking up a position and within 30 days of a significant change in that interest;
- disclosure of gifts/income which predate or postdate an official's time in public office;
- prohibition on acceptance of gifts by officials above a threshold where acceptance could reasonably be considered to be connected with their public office;
- prohibition on a public official entering a contract with a public body while a public official and for a period of one year thereafter;
- prohibition on councillors dealing in or developing land which was the subject of a decision changing its planning or zoning status during the member's term in office and for two years afterwards;
- more effective enforcement of the disclosure provisions by increasing the Commission's role re both the Committees on Members' Interests and local authorities;
- anonymous complaints to be permitted and
- the creation of criminal offences under the Ethics Acts regarding failure to disclose interests, in line with the Local Government Act;

The Tribunal indicated that its recommendations in relation to disclosure of interests were informed in part by a concern that unjust enrichment on the part of public representatives and public officials be brought to the attention of the relevant authorities. It said that improved disclosure may also improve public confidence in public officials by demonstrating that the vast majority of them live within their means.

The Tribunal noted that its recommendations regarding disclosure of the interests of family members may raise privacy concerns. However, it considered that the need to ensure that public power is exercised in the public interest outweighs these concerns. It stated that in the event that limitations are imposed on the publication of disclosures of interests held by family members, it recommended that the full disclosure remain available to other anti-corruption authorities including, in particular, the Garda Síochána.

The Government published its policy response to the recommendations of the Mahon Tribunal in July 2012. In announcing that response, the Minister for Public Expenditure and Reform stated that the findings and recommendations of the Mahon Tribunal highlighted the requirement for a fundamental review of the legislative framework for ethics and that he had decided to take the opportunity to undertake a full review of how the existing legislative framework for ethics can be reformed in order to develop a single, comprehensive legislative framework grounded on a clear and comprehensive set of principles.

The Standards Commission has long recommended that a single comprehensive Act be

adopted which applies equally across all public bodies to ensure that private interests are appropriately disclosed and that conflicts of interests are properly dealt with. The Standards Commission welcomes the recommendations of the Tribunal and the decision of the Government to rationalise the ethics framework for all public representatives and public servants. It notes that the review will consider previous recommendations made by the Standards Commission for the improvement of the Ethics Acts and hopes that the revised legislative framework will be more user-friendly for those who will have obligations under it while ensuring that public functions are performed solely in the public interest.

Codes of Conduct

The Standards in Public Office Act 2001 provides for the adoption of 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. To date, codes have been published for office holders, TDs, Senators and civil servants. The intention of the Oireachtas in enacting the Standards in Public Office Act 2001 was that each public servant would be provided with a clear statement of the standards of conduct and integrity which they are required to follow in the course of their duties.

In each Annual Report since 2003, the Standards Commission has noted that while the 2001 Act provides for a code of conduct for the wider public service to be drafted by the Minister for Finance (now the Minister for Public Expenditure and Reform), no such code has been produced. While the Commission noted in its Annual Report for 2009 that it had been made aware that the Department of Finance was actively pursuing the issue, there has been no movement on this matter since that time.

In its response to the recommendations made by the Mahon Tribunal in its final report, the Government stated that proposals to amend the codes of conduct for office holders and for TDs and Senators who are not office holders are under consideration in the context of the future action plan for the ethical framework. No mention was made of a code for the wider public service.

The Standards Commission remains strongly of the view that a draft code for the wider public service should be produced as a matter of urgency in order to reinforce ethical standards for public servants and recommends that the review of the ethics framework currently being undertaken by the Department of Public Expenditure and Reform should prioritise the adoption of such a code.

Ethical Framework for the Local Government Service

The Standards Commission wrote to the Minister for the Environment, Community and Local Government regarding the procedures adopted within local authorities for the investigation of alleged contraventions of the ethical framework for the Local Government Service set out in Part 15 of the Local Government Act 2001.

Section 174 of the Local Government Act 2001 provides that where an ethics registrar of a local authority becomes aware of a possible contravention of Part 15 of that Act, it is his or her duty to bring the matter to the attention of the manager and/or the Cathaoirleach, who shall consider what action should be taken. This may include:

1. any investigative or disciplinary procedures which may be exercised in relation to the person concerned, whether under any other provision of this or any other enactment or otherwise,
2. referral of the matter to the Director of Public Prosecutions in accordance with subsection (1)(b) or (4)(b) of section 181 as the case may be,
3. any other course of action considered appropriate in the circumstances.

