

ASSESSMENT OF BREACH OF THE CODE OF PRACTICE FOR OFFICIAL STATISTICS

A breach of the Code of Practice for Official Statistics occurs where one or more provisions of the Code were not followed in situations where an exemption or exception had not been approved by the UK Statistics Authority's Head of Assessment, as required in paragraph (xii) of the Code's preamble. Rules on pre-release access to statistics are covered in the relevant Pre-Release Access to Official Statistics Orders; the Code applies as if it includes these orders.

1 Background Information

Name of Statistical Output (including web link if relevant)

Affordable Housing Investment Programme Management information

Name of Producer Organisation

Scottish Government

Name and contact details of person submitting this report, and date of report

Rob Wishart, Chief Statistician, 11 September 2009

2 Circumstances

Relevant Principle/Protocol and Practice

Mary Mulligan MSP asked the Cabinet Secretary for Finance and Sustainable Growth (John Swinney) to investigate statements made by the Minister for Housing and Communities (Alex Neil) in a Housing Debate in the Scottish Parliament on 29 April and subsequently in general question time on 14 May to determine whether the statements complied with the spirit and the letter of the Code of Practice.

The statements related to the Government's performance on building of affordable housing. During the debate and the question time the Minister made statements which suggested that he strongly felt that figures due to be published on 26 May would show a positive set of results. The statements are attached in section 5 for information.

The breach relates to:

Principle 3, Practice 1 – Ensure that no statement or comment – based on prior knowledge – is issued to the press or published ahead of the publication of the statistics.

Other possible breaches were also considered relating to:

- The principles of the Pre-release Access to official Statistics Order (Scotland) 2008.
- Protocol 2, Practice 8 – Ensure that no indication of the substance of a statistical report is made public, or given to the media or any other party not recorded as eligible for access prior to publication.

Date of occurrence

The breaches occurred on 29 April and on 14 May

Nature of breach

At the time of the debate the final publication of the Scottish Housing Statistics had not yet been completed (in fact it was almost a month from being completed) therefore there **was no breach of the pre-release access Order or of Protocol 2, Practice 8**

The Minister did have access to management information on affordable housing completions, which is also not a breach of the Code. The set of figures which the Minister had access to were a provisional set of figures which would eventually go on to be part of the National Statistics publication on Scottish Housing Statistics. These figures would be updated and would go through quality assurance and statistical amendment before being finalised for the Scottish Housing Statistics publication.

The position regarding what Ministers can and cannot say in relation to management information was not clear at the time of the debate and the need for clarification remains, although new guidance on the handling of management information which was published a couple of months after the debate helps somewhat for the future.

Principle 3 Practice 1 of the Code makes it clear that any statement or comment on the figures based on prior knowledge must not occur ahead of publication. It is not just disclosure of specific numbers. This is to ensure equality of access and to guard against selective quoting of advantageous elements of the statistics, or perceptions thereof, which would undermine trust.

The comments made by the Minister, given that he had access to the management information, were in breach of this principle and practice mainly due to the fact that he specifically mentioned what the publication was likely to say. However it should be noted that there was other information in the public domain, published by the National House Building Council (NHBC), which showed similar trends to the management information which the Minister had access to. There was also anecdotal information available which provided an insight to the figures which may be published, such as information on the amount of money available to Registered Social Landlords. Therefore there was justification for some of the statements made by the Minister already in the public domain.

Reasons for breach

The recently published GSS task force guidance on the handling of management information states that those who have access to management information that are used for official statistics must “avoid ad hoc or selective comments on, or reporting of administrative/management data which might undermine trust in any derived statistics” and “avoid making any public statement that pre-judges or pre-empts the contents of any statistical release”. **However it should be noted that this guidance was not in place at the time of the debate** and the rules in relation to public use of management information were therefore less clear cut.

The Minister was advised prior to the debate about the need to only cite published sources

to ensure that no breach of the Code of Practice occurred. The Minister made a clear reference to the Code during the debate and the fact that this prevented him from providing any figures. It is clear that the Minister was trying to avoid breaching the Code, although his statements did provide an indication of the probable direction of the figures and therefore ultimately breached the code.

3 Reactions and Impact

The potential breach was raised by Mary Mulligan MSP in a letter to the Cabinet Secretary for Finance and Sustainable Growth.

Although the guidance issued a couple of months after the debate does help somewhat, there is a need for clarification on which statements are made based on prior knowledge of statistics and which statements are made as part of normal political debate. It would be unfortunate if political debate was ultimately stifled due to the Code. However given that the Minister specifically mentioned the forthcoming publication it is clear that this was in breach of the principles of the code.

