

Committee on Standards of Conduct STD 05-99 (min)

Date: 11th May 2000, at 2pm

Venue: Committee Room 2, Cardiff Bay

Attendance:

Members

David Melding (Chair)
Brian Hancock, Islwyn
Gareth Jones, Conwy
Janice Gregory,

Gwenda Thomas,
Christine Humphreys, North Wales

Officials

Barbara Wilson, Committee Clerk
Julie Grant, Deputy Clerk
David Lambert, Legal Adviser to the Office of the Presiding Officer

Other

Richard Penn, the Assembly's Independent Adviser on Standards

Item 1: Minutes of the last meeting and Chair's introductory remarks

1. This was the fifth meeting of the Committee. The Chair welcomed Gwenda Thomas to her first meeting (in attendance) of the Committee and introduced officials and Mr Penn. Apologies had been received from Richard Edwards, Preseli Pembrokeshire, Val Feld, Swansea East and Janet Davies, South Wales West.

2. The minutes of the meetings on 15th February and 13th April were confirmed as an accurate record subject to the following change:

STD04-00 13th April - Paragraph 7, last line

"Richard will chair the committees for Wales and South West.

3. Matters arising: Christine Humphreys raised the issue of timetable clashes for committees arising out of the need to accommodate a 7th subject committee. This was proving difficult for members and was exacerbated by their inability to send substitutes to the standing committees [standing orders provide for substitutes only in relation to the subject committees]. It was agreed that this issue should be raised in Business Committee via party business managers.

Item 2: Quarterly update and review of action arising from STD-03-99 and STD-04-00

Paper produced by Secretariat - STD05-15-00.

3. The Committee noted the Secretariat's paper.

4. A draft protocol was circulated on the role of and access to the Independent Adviser on Standards. It was noted that the draft reflected the comments and steer given by the Committee at its meeting on 13th April and that it had been cleared by the Chair and the Presiding Officer. The Committee was invited to pass any comments to the Secretariat within 1 week [by close on 18th May] after which point the protocol would be circulated to all Members. There were no points arising during the meeting. The protocol was noted for the record.

Item 3: Update on the Register of Members' Interests

Paper produced by Secretariat - STD05-16-00

5. The paper was noted.

Item 4: The Review of Members' Interests

Paper produced by Secretariat - STD05-18-00

6. The Secretariat ran through the issues highlighted in the paper in turn. The aim of the discussion was to agree the Committee's line on each of the issues to be covered in the paper for consultation with Members.

Issue 1 - Income to be declared.

It was noted that only current interests, as notified to the Table Office, were included in the quarterly publication of the Register of Interests. For archive purposes, however, the Assembly's interests database included all registrations whether current or not.

There was some discussion of the requirement upon Members to declare a 2nd home and the value that should be attributed against the entry in the register including the situation for second homes in Cardiff for north and west Wales AMs. Should it be for example the market value, the purchase price or the market value minus the mortgaged amount (i.e. net "profit")?

It was agreed that:

- There was a need to remind members of the requirement to specify the amount of any income as well as the source.
- Annex 1 (the additional draft guidance on the £5,000 limit and valuation requirements) should be incorporated into the main guidance.
- The Legal Adviser would provide clarification on the requirement to register a 2nd home.

Issue 2 - Publication of register.

It was agreed that:

- Members should be allowed to register all interests even if they are not legally required to.
- The guidance is strengthened to clarify the base requirements and the potential for unfavourable comparisons.
- The idea of a voluntary register is not pursued (because it could give rise to confusion, unfavourable comparisons, and could have staffing implications).

Issue 3 - General declaration of financial interests.

It was noted that this was a particularly tricky issue. Officials had considered whether there are other financial interests that need to be declared and if so how this category should be defined. The conclusion was that it was almost impossible to envisage a catchall definition

that would be understandable and could be applied by Members.

It was agreed that:

- The Committee would not pursue this option. The Secretariat's recommendation was accepted.

Issue 4 - Public Declaration in plenary and committee.

Again this was seen as a tricky issue, and one which had arisen particularly in relation to farmers and councillors. Practice had been variable but the Secretariat was generally content that people were declaring. Supplementary guidance had been issued at the request of the Committee and this needed to be brought into the main guidance.

Gareth Jones raised a practical issue about the position of those who own property in the Bay in relation to the future debates and decisions about the new Assembly building [which could be argued to have a knock-on effect for property values]. The Secretariat confirmed that any Member with such property could participate and vote but before doing so should declare his/her interest. The restrictions on voting would only bite if for example the property were exceptional or if the Member had bought a number of properties speculatively.

It was agreed that:

- The supplementary guidance should be incorporated into the main guidance.
- There should be no changes to the current requirements on declaration [see also Issue 5].

Issue 5 - Prohibition of voting.

The issues on voting were the same as those for declaration of interests. The Secretariat explained that the Assembly's standing orders were a hybrid of the local government and House of Commons' systems. In local government there are many more decisions where the member is likely to have a direct interest and so the regime is necessarily more restrictive. In the Assembly, however, Members have a wider policy role and it would not have been entirely appropriate (or feasible) for the Assembly's arrangements to replicate the local government model in its entirety. To do so would restrict Members' ability to participate.