While a complaint in relation to a possible contravention of a provision of Part 15 of the Local Government Act 2001 may be made to the Standards Commission under section 4(1)(b) of the Standards in Public Office Act 2001, the Commission has previously set out its view that all local avenues provided for by the Local Government Act 2001 should be pursued prior to the making of such a complaint.

A complaint about alleged contraventions of provisions of Part 15 was referred to the Standards Commission in September 2012 by the County Manager and the Cathaoirleach of Dún Laoghaire-Rathdown County Council. The Manager and the Cathaoirleach had previously appointed an external examiner to investigate the alleged contraventions. However, the councillor concerned raised objections to the manner in which the investigation was being conducted and that was of the opinion that it appeared to be entirely devoid of procedures with general assertions being made without any procedural basis or right of reply.

The Standards Commission had previously referred another complaint back to the Deputy County Manager and the Cathaoirleach of Dún Laoghaire-Rathdown County Council with a recommendation that appropriate procedures be adopted which would follow the principles of natural justice. The Standards Commission referred the September 2012 complaint back to the County Manager and the Cathaoirleach with the same recommendation.

The Standards Commission informed the Minister that it is concerned that managers and cathaoirligh may be conducting investigations under section 174 in the absence of clearly defined procedures which protect the interests of all relevant persons. It requested that the Minister consider writing to each local authority to advise them to adopt such procedures. No substantive response to the letter has been received.

While this issue may ultimately be superseded by the adoption of a single ethical framework for the public service, the Standards Commission is concerned that in the meantime alleged contraventions of Part 15 may not be adequately investigated due to the absence of proper procedures. It considers that such procedures should be adopted as a matter of urgency.

Putting People First: Action Programme for Effective Local Government

In October 2012, the Minister for the Environment, Community and Local Government published an action programme for local government reform. Chapter 11 of the document deals with accountability and governance in local authorities. It summarises the provisions of the existing ethical framework for the Local Government Service as set out in Part 15 of the Local Government Act 2001 and notes that complaints may be made to the Standards Commission in relation to a local authority member or employee. It further notes that questions have been raised as to the adequacy and effectiveness of the ethics framework in local government and that there is also a lack of clarity regarding the interface between the local government ethics code and the requirements of the Ethics Acts (these concerns have previously been raised by the Standards Commission).

In that context, the document reiterates the Government decision issued in its response to the Final Report of the Mahon Tribunal to develop a single national legislative framework across the public service, including in local authorities. It is to be hoped that the adoption of such a single framework will eradicate the anomalies between the arrangements in force in local authorities and those in bodies which come within the scope of the Ethics Acts.

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. In its report for 2011, it stated that around 915 public bodies including subsidiaries were within remit.

Regulations were made by the Minister for Public Expenditure and Reform which came into effect on 19 July 2012, which brought members of the Houses of the Oireachtas Commission and the Central Bank's Consumer Advisory Group within the scope of the Ethics Acts. Further regulations made by the Minister for Public Expenditure and Reform came into effect on 1 January 2013. As a result of these regulations, 56 bodies (including 44 subsidiaries) were included within the remit of the Ethics Acts, while 61 bodies (including 31 subsidiaries) were removed. Accordingly, there are now around 910 public bodies within the scope of the legislation.

Regulation of Lobbyists

The Department of Public Expenditure and Reform published detailed policy proposals in July 2012 regarding the regulation of lobbyists. The Government subsequently decided that legislation will be drafted to provide such regulation and that the Standards Commission will be appointed to perform the role of regulator for an initial two year period.

The proposals envisage registration by lobbyists through a dedicated website on which a register of relevant details will be published. The intention is to provide transparency in relation to lobbying of political representatives and public bodies by private interests during the process of policy formulation and decision-making.

The proposed legislation also makes provision for the application of a two year "cooling-off period" for Ministers and senior public servants restricting their employment post-resignation/retirement where there is an actual or apparent conflict of interest with certain activities involving lobbying. The current Programme for Government states

"We will amend the rules to ensure that no senior public servant (including political appointees) or Minister can work in the private sector in any area involving a potential conflict of interest with their former area of public employment, until at least two years have elapsed after they have left the public service."

The current proposals are significantly narrower than the commitment in the Programme for Government. However, it is understood that the intention is to give full effect to the commitment in the revised ethics legislation. The Standards Commission considers that any actual or apparent conflict of interest between an official's functions and any activities which he or she may undertake on resignation or retirement from the public service must be avoided and that appropriate legislative provision must be put in place in whatever form as soon as possible.

