

CONSULTATION PAPER ON A PROPOSED ASSEMBLY PROCEDURE FOR HANDLING COMPLAINTS AGAINST MEMBERS

Introduction

1. At its meeting on 11th November 1999, the Committee on Standards of Conduct endorsed a draft procedure for handling complaints against Assembly Members, subject to all Members being given the opportunity comment on the draft. It also asked the Secretariat and the Office of the Counsel General to explore the scope for an informal procedure to be built into the process for handling minor complaints.
2. Fundamental to the procedure is the role of the Assembly's Independent Adviser on Standards, who is required to be appointed under standing order 16.3. On 24th November 1999, the Assembly resolved that the process for appointing an adviser should be set in train under arrangements to be made by the Presiding Officer, in accordance with the principles of the Assembly's Code on Public appointments. It is anticipated that an adviser will be in post early in the new financial year and that the procedure will come into force on or before that time.
3. This paper sets out the proposed complaint procedure, seen in the context of the statutory framework and the envisaged role of the Independent Adviser. The text is as agreed by the Standards Committee, with the exception of the two proposed additions at stage 3 (see pages 3 & 5), which reflect the desire of the Committee to see the inclusion of a method for dealing with less serious or minor complaints.

Action & Timing

4. Members are invited to submit comments by 24th January 2000 to

Ms J Grant, Deputy Clerk to the Standards Committee, Table Office, Block 3A, Cardiff Bay.

December 1999

Background

The procedure for the investigation of complaints and the role of the Independent Adviser are governed by the Assembly's standing order 16.

1. The Assembly's Standing Orders (paragraph 16.3) require the appointment of an independent person to provide advice and assistance to the Presiding Officer on any matter relating to Standing Orders. The Committee may also, in addition to the appointment of its own adviser, invite the Assembly's appointee to investigate factual matters arising out of any matter put before it. The Assembly's procedures need to take account of the fact that some complaints may, if justified, point towards a criminal offence having been committed, usually under Section 72(6) of the Government of Wales Act 1998. The procedures therefore need to provide a mechanism for identifying and reporting such allegations to the police for investigation and for avoiding any prejudice to any criminal proceedings.

2. The key features and implications of the standing orders are that:

- the Independent Adviser is appointed by the Assembly as a whole and is therefore accountable ultimately to the Assembly as a whole;
- the Independent Adviser is obliged to advise and assist the Presiding Officer on request in respect of any matter relating to conduct of members; the adviser's role in relation to the Committee is by invitation and limited to the investigation of factual matters;
- any complaint which is to be investigated by the Committee on Standards must be addressed in the first instance to the Presiding Officer in his role of overseeing the general standards of conduct within the Assembly;
- standing orders require the Committee on Standards, at an appropriate stage of an investigation, to permit a Member who is the subject of an investigation to make oral or written representations to the Committee;
- the Committee is required to report to the Assembly on the result of its investigation, making a recommendation as to what action the Assembly should take.
- the Assembly may, on the basis of a report from the Committee, exclude a Member from the Assembly for a specified period. During that period the

Member can take no part in proceedings and will receive no salary.

Stages of an investigation

3. There are likely to be 6 stages of an investigation as illustrated in the flowchart at Annex 1 [to follow] and below.

Stage (1)	Complaint received by the Presiding Officer who will, provided that the complaint falls within the Committee's terms of reference, initiate the formal procedure by referring the complaint to the Committee on Standards.
Stage (2)	Initial consideration to determine whether the complaint is: (i) a genuine and substantial complaint which warrants a full investigation; (ii) one which could, if proved, point towards a criminal offence having been committed.
Stage (3)	If the complaint does not appear to warrant full investigation then the Assembly (on the recommendation of the Committee) ought to dismiss it at that stage. Proposed addition to summary of Stage (3) Add after "stage": "or, if the complaint is of a minor nature which would not warrant disciplinary action beyond a rebuke or warning and the Member agrees, make an immediate report to the Assembly recommending accordingly."

Stage (4)	If the complaint appears to be genuine and substantial, but could give rise to criminal liability then the matter should be reported to the police and no further internal action taken until the police investigation and any criminal prosecution have been concluded. At that stage the decision of the Committee and of the Assembly as to how to conclude the investigation of the complaint would depend on the outcome of the investigation and any prosecution.
Stage (5)	Where a full investigation is required, the carrying out of that investigation by the Committee with the assistance of the Independent Adviser.
Stage (6)	Submission of the Committee's report and recommendation to the Assembly and the Assembly's consideration of them.

The details of the Six Stages

Stage (1): *Initial reference.*

It is envisaged that, in order to preserve the integrity of the procedure, which could be the subject of scrutiny in the courts, the Presiding Officer would not carry out any investigation or evaluation of a complaint. He would be solely responsible for initiating the procedure by referring the complaint to the Committee on Standards.