It was acknowledged that the Agriculture Committee had faced this issue head on and that Committee Members had sought additional guidance. Partly in the light of this request, the Committee had endorsed and issued supplementary guidance for all Members. The guidance clarified the practical requirements whilst recognising that ultimately the decision on whether or not to vote is a matter for Members' own judgement; the bottom line, however,

was "if in doubt don't vote".

Gwenda Thomas raised the question of dispensation, which she had on a previous occasion, as a local authority member, been granted by the (then) Secretary of State. The Legal Adviser confirmed that the Assembly had no powers of dispensation.

It was agreed that:

- There should be no changes to the existing rules on prohibition of voting;
- The supplementary guidance should be built into the main guidance.
- It was important for the expertise and experiences of Members to be fully utilised in all the Assembly's proceedings therefore it would be wrong to rule out membership of one group of people because of potential conflict of interests.
- Members should be reminded of their obligations.

Issue 6 Private Members' Clubs.

The Secretariat outlined the concerns about the feasibility of producing a robust definition and of the potential for infringing human rights legislation.

It was agreed that:

- This item would not be pursued for the time being.
- Members of the Committee could raise the issue at a later date if desired.

Issue 7 - Indirect issues.

The Secretariat explained that fresh legal advice had cast doubt on the clarity of the Assembly's additional resolution on indirect interests. In addition, the supporting guidance could give rise to problems of interpretation particularly if the matter were to come before the Committee.

If the relevant provisions were to be brought within standing order 4 then it is possible that criminal provisions (section 72) in the Government of Wales Act 1998 would attach. This would elicit even more cause for concern given the potential flaws in the existing resolution. The problem lay mainly in the definition of an indirect interest. The Legal Adviser referred to experience on the Standing Orders Commission when he had found it impossible to find a

true definition of "partner"; this was one of the reasons why, with the exception of one or two categories, standing order 4 did not require Members to declare such interests.

It was agreed that:

- The Secretariat would consider further and circulate a note to Committee Members before the end of May.

Other Issues

Paid Advocacy - it was agreed that the status quo should be maintained

The Neill Committee - see below

The pocket checklist - the Committee was content with the proposed content of the pocket guidance.

Action

The Secretariat will:

- Circulate further advice to the Committee on the areas identified under "Issues" above.
- Prepare a draft consultation paper & revised guidance by end-May for circulation to the Committee prior to issue to all Members.

Item 5: The Assembly Complaints Procedure

7. Richard Penn ran through the main issues which he had identified as needing consideration. The recent case had thrown-up a number of other issues that needed to be taken into account in refining the draft procedure which the Committee had passed to him at its April meeting.

8. The key points were:

- Jurisdiction - need to be satisfied that the complaint falls within the proper business of the process and the Committee

- Distinction between the preliminary and full investigation; clarification of where one process ends and the other begins
- Definition of "sufficient information" to decide whether there is a case to answer
- How to establish that the material submitted amounts effectively to a complaint. I.E. is there really a complaint, is it anonymous, etc.
- The role of the Presiding Officer - a filtering mechanism?
- Handling and procedures for Committee meetings.

9. Christine Humphreys emphasised the need for the new procedure to make provision for the rights of members to be protected. It should be a requirement of the process that any member against whom a complaint has been made has the opportunity to discuss his or her rights and to have the procedure fully explained to them.

10. There was a consensus that the draft procedure had served its purposes and that it had provided a reasonable base on which the other requirements that had now been identified could be built.

11. The Committee noted that a revised draft would be circulated to the Committee, via the Secretariat, at the end of the month.

The time being 3.10pm, the Committee agreed to take a break until 3.25pm.

Item 6: The Neill Committee

Paper prepared by the Secretariat STD-05-17-00.

12. The Committee focussed on Annex 2, which contained the Secretariat's recommendations. There was some discussion of the Neill proposal for an appeal and trial procedure to be added to the House of Commons complaints process. The Assembly is a different, much smaller and newer institution and the proposal was seen to be extremely heavy. It was therefore agreed that this should not be pursued at the present time.

13. The other Secretariat recommendations were also endorsed. It was agreed that a response would be drafted and would be sent from officials either as an Assembly-wide response or as a separate submission from the Office of the Presiding Officer covering only those proposals relating to Assembly Members.

Item 7: Any Other Business and date of next meeting

14. The next quarterly meeting was scheduled for 2pm on the 6th July. The autumn diary dates were 2pm on 26th October and 2pm on 7th December.

15. There was concern that the next meeting clashed with a proposal for a site visit by one of the subject committees to Pembrokeshire, following a committee meeting in Pembrokeshire earlier in the day. This affected 2 members of the Standards Committee. It was noted that the clerks attempt wherever possible to avoid timetable clashes but that the 7th subject committee had made this task increasingly difficult. It was further noted that there is no provision for substitutes to be sent to the standing committees, although as the quarterly meetings are routinely held in public it would be possible for a representative to observe proceedings. Substitutes could of course attend subject committee meetings.

The Committee then went into closed session to discuss the complaint before it C001-00.

3.55pm The Committee then went into Oral Hearing Mode

4.20pm The Committee returned to closed session to deliberate and reach its decision.

Standards Committee Secretariat

Office of the Presiding officer