The Standards Commission is of the view that the proposed regulator of lobbying will have to be properly resourced and has communicated this view to the Department. It is intended

that there will be an intensive initial phase involving training and advice to lobbyists with a view to assisting compliance, while fewer resources would be needed once the legislation has bedded down. The legislation will provide for investigation of complaints. It will also provide for the application of administrative sanctions for minor breaches and for criminal offences for more serious contraventions.

The Standards Commission considers that the enactment of such legislation has the potential to enhance the existing and developing framework of legislation ensuring transparency throughout the public service.

03

CHAPTER

Chapter 3 - Electoral

Amendments to the Electoral Acts

Change in Disclosure and Acceptance limits for Donations

The Standards Commission published a series of new Guidelines in January 2013 under the Electoral Act 1997, as amended, dealing mainly with the changes introduced by the Electoral (Amendment) (Political Funding) Act 2012. These guidelines replace previous guidelines published by the Commission.

The Electoral (Amendment) (Political Funding) Act 2012 introduced additional requirements and restrictions on the acceptance of political donations. These provisions, which came into effect on 1 January 2013, apply to members of, and candidates seeking election to, the Dáil, Seanad, European Parliament and local authorities; to political parties, third parties and candidates at a Presidential election. They include the following:

- a reduction in the maximum donation that can be accepted by an individual elected representative or candidate from €2,539.48 (IR£2,000) to €1,000 and by a political party, accounting unit or third party from €6,348.69 (IR£5,000) to €2,500;
- the introduction of a ban on the acceptance of a corporate donation in excess of €200 from a corporate donor unless the donor has registered with the Commission and a statement is furnished to the recipient confirming that the donation has been approved by the members, shareholders or trustees of the corporate donor concerned;
- a reduction in the maximum amount that can be accepted as an anonymous donation from €126.97 (IR£100) to €100. The same reduction applies to the threshold for opening a political donations account. The definition of a 'third party' and 'accounting unit' has also changed and these bodies will now be recognised as such upon receipt of a donation that exceeds €100. The previous figure was €126.97 (IR£100);

- a ban on the acceptance of any cash donation over €200, and
- where a donation is given through an intermediary, the identity of the person on whose behalf the donation is made will have to be provided to the recipient. It will be an offence to fail to provide this information.

Register of Corporate Donors

A corporate donor is defined as including: a body corporate, an unincorporated body of persons or a trust which makes a donation. A body corporate and any subsidiary thereof are deemed to be one person. In the case of a Corporate Donor, a donation in excess of the value of €200 cannot be accepted unless the Corporate Donor is registered in the Register of Corporate Donors (maintained by the Commission) and a statement (i.e., a donation statement) is made on behalf of the Corporate Donor and furnished with the donation to the donee confirming that the making of the donation was approved by the Corporate Donor. The statement must be accompanied by a statutory declaration that to the best of the knowledge and belief of the person concerned, the statement is correct in every material respect and that the person has taken all reasonable action in order to satisfy him/herself as to the accuracy of the statement.

The Commission has published Guidelines relating to the register of Corporate Donors which will be maintained by the Commission. Corporate donors who wish to make a donation for political purposes in excess of €200 must register with the Commission and furnish a statement to the recipient of a donation confirming that the donation has been approved by the members, shareholders or trustees of the corporate donor concerned.

All of the revised Guidelines are available on the Commission's website.

Political Party Accounts

The Electoral (Amendment)(Political Funding) Act 2012 requires the Commission to prepare and publish guidelines for the purpose of providing practical guidance to political parties with respect to keeping proper books of account and preparing an annual statement of accounts and auditor's report.

The Commission decided to use accountancy consultants to advise on the drafting of guidelines. Drafting was ongoing at the time of writing. The legislation provides for a 28 day public consultation process prior to the publication of the final Guidelines.

Disclosure of Donations in respect of 2012 by TDs, Senators and MEPs

A person who was a TD, Senator or MEP during 2012 was required to furnish a Donation Statement to the Standards Commission by 31 January 2013. Donations received during 2012 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 (prior to 1 January 2013, the limit was €2,539.48).

Donation Statements received from TDs, Senators and MEPs

In early January 2013 the Standards Commission wrote to all 238 Members enclosing a Donation Statement/Statutory Declaration form for completion and return by 31 January 2013. The total of 238 Members comprised 165 TDs, 60 Senators, 12 MEPs and 1 former MEP. 16 Members failed to adhere to the deadline. The 16 Members in question were:

Member	Party	Date Received
Joe Higgins TD	Socialist Party	04/02/2013
Michael McGrath TD	Fianna Fáil	04/02/2013
Joan Collins TD	People Before Profit Alliance	05/02/2013
Senator Mary White	Fianna Fáil	05/02/2013
Ciaran Cannon TD	Fine Gael	06/02/2013
Barry Cowen TD	Fianna Fáil	06/02/2013
Nicky McFadden	Fine Gael	06/02/2013
Senator Tony Mulcahy	Fine Gael	06/02/2013
Robert Troy TD	Fianna Fáil	06/02/2013
Phil Prendergast MEP	The Labour Party	08/02/2013
Senator John Whelan	The Labour Party	08/02/2013
Senator Terry Brennan	Fine Gael	11/02/2013
John Perry TD	Fine Gael	11/02/2013
Senator James Heffernan	The Labour Party	12/02/2013
Paudie Coffey TD	Fine Gael	13/02/2013
Colm Keaveney TD	The Labour Party	19/02/2013

All of the statutory documentation was returned to the Commission by 19 February 2013.

Donations with a total value of €3,800 were disclosed. Of this total, €300 was disclosed by Senator Fidelma Healy Eames (Fine Gael), €2,500 by Stephen Donnelly TD (Non-party), and €1,000 by Mary Lou McDonald TD (Sinn Féin). Details of the donations disclosed in respect of 2012 are available in a report to the Ceann Comhairle which was published in February 2013. The report is also available on the Commission's website.

Donation Statements received from individual donors

Section 24(1A) of the Electoral 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 (prior to 1 January 2013; the limit since then is €1,500) 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.

If a donor does not intend to comply with this requirement and a Member or candidate at an election is aware of this, he/she is prohibited from accepting a donation from that individual. If such a donation is received, the Standards Commission must be notified within 14 days and the donation or its value remitted to the Standards Commission.

No Donation Statements from individual donors were received for 2012.

Donations disclosed by political parties

Each political party was required to furnish a Donation Statement to the Standards Commission by 31 March 2013. Donations received by a political party exceeding an aggregate value of €5,078.95 were required to be disclosed. The maximum value of donations which a political party could accept from the same person in the same calendar year prior to 1 January 2013 was €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 2012 was €33,605.78. Only Sinn Féin, the Christian Solidarity Party - Comhar Chríostaí and the Socialist Party disclosed donations in 2012.

Details of the donations disclosed by political parties in respect of 2012 are available in a report which the Standards Commission furnished to the Ceann Comhairle in April 2013. The report is also available on the Commission's website. At the time that

report was published, three political parties had failed to furnish the required statutory documentation to the Commission. These parties furnished the required documentation to the Commission at the end of April 2013 and accordingly no files were referred to the Gardaí.

Exchequer funding of political parties

The Electoral Act 1997, as amended

In order to qualify for funding under the Electoral Acts, a political party must be included in the Register of Political Parties and must have obtained at least 2% of the first preference votes at the last Dáil general election. Funding was paid to four qualified parties (Fianna Fáil, Fine Gael, Sinn Féin and The Labour Party) during 2012 on the basis of the results of the 2011 general election.

Each qualified political party is paid a basic amount of €126,973.81 annually. In addition, each qualified political party is also entitled to a share of an annual fund which was originally set at €3m and which increases in line with general pay increases in the civil service. The Electoral (Amendment)(Political Funding) Act 2012 introduced a new requirement that the annual sum will decrease in line with any general pay reductions in the civil service. There were no increases or decreases applied to the fund in 2012. The fund stood at €4,948,202 at 31 December 2012. The share of the fund payable to a qualified political party is determined by expressing the first preference votes of the qualified party as a percentage of the total first preference votes received by all qualified political parties.

The funding may not be used for electoral or referendum purposes. Details of the payments made to the qualifying political parties in respect of 2012 are shown below:

Qualified Political Parties	Total funding received for 2012
Fianna Fáil	€1,167,856
Fine Gael	€2,281,055
Sinn Féin	€719,919
The Labour Party	€1,287,267
Total	€5,456,097

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

The Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 provides for the payment of an annual allowance to the parliamentary leader of a qualifying party in relation to expenses arising from the parliamentary activities, including research, of the party. This allowance is known as the Party Leaders Allowance. A qualifying party is defined in the Act as a political party, registered in the Register of Political Parties, which contested the last preceding general election or any subsequent bye-elections and which had at least one member elected to Dáil Éireann or elected or nominated to Seanad Éireann. The funding may not be used for electoral or referendum purposes.

Following the general election of 2011, the parliamentary leaders of six political parties (Fianna Fáil, Fine Gael, People before Profit Alliance, Sinn Féin, The Labour Party and The Socialist Party) qualified to receive the allowance. The parties received a total of €7,507,063 under the Party Leaders Allowance Act.