It should be noted that there is a risk that the Government Statistical Service is driven down the road of releasing more management information as provisional statistics to avoid these problems – if the information is in the public domain the issues do not arise. That may be appropriate in some cases – for example where the data are already widely available or relatively low profile and uncontroversial. But in other cases it would not be in the public interest to do so for example where there were substantial issues of interpretation, where there were considerable short term fluctuations or where the statistics were particularly sensitive, where the statistical processes resulted in substantial improvements to the quality of the data or where orderly release was especially important.

4 Corrective Actions Taken (include short-term actions, and long-term changes made to procedures)

We will work with Ministers and officials to ensure that the new guidance is adhered to. In particular we will highlight the need to avoid giving any indication of figures and not just the actual figures themselves.

Although the guidance provides clarity on some of the issues on handling management information it is likely it will need to be developed as further real life problems arise. There is a particular need for guidance on what Ministers are able to say as it would be unfortunate if legitimate public debate (which would occur even when management data are not available) was stifled due to the principles in the code of practice as mentioned above.

5 Any other relevant supporting material (including link to published statements about this breach)

Statements in the Debate

See [The Scottish Parliament - Official Report](#)

Relevant extracts are given below

Col 16834

Jamie McGrigor (Highlands and Islands) (Con): I return to the minister's previous point. He said that the changes that were made in February brought HAG back to its level under the previous Administration. Why did that level fall initially under the current Administration?

Alex Neil: We want to look to the future, but I will explain the situation to Jamie McGrigor. Those who gave the warning that a reduction in HAG would result in a collapse in house building by housing associations will be proved incorrect. I am absolutely confident that, when the final figures for last year are produced, they will show that the number of new houses that housing associations built met our targets. It is untrue to say that reducing the HAG contribution had a detrimental effect on the house-building programme.

Col 16865

Mary Mulligan: Given that the minister is so keen on NHBC figures, I note that the figure for completions in the three months to March 2008 was 3,717.

The Minister for Parliamentary Business (Bruce Crawford): The member is referring to 2009.

Mary Mulligan: I am making a comparison—Mr Crawford may understand that. In 2009, the figure was 1,712. To me, that is a fall.

Alex Neil: Mrs Mulligan should wait for confirmation of the figures, which will bear out the NHBC.

[The Minister has advised that he has been misquoted in Parliament's Official report and that he said 'Mrs Mulligan should wait for confirmation of the figures, which **I believe** will bear out the NHBC'.]

Alex Neil (Cont.): The Victorian undertaker wants to look at the bad news, but part of the bad news for Mary Mulligan is that I have been looking at the track record for the past 10 years. I found that the period during which she was Deputy Minister for Communities—the position that I now hold—was the year in which the Lib-Lab pact built the fewest houses in the Parliament's first eight years of existence. Those who criticise the Government should be absolutely sure of their record and wait until the facts come out on 26 May—facts are chieils that winna ding. I am totally confident that, when the figures appear, the Labour Party will have egg all over its face—not for the first time.

Statements in General Questions

[Link to Official Report](#)

Relevant Extracts are below

Helen Eadie: I note that, once more, the minister dances around and does not give a direct answer. What excuses will he give for the fall in the number of homes that Scottish housing associations build? All stakeholders attribute that fall directly to the Scottish National Party's decision to cut the grant for new affordable homes.

Alex Neil: Since Helen Eadie praised herself as a great socialist, I remind her of what Nye Bevan said about the language of priorities and of how we decide priorities systematically. When Mr Swinney makes his announcement on the consequentials, he will base it on the Government's priorities in achieving our strategic objectives on poverty and the economy.

As for the specifics of housing association starts, completions and approvals, when the official figures for last year are published on 26 May, I would like the member to revise her opinion. Perhaps she will be a bit confused when she learns the facts.

We announced just this week a record number of approvals—more than 8,100—for new housing association houses. The Labour Party never achieved such a figure.

Rhona Brankin (Midlothian) (Lab): On a point of order, Presiding Officer. If the minister knows the answer to a question—as was just implied—is he not duty bound to give the chamber that answer?

The Presiding Officer: The member is fully aware that ministers are responsible for the contents of their answers.

Alex Neil:

As for the figures, ministers must abide by the statistics code, so I am not allowed to give any numbers until they are officially published by the Government's statistics service.