Stage (2): *Preliminary investigation*

a) The factual investigation of complaints in order to determine what case if any a Member has to answer is something that can only be carried out fairly and effectively by the Independent Adviser. To protect Members as far as possible against the bad publicity which even a malicious or obviously unfounded complaint would generate, an initial filtering-out process, preserving as much anonymity as possible, is needed.

b) These aims can best be achieved by an immediate instruction to the Independent Adviser to carry out a preliminary investigation. In order to avoid delay and to minimise unjustified bad publicity the Committee has agreed that the passing of the complaint to the Independent Adviser will be delegated by the Committee to the Clerk to the Committee under a standing instruction. The obligation of the Committee to meet "as soon as may be after a complaint has been laid before it" means that the Committee must consider a complaint as soon as it is practicable for it to do so, i.e. when there is available an objective preliminary assessment of the complaint by the Independent Adviser.

c) At this stage, the Independent Adviser would require sufficient information to decide whether the complaint:

- amounts to an allegation that there has been a breach of the requirements of standing order 4 or paragraph 2.8 of standing order 2; or of any of the approved protocols or guidance relating to Members' standards of conduct approved by Assembly resolution; or of the guidance for Assembly Secretaries approved by the Assembly under paragraph 2.7 of standing orders;
 - suggests a possible offence under section 72 of the Government of Wales Act 1998, requiring reporting to the police;
 - can be investigated by the Assembly because the police have already investigated and decided not to prosecute;
 - is so clearly unfounded that no further investigation would be justified;
 - is obviously so trivial or frivolous that it does not justify further action;
- is within the Committee's jurisdiction.

d) General Principles - the Committee has agreed that:

- It (and by inference the Adviser) will be guided by the general principle that the receipt of a complaint is not to be interpreted as an indication that a prima facie case has been established.
- It is not sufficient for a person to make an unsubstantiated allegation and expect the Committee to assemble the supporting evidence.
- It (and by inference the Adviser) will not entertain anonymous complaints;
- Nor will it (and by inference the Adviser) regard a complaint founded on no more than a (single) newspaper story or television report as a substantiated allegation.

Stage (3): *Insufficient substance [or insufficiently serious] to warrant further investigation*

Following preliminary consideration, which would have to be carried out speedily, a recommendation by the Independent Adviser that the complaint did not justify a full investigation would be reported to the Committee, which would meet as soon as possible to consider that recommendation. The report of the Independent Adviser should be framed so as to protect the identity of the Member but should contain enough detail of the nature of the complaint and the Independent Adviser's reasoning for the Committee to understand and be able to review the recommendation that the complaint need not be investigated further. If the Committee accepted that recommendation it would report to the Assembly along the same lines, recommending that the complaint be dismissed. The Committee (or the Assembly) would have to have very clear and sound reasons for declining to follow the findings of the Independent Adviser.

PROPOSED ADDITION TO STAGE 3: *see also [] in stage title*

"The Committee may, in the light of the Adviser's preliminary report feel that although there is enough substance to the complaint to warrant further investigation if necessary, nevertheless the complaint, if established, would not be serious enough to warrant disciplinary action against the Member other, perhaps, than a rebuke or a warning as to future conduct. If so, the Committee could inform the Member of that fact and if the Member accepted the substance of the complaint and agreed that it could be dealt with without the need for a full investigation the Committee could report to the Assembly immediately, recommending that no action be taken or that there be a rebuke or warning as to future conduct."

Stage (4): *Substantial allegations of criminal conduct.*

a) If the Independent Adviser's preliminary investigations suggested that a complaint, if true, was of conduct which constituted a criminal offence then, unless the Independent Adviser also found that the complaint was obviously unfounded, the matter would have to be reported to the police. The Assembly is in the process of formulating a protocol between the Assembly and the police governing procedures where offences against Section 72(6) of the Government of Wales Act may have been committed. It is likely that the protocol will identify the Deputy Clerk to the Assembly (who is also the Clerk to the Committee on Standards) as the Liaison Officer between the Assembly and the police. It would be appropriate for the Independent Adviser to be subject to a standing instruction, if such a situation were to arise, to pass the matter back to the Clerk for reporting to the police.

b) Where a police investigation had resulted in the police taking no action or a prosecution had been unsuccessful, the Independent Adviser could continue with a preliminary investigation.

(Where a prosecution has been successful there would be no need for a preliminary investigation and the matter could go straight to the Committee to decide what further penalty if any, in addition to any imposed by the courts, the Committee recommended that the Assembly impose)

Stage (5): Full investigation.

a) Where the Independent Adviser had recommended that a full investigation was needed, the Committee (unless, for clear and sound reasons it disagreed with that view) would invite the Independent Adviser to conduct the detailed investigation on its behalf. The purpose of the investigation would be to establish the facts. To establish the facts the Adviser might need to:

- interview the complainant and other persons;
- interview the Member;
- investigate any documentary evidence.

b) The Adviser would then lay the report outlining the facts before the Committee. The Committee would then give the Member an opportunity to comment, in writing or orally, on the allegations and would make its findings and formulate its recommendations to the Assembly. (Any Member who is the subject of an investigation can, under standing order 16.5, be accompanied at any hearings by another person.)

c) The Independent Adviser would not sit on the Committee but could be called to appear before it. The adviser's role would be to clarify any item in the report; to answer any issues on the conduct of his or her inquiry.

d) The Committee has agreed that its role at this stage would be to carry out a review type function. That is:

- the Independent Adviser would have established that there was a prima facie case to answer that there had been a breach of the rules;

- the Committee would be required to satisfy itself that, as far as possible, all proper procedures have been adopted and that all facts could be supported by evidence.
- the Committee would consider, whether, in the light of the representations made by the Member, the findings of the Independent Adviser satisfied them so that they were sure that the complaint was established.)

Stage (6): *Submission of Committee's Report*

Once the Committee had investigated a complaint against a Member it would prepare a report for the Assembly. The Committee could not itself take any action against a Member. Any proposed action would be in the form of a recommendation to the full Assembly.

Office of the Presiding Officer