Non-party members of Dáil Éireann and Seanad Éireann also receive funding under the Party Leaders Allowance legislation. The amount payable to each non-party member elected to Dáil Éireann during 2011 was €41,152 and the amount payable to each non-party member elected or nominated to Seanad Éireann during the same period was €23,383. The total paid to non-party members was €928,154 (€652,553 to non-party members of the Dáil and €275,601 to non-party members of the Seanad). Non-party members are not required, however, to provide a Statement of Expenditure of the allowance to the Standards Commission, or to any other authority.

The level of funding is linked to pay increases in the civil service; however, the legislation which governs the funding is silent on pay decreases. In December 2012 in the context of the Expenditure Estimates for 2013, the Minister for Public Expenditure and Reform announced a 10% reduction to be applied to the rates of the Party Leaders Allowance. He also announced that he intended to amend the legislation to provide for external validation of its use by non-party members.

Qualified political parties must furnish to the Standards Commission Statements of Expenditure of the funding received. Details of the payments made to the qualifying political parties in respect of 2012 are shown below:

Party	Total funding received for 2012
Fianna Fáil	€1,674,403
Fine Gael	€2,678,403

Party	Total funding received for 2012
People before Profit Alliance	€143,040
Sinn Féin	€1,084,354
Socialist Party	€137,080
The Labour Party	€1,789,783
Total	€7,507,063

Reports on the exchequer funding received in 2012 by political parties under both pieces of legislation are available on the Commission's website.

Accounting Units

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 documentation was required to be furnished to the Standards Commission by 31 March 2013.

Table of Accounting Units returns received in respect of 2012

Political Party	Returns Received before the Deadline	Returns Received After the Deadline	Outstanding Returns*
Fianna Fáil	33	6	0
Fine Gael	35	17	1
People before Profit Alliance	1	0	0
Sinn Féin	7	4	2
The Green Party	17	5	1
The Labour Party	26	9	3
Total:	119	41	7

* Returns outstanding at the time of writing.

The seven outstanding accounting units were referred to An Garda Síochána on 22 May 2013.

Third Parties

Prior to 31 December 2012, on receipt of a donation for political purposes 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. From 1 January 2013, an organisation which receives a donation in excess of €100 in value is considered to be a third party.

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

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

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.

On 8 March 2013 the Standards Commission wrote to 21 third parties seeking a CMD and a bank statement, if appropriate, in relation to their political donation accounts. All third parties were required to submit the relevant documents by 31 March 2013, in respect of 2012.

One third party, the Seanad Reform Group, registered in 2012.

The table below identifies the third parties that were registered in 2012 and the date by which documentation was received, along with the current position. In this regard some third parties continue with registration on the basis that donations continue to be received whereas some third parties opted to de-register because they are no longer active. Seven third parties were referred to An Garda Síochána on 11 April 2013.

Third Parties	Statutory Documentation received by 31 March	Status
Alliance for Freedom and Democracy	No (received on 3 April 2013)	Registered
Alliance for Ireland	No (referred to Gardaí on 11 April 2013; received on 23 April 2013)	Registered

Third Parties	Statutory Documentation received by 31 March	Status
Business for Ireland	Yes	De-registered
Change Ireland	No (received on 11 April 2013)	Registered
Chambers Ireland	Yes	De-registered
CÓIR	No (received on 9 April 2013)	Registered
Dublin Chamber of Commerce	No (referred to Gardaí on 11 April 2013; received on 17 April 2013)	Registered
Immigration Control Platform	Yes	Registered
Irish Society for Christian Civilisation	Yes	De-registered
Libertas	No (referred to Gardaí on 11 April 2013; received on 22 April 2013)	Registered
Mayo Reform Movement	No (referred to Gardaí on 11 April 2013; received on 9 May 2013)	Registered
National Campaign for the Arts	No (referred to Gardaí on 11 April 2013; received on 15 April 2013)	Registered
Peace and Neutrality Alliance	Yes	Registered
People's Movement	No (received on 2 April 2013)	Registered
Pro-Life Campaign	No (received on 8 April 2013)	Registered
RISE!	No (received on 4 April 2013)	Registered
Seanad Reform Group	Yes	Registered
The Charter Group	No (referred to Gardaí on 11 April 2013; received on 16 April 2013)	Registered
United Left Alliance	No (referred to Gardaí on 11 April 2013; received on 18 April 2013)	Registered
VoteNo.ie	Yes	Registered
YES for Children	Yes	Registered

The Standards Commission subsequently notified An Garda Síochána of the receipt of outstanding documentation from third parties.

