

STANDARDS COMMISSIONER AND NEW COMPLAINTS PROCEDURE

Report of the Committee on Standards of Conduct

1. This report contains recommendations arising from a review of the standards of conduct arrangements for Assembly Members by the Committee on Standards of Conduct.

Recommendations

2. The Assembly is invited:

- i. to note the Committee's revised Complaints Procedure at Annex A; and
- ii. to agree the proposed amendments to Standing Order 16 at Annex B.

Background

3. The Procedure for Dealing with Complaints against Assembly Members was originally approved by the Standards Committee on 6 July 2000. Subsequent experience of dealing with complaints exposed a number of gaps and limitations in that Procedure.

4. As a result the Committee commissioned Professor Diana Woodhouse of Oxford Brookes University to undertake a review of the Assembly's standards of conduct regime. She reported in October 2002, making a total of 31 recommendations. A copy of her report can be found [here](#). Amongst Professor Woodhouse's most significant recommendations were for a complete overhaul of the Complaints Procedure and the enhancement of the role of the Independent Adviser.

5. The Committee has considered the recommendations of the Woodhouse Review in great detail, and has now approved a new Procedure for dealing with complaints against Assembly Members (Annex A). The new Procedure provides much greater openness and transparency and includes an appeals procedure. It also provides for the Independent Adviser to report to the Committee instead of the Presiding Officer and to have greater autonomy in sifting and managing complaints. In view of these increased responsibilities, the post has been given the higher profile title of Standards Commissioner.

The Standing Orders amendments

6. To implement the new Procedure fully, a number of changes are needed to the Assembly's Standing Orders. The proposed amendments are set out in Annex B.

(i) Removal of involvement of the Presiding Officer (SO 16.1(i),(ii) & (v), SO 16.3 and SO 16.7).

At present the Independent Adviser reports in the first instance to the Presiding Officer, who may refer complaints to the Committee. The amendments give these roles to the Standards Commissioner and the Standards Committee in line with the Woodhouse recommendations.

(ii) Duty to establish complaints procedure (SO16.1(vi)).

While Standing Orders make it clear that the Committee may investigate and report on complaints against Members, at present there is no requirement for a complaints procedure. In the interests of transparency, this amendment will require the Committee to establish a procedure and lay it before the Assembly.

(iii) Complaints Against Committee Members

This amendment enables a member of the Committee to be temporarily replaced if a complaint is against them. As it would be improper for the Member complained of to nominate his or her replacement, there is a requirement for the replacement Member to be nominated by the Leader of their Group. If the Chair of the Committee is the subject of a complaint and has to withdraw, a temporary chair can be elected in accordance with Standing Order 8.20.

(iv) Meetings held in public/private (SO16.5).

Under the new Complaints Procedure oral hearings of complaints may be held in public or in private. This amendment clarifies that the Committee is only required to meet in private when it is deliberating on complaints.

(v) Plenary time to debate reports (new SO 6.7 & 6.8).

Arrangements to ensure Committee reports are debated in reasonable time and clarifying that they can include recommendations to censure individual Members.

(vi) Appointment of a Temporary Commissioner (New SO16.3A).

This establishes the procedure for appointing a temporary Commissioner if the Standards Commissioner is unable to investigate a complaint.

Conclusion

7. The Committee believes that the new Complaints Procedure will be fairer, clearer and more open. The improvements to the Procedure and the appointment of a Standards Commissioner with enhanced responsibilities will strengthen the system for maintaining high standards of conduct by Assembly Members and contribute towards the development of a standards culture within the Assembly.

The Assembly is invited to:

- 11.1 note the Standards Committee's revised Complaints Procedure at Annex A;
- 11.2 agree the Standing Orders amendments at Annex B;

NATIONAL ASSEMBLY FOR WALES
PROCEDURE FOR DEALING
WITH COMPLAINTS AGAINST
ASSEMBLY MEMBERS

Annex A

1. GENERAL PROVISIONS

Administrative Arrangements

- 1.1 Complaints should be made to the Commissioner via the Clerk to the Committee on Standards of Conduct. The Committee Secretariat will log the correspondence and send a letter to acknowledge receipt to the complainant. The letter will explain that this does not necessarily mean that the complaint is admissible and that the case will only proceed if the complainant is prepared for the details to be released to the Committee and the Member complained of. The Secretariat will ensure that the complaint and any subsequent correspondence are sent to the Commissioner without delay.
- 1.2 The Secretariat shall provide such other administrative support to the Commissioner as may be required for the efficient handling of a complaint. However, they will not be asked to participate in the investigation of complaints.

