

COMMITTEE ON STANDARDS OF CONDUCT

Date: 11th November 1999

Time: 2pm to 3.30pm

Venue: Committee Room 3, National Assembly Building

Title: INVESTIGATION PROCEDURE AND ROLE OF INDEPENDENT ADVISER

Purpose

1. At the first meeting of the Committee on Standards held on 22 July 1999, the Committee asked for a further note setting out the procedures to be followed in the conduct of an investigation into the behaviour of a Member. It also asked for sight of a draft job description for the appointment of the Independent Adviser.

Recommendation

2. That the Committee agrees that:

- (i) the Assembly's appointed Independent Adviser should be involved in all stages of an investigation in accordance with this note;
- (ii) the Adviser's terms of appointment should be along the lines set out in the attached draft job description and advertisement; and
- (iii) Officials may proceed with making the arrangements for the appointment

(paragraph 8 and Annex 3).

Background

3. The procedure for the investigation of complaints and the role of the Independent Adviser are governed by the Assembly's standing order 16. A complaint about a Member's behaviour enters the system via the Presiding Officer who would then refer it to the Committee for investigation. The Assembly's Standing Orders (paragraph 16.3) require the appointment of 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.

4. 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

5. There are likely to be 6 stages of an investigation:

(1) Receipt of a complaint 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.

(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;

(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.

(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.

(5) Where a full investigation is required, the carrying out of that investigation by the Committee with the assistance of the Independent Adviser.

(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 passing of the complaint to the Independent Adviser should 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.

(Note: the House of Commons Committee on Standards and Privileges has approved its own procedure for conducting preliminary investigations. Under those procedures, the independent Parliamentary Commissioner for Standards receives the complaint direct from the complainant, acts as a filter, carries out any investigation and reports to the Committee. The Committee is 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. The Committee also takes the view that it is not sufficient for a person to make an unsubstantiated allegation and expect the Committee to assemble the supporting evidence. The Committee does not entertain anonymous complaints; nor does it regard a complaint founded on no more than a newspaper story or television report as a substantiated allegation. The Assembly's Committee on Standards, in consultation with the Independent Adviser will need to consider to what extent it should adopt or modify that approach.)

Stage 3: Insufficient substance to a complaint 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.

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.

(Note *If the Committee followed the role of its House of Commons counterpart, 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.

Key elements of the adviser's job description

6. The key elements of the Independent Adviser's job description, which would emerge from this process, are that the person would be expected to:

- conduct the preliminary investigation; provide advice on whether the case

should proceed and, if so, on its handling;

- identify which cases ought to be referred to the police and crown prosecution service;
- by invitation, conduct a detailed investigation on behalf of the Committee on Standards;
- assemble detailed documentary, written and oral evidence;
- deal directly with Members, the complainant and others in the preparation of such evidence;
- prepare a report for the Committee presenting the evidence and findings;
- attend meetings of the Committee to clarify points of fact; and
- advise the Presiding Officer on general matters concerned with standards of Members;

7. A draft job specification is attached at Annex 1 to this paper.

Next Steps

8. The agreement of the Assembly will be needed before we proceed with the making of this appointment. A draft motion has been prepared and is attached at Annex 2. An outline recruitment plan is at Annex 3.

Standards Committee Secretariat