Consideration of possible breaches of donation limits by TDs

In 2012 the maximum donation that could be accepted by a political party in a particular year from a person was €6,348.69 in aggregate. All donations exceeding €5,078.95 were required to be disclosed on the party's annual donation statement to the Commission.

In June 2012 media reports suggested that the Dáil salary of Sandra McLellan TD (Sinn Féin) of €92,672 was reduced to €34,000 because she gave the remainder to Sinn Féin. The media report also stated that she gave some of her allowances for expenses to Sinn Féin. Both Deputy McLellan and Sinn Féin were asked to comment on the media reports and to clarify matters. The Commission also received two queries on this matter from members of the public.

In subsequent correspondence both the Deputy and the party emphasised that elected Members' salaries and expenses are paid directly into the Members' own bank accounts and after awarding themselves the average industrial wage the Members use the remaining funds to expand and develop their constituency service. The Deputy and two party members attended at the offices of the Commission to explain matters and supplied copies of the Deputy's personal bank statements. As the Commission did not uncover any evidence of a breach of the Act through any transfer of funds from the Deputy's bank accounts to the Sinn Féin party it decided that its enquiries into this matter should be closed.

In July 2012, Clare Daly TD was reported in the media to have said that she lived "... on an average industrial wage and the rest of the money is given back to the Socialist Party". In subsequent correspondence, both the Deputy and the party emphasised that elected Members made donations from their salaries to the party in strict accordance with current legislation and that they also made donations to many other campaigns, community organisations and charities. They also confirmed that all donation statements submitted to the Commission were correct and did not require amendment.

Media reports in October 2012 suggested that Richard Boyd Barrett TD had claimed that "... rather than giving the remainder of his salary back to the taxpayer, he donates it to the People Before Profit group ...". Enquiries made of the People before Profit Alliance and the Deputy resulted in clarification that in fact the Deputy had, inadvertently, donated in excess of the maximum donation limit to the party. However, the excess of the donation above the maximum allowable limit was returned to the Deputy and the appropriate corrected documentation was furnished to the Commission. The Deputy confirmed that he retains less than the average industrial wage and donates, in accordance with the relevant legislation, the remainder of his salary to various charities and campaigns.

Improper Use of Oireachtas Facilities

In March 2009, the Chairman of the Standards Commission wrote to the then 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. Copies of the Chairman's letter were issued to the Chairpersons of the Committees on Members' Interests of Dáil Éireann and Seanad Éireann. The 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.

In November 2012, the Commission was informed by one of the political parties that Members of its parliamentary party pay to the party an annual levy plus a contribution of Oireachtas envelopes per month for use by that party. The Commission was given to understand that this practice was also followed in other political parties. The Commission considers that members should not provide Oireachtas envelopes to political parties, that the parties should not accept them and that, in the event that they do accept them, this may constitute a donation to the party requiring disclosure.

The Commission wrote to the Secretary General of the Houses of the Oireachtas Commission and to the Chairman of both the Committee on Members' Interests of Dáil Éireann and Seanad Éireann pointing out that the Commission had concerns about this practice both under Electoral and Ethics legislation. The Commission also wrote to all the political parties asking them to confirm that they had instructed their elected Members to discontinue this practice.

The Committee on Members' Interests of Seanad Éireann forwarded a copy of the correspondence to all Senators for their information. No response was received from the Committee on Members' Interests of Dáil Éireann. The Labour Party confirmed that it had instructed its elected Members to discontinue this practice. People before Profit Alliance confirmed that its members had not donated envelopes to the party and it had instructed its members not to do so. Fine Gael confirmed it had instructed its members to discontinue the practice while it initiated a review of the use of Oireachtas envelopes and finalised its view as to what was an appropriate use of this resource. Fianna Fáil took the view that their policy relating to the use of Oireachtas envelopes did not constitute a donation to the party and are in correspondence with the Commission in this regard. Neither Sinn Féin nor the Socialist Party responded to the Commission's correspondence.

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APPENDIX

Appendix 1: 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 procedural amendments to the Ethics Acts

- The Standards Commission should directly lay its Annual Report before each House of the Oireachtas rather than furnishing it to the Minister for Finance who then lays it ([Introduction, Annual Report 2010](#));
- power to appoint an Inquiry Officer to conduct a preliminary inquiry into a matter in the absence of a complaint under the Ethics Acts ([Chapter 1, 'Own initiative inquiries', 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 ([Chapter 4, 'Proposed amendments to the Ethics Acts', Annual Report 2008](#)).