Investigations

- 1.3 Investigations under this procedure shall be conducted by the Commissioner for Standards (the Commissioner) appointed by the Assembly under Standing Order 16.3.
- 1.4 In the event of the Commissioner being unable, for whatever reason, to carry out an investigation, the Chair to the Standards Committee shall seek the agreement of the Committee on Standards of Conduct to invite the Parliamentary Commissioner for Standards, the Scottish Parliamentary Commissioner for Standards or the Northern Ireland Assembly Ombudsman to conduct the investigation.
- 1.5 In the event that none of the above is able to conduct an investigation, the Committee Chair shall, after consulting Members of the Committee and Party Leaders, propose to the Assembly that a temporary Independent Adviser be appointed to conduct an investigation. Any such proposal will take precedence over other Plenary Business and will not be subject to debate.

Stages

- 1.6 There are two possible stages to any investigation by the Commissioner into a complaint:

Preliminary Investigation Stage which consists of investigating and determining whether a complaint is admissible; and

if the complaint is admissible, **Formal Investigation stage** which consists of further investigating the complaint and reporting upon it to the Committee on Standards of Conduct.

Conduct of Investigations

- 1.7 Subject to the provisions of the procedure, it is for the Commissioner to decide when and how to carry out any investigation at each stage.
- 1.8 Each stage of an investigation into a complaint shall be conducted in private. However the Commissioner may at any time make a report to the Committee as to the progress of an investigation into a complaint.

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2. PRELIMINARY INVESTIGATION STAGE

- 2.1 At this stage, the Commissioner shall investigate and determine whether a complaint is admissible within the terms of paragraph 3 below. The Commissioner may contact the complainant to elicit more details and to ascertain whether or not he or she is willing for his or her name to be released to the Member complained of and the Committee. The Commissioner may also, at his/her discretion, contact the Member complained of.
- 2.2 If the Commissioner considers that the complaint is admissible, the Commissioner shall proceed to a Formal Investigation into the complaint and shall make a report to the Committee on Standards of Conduct informing it of the fact and setting out the main factors identified by the Commissioner in coming to that conclusion. The Commissioner shall also:
- i. notify the Member concerned that a complaint has been made and of its nature; and
 - ii. except where the Commissioner considers that it would be inappropriate to do so, inform the Member of the name of the complainant.
- 2.3 If the Commissioner considers that the complaint is inadmissible, the Commissioner shall dismiss the complaint and shall inform the complainant and the Member concerned accordingly, together with the reasons for that view.

3. ADMISSIBILITY OF COMPLAINTS

- 3.1 A complaint is admissible under this procedure if:
- i. it is in writing^{*};
 - ii. it is about the conduct of an Assembly Member;
 - iii. it is not anonymous and clearly identifies the complainant in a way which provides for further communication with him/her;
 - iv. it clearly identifies the Assembly Member complained of;
 - v. it is made within one year from the date when the complainant could reasonably have become aware of the conduct complained about; and
 - vi. it appears at first sight that, if all or part of the conduct complained about is established to have been committed by the Member, it might amount to a breach of any of the matters encompassed within Standing Order 16.1(i) or (ii).~~:-~~

4. FORMAL INVESTIGATION STAGE

- 4.1 At this stage, the Commissioner shall investigate an admissible complaint with a view to:
- i. establishing the facts in relation to whether the Member concerned has committed the conduct complained about; and

^{*} Where the complainant is unable to make a complaint in writing, facilities will be made available through the Secretariat so that he or she can agree the terms of a written statement.

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- ii. reaching a conclusion as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i) or (ii).
- 4.2 When a formal investigation into a complaint has been completed, the Commissioner shall make a report to the Committee on Standards of Conduct. The report shall include:
- i. details of the complaint;
 - ii. details of the investigation carried out by the Commissioner;
 - iii. the facts found by the Commissioner in relation to whether the Member concerned has committed the conduct complained about;
 - iv. the conclusion reached by the Commissioner as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i) or (ii);
 - v. whether the Committee should consider the complaint in private; but
 - vi. shall not express any view upon what sanction would be appropriate for any breach.
- 4.3 No report, concluding that a Member has breached one of the matters within Standing Order 16.1 (i) and (ii), shall be made to the Committee unless the Member and the complainant have been given a copy of the draft report and an opportunity to comment on factual accuracy. If the Commissioner does not accept any of these comments, the report to the Committee shall include details of these disputed facts.
- 4.4 Copies of the Commissioner's final report to the Committee of a formal investigation shall be made available to the complainant and the Member complained of at the same time that it is provided to the Committee.
- 4.5 The Member complained of will be informed that they have the right to:
- i. make written representations to the Committee within a specified time; and
 - ii. to make oral representations at an oral hearing of the Committee.
- 4.6 The Commissioner's report should remain confidential until the Committee has concluded its consideration of the complaint. Those sent copies of the report will be asked to respect this confidentiality.
- 4.7 If the Commissioner has not completed a formal investigation within six months of finding that the complaint is admissible, the Commissioner shall report to the Committee on the progress of the investigation.
- 5. CO-OPERATION OF MEMBERS**
- 5.1 This procedure is based on the principle that Assembly Members will co-operate fully with any investigation into a complaint. If at any stage in the consideration of a complaint the Commissioner has reason to believe that any Member is not co-operating, the Commissioner may, having first given notice of the intention to do so to the Member complained of, report this view to the Committee on Standards

