

PANEL OF CHAIRS MEETING

Thursday, 29th November 2001

AGENDA ITEM 3(ii)

CONFIDENTIALITY OF COMMITTEE REPORTS

Introduction

1. At the last meeting of the Panel, Chairs received an oral report on the unauthorised external distribution of the ELL committee's draft HE report which was being discussed in closed session. The guidance on handling committee reports now includes a paragraph on how reports for private discussion will be distributed to committee members.
2. The guidance does not address what steps should be taken in the event of the unauthorised disclosure of such a document. This paper considers the issues.

Experience Elsewhere

3. A copy of the Scottish Parliament's Standards Committee's report on unauthorised disclosure is attached (Annex A) [click here for link: http://www.scottish.parliament.uk/official_report/cttee/stan-01/str01-08-01.htm]. This gives a helpful overview of the issues and indicates the difficulties which would be likely to arise if leak inquiries were pursued here.

Discussion

4. The following are the key issues:
 - It is possible to take steps to prevent inadvertent disclosure of confidential documents by distributing them in hard copy marked "not for publication". This will reduce instances of staff or Members who, accustomed to working in an atmosphere of open access to information, do not realise that a particular document should not be passed on to others.

- While preventative measures will make it more inconvenient for Members who wish to disclose confidential information to do so, it will not prevent those who are determined to leak a document from doing so.
- Members who have made a conscious decision to make the effort to leak a document are unlikely to admit that fact, so leak inquiries are unlikely to ever be productive.
- Concerns about confidentiality are not limited to incidents of a whole document being copied to the media: off the record briefings on the line a report may take or disagreements within a committee meeting can also be a matter of concern.
- The most effective way of preventing inappropriate disclosure of material is to generate a culture in which all Members are wholeheartedly against leaking committee reports for short-term political gains.
- The question of whether it is realistic - or even desirable - in a political environment to attempt to prevent leaks is a matter for Members to consider. Annex B quotes from some of the House of Commons considerations of this matter. The Scottish Parliament Standards Committee states in its report that it takes seriously breaches of the confidentiality requirement in the Parliament's code of conduct and proposes to strengthen that code.

The Current Position

5. A copy of the NAW Code of Standards for Members is attached at annex C (click here for the intranet link: http://assembly/aegis/AssemblyGuidance/New%20Structure/Codes%20and%20Protocols/Code%20of%20Standards%20for%20Assembly%20Members_e.html.) Paragraph 4 states that "*Members must bear in mind that information which they receive in confidence in the course of their Assembly duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.*" Unlike the Scottish Code, there is no specific reference to the requirement to treat committee reports as confidential - which is the basis for the Scottish Standards Committee's investigations into leaks.

6. A review of standards issues in the Assembly is about to be undertaken (starting in January) by a recently appointed adviser to the Standards Committee. The Panel may wish to ask the Committee to include the handling of confidential documents and disclosure of information about private committee meetings in its review.

Such a review would need to cover:

- Whether leaks for political gain should be actively discouraged;
- if so, how a culture which achieves this can be created;
- if a leak occurs, whether a leak enquiry should be launched, and if so, how (ie. at the request of an individual Member, individual Chair, a committee as a whole, via the Presiding Officer, etc);
- what action should be taken against a Member who is found to have leaked a document or piece of information.

The Standards Committee only deals with the conduct of Members, so staff would be excluded from the Assembly review (and from any leak inquiries undertaken by the Committee). The activities of Assembly staff are a matter for the Permanent Secretary/Clerk to the Assembly, while the activities of AMSS are a matter for the relevant Member/party group.

Conclusion

The Panel's comments are invited on the paper.

Committee Secretariat

November 2001

Annex B

Extracts from House of Commons Considerations

- The Committee of Privileges 1984-85 pointed to "the damage that leaks had created among Members on committees by undermining their mutual trust, one of another. The morale of committees could decline if some Members showed scant respect for the rules of privilege or for the loyalty of colleagues who do not betray confidential matter."
- The Select Committee on Procedure of 1989-90 said that "All leaks are a breach of trust amongst the Members and staff of a committee which is essential to its smooth functioning."
- The Committee on Standards and Procedures also referred to "the indirect damage that leaks could do to the select committee system. If leaking becomes the common practice then there can be a cumulative effect and a general slippage from the standards of responsibility in maintaining committee confidences that the rules require. This could damage the standing of select committees in the public eye."

The Code of Standards for Members of the Assembly

NATIONAL ASSEMBLY FOR WALES CODE OF STANDARDS FOR MEMBERS

The Code of Standards for Members of the Assembly

PRINCIPLES

Public duty

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them. Members have a general duty to act in the interests of Wales as a whole; and a special duty to the residents of the areas for which they have been elected to serve.

Selflessness

Members should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Members should not place themselves under any financial or other obligation to individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, Members should make choices solely on merit and the public interest.

Accountability

Members are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Members should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it.

Honesty

Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Members should promote and support these principles by leadership and example.

THE PRINCIPLES IN PRACTICE

1. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two at once, and in favour of the public interest.

2. Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and refrain from any action which would bring the Assembly, or its Members generally, into disrepute. Members shall not ask civil servants to act in any way which would compromise the political impartiality of the Civil Service or conflict with the Civil Service Code.

3. In any activities in relation to, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with other Assembly Members, and with officials.

4. Members must bear in mind that information which they receive in confidence in the course of their Assembly duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain.

5. No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

6. Members shall comply with the Assembly's standing orders and its codes of practice and protocols.

Adopted in Plenary on 18 May 1999 following clearance with Standards Committee and consultation with Assembly Members.