Other 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 ([Chapter 2, 'Overlapping Ethics Frameworks' Annual Report 2009](#)); the Minister for Public Expenditure and Reform is undertaking a full review of how to reform the existing ethics framework in order to develop a single, comprehensive legislative framework ([Chapter 2, 'Final Report of the Mahon Tribunal' Annual Report 2012](#));

- 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 ([Chapter 2, ‘High Level Statement of Ethical Principles’, Annual Report 2009](#));
- amendment of the definition of ‘connected person’ (see definition in Appendix 3) to provide that a person is a “connected person” to a company (see definition in Appendix 3) of which he or she is a director and that the other directors of that company are also “connected persons” to that person ([Chapter 2, ‘Connected Persons’, Annual Report 2009](#));
- requirement that liabilities be disclosed as ‘registrable interests’ ([Chapter 2, ‘Disclosure of Liabilities’, Annual Report 2009](#));
- 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 ([Chapter 1, ‘Ethics Acts’ Annual Report 2005](#)); the Minister for Finance decided not to move the resolutions ([Chapter 4, ‘Proposed amendments to the Ethics Acts’, 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 ([Chapter 1, ‘Tax Clearance Provisions - observations to the Minister for Finance’ Annual Report 2003](#)); 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 ([Appendix 4, ‘Proposed amendments to the Ethics Acts and related legislation’, Annual Report 2009](#));
- adoption of a code of conduct for public servants and members of state boards in the wider public service ([Chapter 1, ‘Codes of Conduct for Public Servants’, Annual Report 2003](#)).

Proposed legislation regarding public interest disclosure

- A comprehensive public interest disclosure and whistleblower protection law ([Chapter 2, ‘Whistleblowing’, Annual Report 2009](#)); the Minister for Public Expenditure and Reform published the Draft Heads of the Protected Disclosure in the Public Interest Bill 2012 in February 2012 ([‘Introduction by the Chairman’, Annual Report 2012](#)).

Proposed procedural amendment 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](#)).

Proposed amendment to the Electoral Acts relating to the election period

- 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 Government has indicated that it intends to publish a Bill to provide for the extension of the spending limit period that applies at Presidential, Dáil, European Parliament and local elections.

Proposed amendment to the Electoral Acts relating to Third parties

- 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 2008](#));
- 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 an individual/group to register as a “third party” and to also register as an “other person”.) ([Review of the Electoral Acts 2003](#));
- 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](#)).

Proposed amendment to the Electoral Acts relating to spending at referendums

- 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](#)). The Government has indicated that it intends to publish a Bill to provide for the disclosure of expenditure and donations at a referendum campaign.

Other proposed amendments to the Electoral Acts

- 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 Electoral Act should constitute an offence ([2009 Report on third parties at the Referendum on the Treaty of Lisbon 2008](#));
- 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 amended by Section 4(c) of the Houses of the Oireachtas Commission (Amendment) Act 2009)] ([Report on the Dáil general election of 2007](#)).

Proposed amendment to the Party Leaders Allowance legislation relating to the giving of advice

- 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](#)).

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APPENDIX

Appendix 2: Standards Commission Publications in 2012

- Report to Ceann Comhairle re Dublin West Bye-Election of 27 October 2011 (February 2012)
- Report to Ceann Comhairle re Presidential Election of 27 October 2011 (February 2012)
- Report of investigation by the Standards Commission of alleged contraventions of the Ethics in Public Office Acts 1995 and 2001 and Part 15 of the Local Government Act 2001 - Councillor Oisín Quinn, Dublin City Council (February 2012)
- Report to the Committee on Members' Interests of Dáil Éireann on the Investigation by the Standards Commission into contraventions of section 21(1) of the Standards in Public Office Act 2001 by Arthur Spring TD (April 2012)
- Report on Disclosure of Donations received in 2011 by TDs, Senators and MEPs (April 2012)
- Report regarding Donation Statements furnished by Political Parties for 2011 (May 2012)
- Report to the Committee on Members' Interests of Seanad Éireann on the Investigation by the Standards Commission into contraventions of section 21(1) of the Standards in Public Office Act 2001 by Senator Pat O'Neill (May 2012)
- Report on Exchequer Funding received by Political Parties for 2011 (May 2012)
- Report on Expenditure of Party Leaders Allowance 2011 (May 2012)
- Annual Report 2011 (July 2012)
- Public Service Guidelines 9th Edition (Updated for 2012) (September 2012)

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APPENDIX

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 €100 (prior to 1 January 2013 the limit was €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)
- Civil partner** ‘civil partner’, in relation to a person, means a civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 but does not include a civil partner who is living separately and apart from the person” (Section 97(2) and Part One of the Schedule, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010);
“For the purposes of this Act a civil partner is either of two persons of the same sex who are (a) parties to a civil partnership registration that has not been dissolved or the subject of a decree of nullity, or (b) parties to a legal relationship of a class that is the subject of an order made under section 5 that has not been dissolved or the subject of a decree of nullity” (Section 3, Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010)
- 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)