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of Conduct who may arrange for the report to be published and laid before the Assembly as soon as may be.

- 5.2 The making of such a report shall not prevent the Commissioner or the Committee from continuing to consider the complaint in line with this procedure.

6. CRIMINAL OFFENCES

6.1 If at any stage in the consideration of a complaint evidence arises of conduct which could involve a breach of section 72(6) of the Government of Wales Act the Commissioner shall inform the Clerk to the Standards Committee immediately. The Clerk to the Committee shall refer the papers concerned to the Police in accordance with the protocol agreed with the Police and Crown Prosecution Service.

6.2 In such circumstances all consideration of the complaint under this procedure will be suspended until such time as consideration of the complaint by the Police, Crown Prosecution Service or the Courts has fully concluded.

6.3 The Committee, the Member concerned and the Complainant will be notified of any decision to refer a complaint to the Police.

6.4 As soon as may be after consideration of a complaint by the Police, Crown Prosecution Service or the Courts has concluded, the Commissioner shall prepare a report for the Committee setting out:

- i. the details of the complaint;
- ii. details of any investigation carried out by the Commissioner up to the point where the complaint was referred to the Police;
- iii. any facts found by the Commissioner or provided by the Police, Crown Prosecution Service or the Courts;
- iv. any conclusions that the Commissioner has been able to reach, on the evidence available at that time, as to whether the Member has breached one of the matters encompassed within Standing Order 16.1 (i) or (ii); and
- v. whether, in the Commissioner's view, the complaint raises any issues of general principle.

6.5 The Committee shall meet in private to consider the Commissioner report under paragraph 6.4 above. At this meeting the Committee may decide:

- i. to dismiss the complaint;
- ii. to dismiss the complaint but consider any general principles that arise from it; or
- iii. to continue consideration of the complaint.

6.6 Where the Committee dismisses a complaint it shall, as soon as may be following its decision, publish a report of its considerations and lay it before the Assembly along with the Commissioner report to the Committee under paragraph 6.5 of this procedure.

6.7 Where the Committee decides to continue consideration of a complaint:

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- i. it shall not express any view upon whether the Member is in breach; and
- ii. the complaint shall be considered from the point in this procedure that had been reached prior to the complaint being referred to the Police and shall be dealt with thereafter under the arrangements set out in this procedure.

7. CONSIDERATION BY THE STANDARDS COMMITTEE

Initial Consideration

- 7.1 The Committee will meet first in private to consider whether, in the light of the Commissioner's report, and any other written evidence that it considers appropriate, any witnesses should be invited to give evidence to the Committee at an oral hearing. It may also consider how it proposes that the Member or witnesses should be questioned. It will make no findings of substance on the complaint at this stage.
- 7.2 In accordance with Standing Order 16.2A, where a Committee Member is subject to a complaint he or she shall take no part in any consideration of the complaint by the Committee. In such circumstances, another Member from the same political group may replace that member in accordance with the arrangements set out in Standing Orders.

Oral Hearing

- 7.3 The Committee will meet in public unless it has decided in the light of the Commissioner's advice, and in the circumstances of the case, that it should meet in private, to consider:
 - i. any oral or written representations that the Member complained of wishes to make; and
 - ii. any oral or written evidence from witnesses.
- 7.4 At any oral hearing, the Member complained of, or any witnesses who choose to give evidence, may be accompanied by an adviser.
- 7.5 A verbatim transcript of the proceedings of any oral hearing will be provided. The general presumption is that the Committee will only ask questions of the Member or witnesses to clarify matters of fact. The Member or any witnesses would have the right to ask and have answered factual questions about procedural or technical matters; they do not have the right to question the Commissioner or the Committee about matters of argument.
- 7.6 If the Member or witnesses are accompanied, the chair may give permission for that person to make oral representations and the same rules would apply.