Corporate Donor	A “corporate donor” is defined as: a body corporate, an unincorporated body of persons, or a trust which makes a donation. A body corporate and any subsidiary thereof are deemed to be one person.
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	<p>a donation means “any contribution given for political purposes by any person, whether or not a member of a political party.....”</p> <p>[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 -</p> <ul style="list-style-type: none">(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 (i.e. conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods);(iv) a free supply of services (i.e. the supply of services

- without payment or other consideration);
- (v) the difference between the usual commercial price and the (lower) price charged for the purchase, acquisition or use of property or goods, or the supply of any service, where the price, fee or other consideration is less than the usual commercial price (this can include a loan provided by a third party or by a financial institution at terms and conditions which are more favourable than that provided by a financial institution to other individuals in the normal course of business);
- (vi) a contribution made by a person to a fund-raising event organised for the purpose of raising funds for a political purpose. The donation is that proportion of the contribution which is attributable to the net profit, if any, deriving from the event. Donations are deemed to have been received on the date of the actual fund-raiser (and not when actually received).
- (vii) a payment by the person on their own behalf, or on behalf of one or more than one other person, of a fee or subscription for membership or continued membership of a political party (membership fees include any membership fees/levies/subscriptions paid to any sub-unit of a political party);
- (viii) a notional donation/donation in kind. This means that where a person/organisation pays for work/expenses from its own resources (i.e. not party funds) then this is considered a donation of the notional value/cost of the work/expenses to the donee. Donations in kind or notional donations are to be valued at the usual commercial price charged for the purchase, use or acquisition of the property or goods or the supply of any service donated.

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)

Special adviser

“special adviser” has the meaning assigned to it by section 19 (1) of the 1995 Act, namely a person who -

(a) occupies or occupied a position to which section 7(1) (e) of the Public Service Management (Recruitment and Appointments) Act 2004 relates, having been selected for appointment to that position by an office holder personally otherwise than by means of a competitive procedure, or

(b) is or was employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally otherwise than by means of a competitive procedure,

and whose function or principal function as such a person is or was to provide advice or other assistance to or for the office holder (Section 19 of the Ethics in Public Office Act 1995)

(A special adviser also includes a person appointed, by order of the Government, pursuant to section 11 of the Public Service Management Act 1997).

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 €100 (prior to 1 January 2013 the limit was €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)

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APPENDIX

Appendix 4: Costs in 2012

The table below outlines the expenditure attributed to the Standards Commission in 2012. The figures for 2011 are also shown for comparison purposes. The expenditure is provided for in Subhead B of Vote 18 [Office of the Ombudsman].

	2012 €000	2011 €000
Staff Salaries	601	613
Travel and Subsistence	2	4
Incidental Expenses	57	65
Postal Telecommunications	13	16
Office Machinery and Other Office Supplies and Related Services	44	43
Office Premises Expenses	24	46
Consultancy Services	28	3
Legal Fees	101	71
Total	870	861

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APPENDIX

Appendix 5: Annual Energy Efficiency Report

The secretariat to the Standards Commission is provided by the Office of the Ombudsman at its offices in 18 Lower Leeson Street, Dublin 2, which also houses the Office of the Information Commissioner, the Office of the Commissioner for Environmental Information and the Commission for Public Service Appointments. This report itemises energy usage across the whole office.

Monthly Energy Report		OPW - Office of Public Works Ombudsmans Office	
Summary		Dec 2012	
Month to month			
Energy usage has decreased by -27.0% from 58,955kWh in Dec 2010 to 43,023kWh in Dec 2012. As a result, CO2 emissions for this period have decreased by -19.4% from 19,886kg to 16,023kg, (-3,862Kg).			
Annual			
The base year used for all these calculations is 2010.			
Compared to this base year, energy consumption on site has decreased by -32,453kWh or -7.0% over the last 12 months.			
In terms of total CO2, production has decreased by -8.3%, since 2010 or by -17,143Kg			
Normalised for weather variations, CO2 has decreased by -11.1%, since 2010 or by -22,923Kg			
Energy use - Dec 2012			
Annualised energy usage			
Description	Electricity	Gas	Total
Benchmark Year	284,062	179,086	463,148
Previous 12 months	257,401	173,294	430,695
% Difference	-9.4%	-3.2%	-7.0%