Committee's Consideration of its Decision

- 7.7 Following any oral hearing, the Committee will meet in private to consider whether the Member is in breach of one of the matters encompassed within Standing Order

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16.1(i) or (ii) and what action if any it should advise the Assembly to take if a breach is found.

Committee's Recommendations

7.8 The Committee may recommend:

- i. that no breach has been found and that the complaint is dismissed;
- ii. that a breach has been found but that it is trivial or inconsequential and that the complaint should be dismissed;
- iii. that a breach has been found and that no further action should be taken;
- iv. that a breach has been found and that the Member should be "censured" under Standing Order 16.7; or
- v. that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time.

7.9 As soon as may be following its decision, but not sooner than 10 working days after providing the Member complained of with a copy of the Committee's report, the Committee will publish the report of its considerations and lay it before the Assembly along with the Commissioner report to the Committee. In those cases where the Commissioner has recommended that a report should be considered in private, and where there is no breach or the case is dismissed, the Committee may decide that the report should be anonymised.

7.10 Where the Presiding Officer informs the Committee that an appeal has been made under section 8 below, the Committee shall not publish its report or lay it before the Assembly until consideration of the appeal has concluded.

8. APPEAL PROCEDURE

8.1 Where a Member has been found in breach by the Committee, and the Committee does not recommend that the complaint be dismissed, the Member complained of may, within 10 working days of being sent the Committee's report, appeal to the Presiding Officer.

Establishment and Composition of Appeals panel

8.2 The Presiding Officer shall on each occasion establish a panel to consider the appeal according to arrangements that he shall agree from time to time with the Standards Committee. The panel shall comprise four Assembly Members and an independent legally qualified person who shall not be an Assembly Member or a member of the Assembly's staff. Each of the Assembly Members shall be drawn, as far as possible, from different political groups represented in the Assembly.

8.3 Members of the Standards of Conduct Committee, the Presiding Officer and Deputy Presiding Officer, the First Minister and the leaders of political groups, a complainant or witness shall not serve as Members of an appeal panel.

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Consideration of Appeals

8.3 Appeals will only be considered on the following grounds:

- i. that the Committee's conclusions are based on significant factual inaccuracies which, had they been known, might have led to the Committee finding differently;
- ii. that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.

8.4 The appeal panel will consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant. It will not conduct oral hearings nor will it consider representations from any other source.

8.5 The appeal panel shall either:

- i. uphold the appeal and dismiss the complaint. In such cases it shall lay a report before the Assembly explaining its decision. Any such report shall include the reports of the Commissioner and the Standards of Conduct Committee; or
- ii. dismiss the appeal. In such cases it shall take no action other than to present a report to the Standards of Conduct Committee explaining its decision.

9. CONSIDERATION BY THE ASSEMBLY

Where there is no appeal or an appeal is unsuccessful.

9.1 Where an appeal is unsuccessful or where no appeal is made to the Presiding Officer and where the Committee does not recommend dismissal, the Chair of the Standards Committee shall table a motion calling on the Assembly to endorse the Committee's recommendations. Such motions will not be subject to amendment. Time to debate the motion shall be made available as soon as may be

Where a successful appeal has been made.

9.2 When an appeal has been upheld by the appeal panel and their report laid before the Assembly, the case is dismissed and all further consideration of the complaint ends.

10. TRIVIAL COMPLAINTS OR WHERE BREACH RECTIFIED

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- 10.1 Where, during preliminary investigation, the facts are not disputed and the Member immediately rectifies or apologises for a failure of a minor nature the Commissioner may recommend to the Chair of the Standards Committee that a formal investigation should not be pursued. If the Chair agrees, the Commissioner shall inform the Member and the complainant that although a breach has been found no further action will be taken against the Member.
 - 10.2 In these circumstances, the Commissioner need not report to the Standards Committee except to recommend any action that may be needed to clarify or interpret rules for future reference. Where the Commissioner does choose to report in this way, the name of the Member and complainant need not be identified.
- 11. ANNUAL REPORT**
- 11.1 The Commissioner shall prepare an annual report, for inclusion in the Committee's annual report, setting out the total number of cases dismissed at the preliminary stage together with such other information and general conclusions, which the Commissioner considers appropriate or the Committee may from time to time require.

Approved by the Committee on Standards of Conduct

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STANDING ORDER 16 - ~~Committee on Standards of Conduct~~

Title and Terms of Reference

16.1 There shall be a Committee on Standards of Conduct, which shall:

- (i) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards ~~Presiding Officer~~ that a Member has not complied with Standing Order 4 or any Assembly resolution relating to the financial or other interests of Members, or that a Minister has not complied with the requirements of Standing Order 2.8;
- (ii) Investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards ~~Presiding Officer~~ that a Member has not complied with any Assembly resolution relating to Members' standards of conduct or with the guidance for Ministers which the Assembly has approved in accordance with Standing Order 2.7 or the Code of Conduct under Standing Order 18.14;
- (iii) ~~(iii)~~ consider any matters of principle relating to the conduct of Members generally;
- (iv) supervise the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests, and the form and content of the Register; ~~and~~
- (v) present an annual report to the Assembly on the complaints made ~~to the Presiding Officer~~ under (i) and (ii) and the action taken, and on its conclusions in respect of ethical standards in the conduct of the Assembly's business; ~~and~~ -
- (vi) establish and lay before the Assembly procedures for the investigation of complaints under Standing Orders 16.1 (i) and (ii).

Membership

16.2 The Assembly shall elect a Member to chair the Committee, together with other Members elected so far as practicable to reflect the balance of political groups in the Assembly. The Presiding Officer shall not be a member of the Committee, but shall be entitled to attend any meeting of the Committee, or submit papers to it, for the purpose of drawing to its attention such considerations as he or she considers appropriate.

16.2 A Where a Committee Member is subject to a complaint under this Standing Order he or she shall take no part in any consideration of the complaint by the Committee. In such circumstances, and in relation solely to the consideration of the complaint concerned, another Member from the same political group, who has been nominated in advance by the Leader of that group, may replace that member. The nominated Member may participate in the meetings of the Committee to consider the complaint as if he or she

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were a member of it. No Member may replace more than one Committee member at a meeting.

Independent Adviser Commissioner for Standards

16.3 The Assembly shall appoint a person who is not an Assembly Member or a member of its staff to act as the Commissioner for Standards. The duties of the Commissioner shall be: provide advice and assistance to the Presiding Officer on any matter relating to the conduct of Members; and the Committee may, in addition to the appointment as appropriate of its own adviser under Standing Order 8.17, invite the Assembly's appointee to investigate factual matters arising out of any matter before it.

- i. to investigate factual matters arising out of any complaint against a Member;
- ii. to advise the Committee on any matters of general principle relating to the standards of conduct of Members;
- iii. to advise the Committee on any matters of general principle relating to the Registration of Members' Interests; and
- iv. otherwise render such assistance on matters relating to the standards of conduct of Members as the Assembly may from time to time decide.

16.3A Where the Commissioner for Standards is unable, for whatever reason, to investigate a complaint, the chair of the Committee (or if he or she is unable to act another member of the Committee acting on his or her behalf) shall propose to the Assembly the temporary appointment of a person, who is not an Assembly Member or a member of its staff, to investigate the complaint. Time shall be made available as soon as possible for such a motion to be debated; and in any event such a debate shall take place within five working days of the motion having been tabled. Such motions shall not be subject to amendment.

Meetings

16.4 The Committee shall meet as soon as may be after a complaint has been referred to it by the Commissioner for Standards ; and at other times as convened by the chair.

16.5 The Committee may meet in public or in private, but when deliberating upon~~considering~~ a complaint, the Committee shall meet in private unless it resolves otherwise. Any Member who is ~~or may be~~ the subject of an investigation by the Committee shall ~~at his or her request~~ be permitted to make oral or written representations to it and may be accompanied at oral hearings by another person (who may participate in the proceedings with the permission of the chair).

16.6 The chair may, after consulting the Presiding Officer, call a meeting of the committee in a week in which the Assembly is not holding a Plenary meeting in order to consider an urgent matter, ~~of urgent public importance.~~

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Reports

~~16.7~~ 16.7 If the Committee has investigated a complaint referred to it by the Commissioner for Standards ~~Presiding Officer~~, it shall report to the Assembly as soon as may be after completion of the investigation. Such a report may include a recommendation to censure a Member for failing to comply with any of the matters encompassed within Standing Order 16.1 (i) or 16.1 (ii).

16.8 If a motion to consider a report under Standing Order 16.7 is tabled by a member of the Committee, time shall be made available as soon as possible for the motion to be debated. Such motions shall not be subject to amendment.

16.9 The Committee may report to the Assembly on other matters within its remit from time to time.