



## **Comisiwn y Cynulliad Assembly Commission**

### **NAFWC 2008 (Paper 1A)**

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### **Employment of Family Members**

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#### **Purpose and summary of issues**

1. This paper provides background information to the Commission on the issue of employment of family members as Assembly Member Support Staff and suggests options.

#### **Recommendations (including priority deadline)**

2. That the Commission

- Notes the findings of a recent House of Commons Standards Committee report;
- Notes the arrangements currently in place in the Assembly;



- Recommends the introduction of a Register of Employed Family members as suggested in paragraph 17 below and invites the Standards Committee to consider this;
- Agrees that the level of bonuses payable to individual support staff should be “capped” at a level of 15 per cent of the amount of salary received in that financial year;
- Agrees that the Guidance at Annexes B and C should be issued to AMs;
- Agrees that following any initial action by the Commission, this matter be reviewed in the next phase of the work of the review of support for Assembly Members.

## **Discussion**

3. There are no restrictions placed on Assembly Members in respect of employment of members of their family as AMSS. Under Standing Order 31, Members are required to register the employment of partners or dependent children, which would include employment of them by the Member as an AMSS.

The issue of Member employment of family has been the subject of extensive press coverage following a recent House of Commons Standards Committee report (<http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmstnprv/280/280.pdf>)

4. In essence, the House of Commons Standards Commissioner found that the Member concerned paid higher bonuses than were allowed to his son and paid a rate for the job than was unwarranted by his qualifications and level of responsibility. The Commissioner also believed it unlikely that the son had fulfilled his contractual commitments.

5. Section 10 of the National Assembly for Wales (Assembly Members and Officers) (Salaries, Allowances etc.) Determination 2006 establishes salary scales for support staff and sets out a mechanism in which the normal starting salary is at the bottom point of the relevant scale. Members are only able to appoint at a higher point on submission of a case which would typically include a career history showing suitable relevant experience and prior salary level. A relatively small sum of money (currently £5,600 per AM) is available for costs such as staff overtime, travel, training, eye tests and bonuses. Even if this sum were to be enhanced from the Office Costs Allowance to the maximum allowable, there would be a total of £9,350 available to cover all employed staff. It would be very unusual for all of this to be used to pay a bonus for one member of staff.



6. The arrangements which are in place would have given partial protection in the circumstances surrounding Mr Conway's situation. They would have:

- Prevented initial appointment at any point above the entry point of the relevant scale;
- Limited the total sum available for bonuses to all of the support staff employed by the Member.

7. However, they would not have:

- Identified whether the employee was related to the Member (the current registration regime does not require disclosure of all employed family members and those responsible for administering the system would not always be aware of a family relationship);
- Guaranteed that the employee was working the hours contracted or was producing work commensurate with the level of appointment;
- Identified that the employee was on sick leave (which, depending on the length of the absence, could affect the salary payable) – it is often the case that the only time when the Members' HR & Allowances Team are advised of AMSS sickness absence is when the employing AM wishes to claim the Temporary Staffing Allowance;
- Prevented the payment of bonus up to the maximum available to one person.

8. If the Commission is minded to extend the system to cover these factors, there appear to be a number of options open.

*A total ban on the employment of family members*

9. Whilst this may seem, at first sight, the simplest solution, there are a number of difficulties which arise.

10. Firstly, it penalises Assembly Members who have done nothing wrong.

11. Secondly, it would require the dismissal of those family members who are currently employed by Assembly Members. This is a process which will take time as it must be carried out in accordance with the provisions of the Employment Act 2002 and the Employment Act 2002 (Dispute Resolution) Regulations 2004. Notice periods in accordance with individual contracts would also need to be observed.

12. Thirdly, there may be a risk of unfair dismissal cases being brought (slim though that may be as the individuals are related to the Assembly Members).



There are a number of reasons for dismissal which are considered as being acceptable. These are:

- Capability;
- Conduct;
- Redundancy;
- Contravention of an enactment;
- Some other substantial reason of a kind such as to justify the dismissal of an employee holding a position which that employee held (SOSR);
- Retirement.

13. The only category which a dismissal in the situation considered here may fall, as things currently stand, is the SOSR category (unless Parliament introduces legislation to cover the issue). Should a case be taken to an Employment Tribunal then there would be a risk that the dismissal could be found unfair and the Assembly Member could be required to pay compensation.

14. However, should the Assembly pass a Measure to this effect then the dismissal would fall into the “contravention of an enactment” category which would give a stronger defence.

*Allow existing contracts of employment to continue but introduce a ban on the commencement of any new employment of family member.*

15. This would avoid the risks outlined in the previous option but would not remove the danger of allegations similar to those involving Mr Conway being made. The risk of a similar case occurring here would continue for an indeterminate period into the future. Nor would such a solution address public concerns about the transparency of arrangements involving Assembly Members’ families.

*An expansion of the Register of Members’ Interests to cover all family members employed by AMs.*

16. This would give a clear and transparent record of all family members employed by Assembly Members and would be readily accessible by the public. However, criminal sanctions would apply to any failure to comply with the requirement to register.



*A new register (similar to that for Clubs and Societies established under Standing Order 32) requiring the registration of all family members employed by AMs.*

17. This would also give a clear and transparent record of all family members employed by Assembly Members and could be readily accessible by the public. Whilst criminal sanctions would not attach to any failure to comply, any such failure would still fall within the remit of the Commissioner of Standards and so allow action to be taken in respect of any breach.

*A record of all family members employed by AMs maintained by the Members' HR & Allowances Team which is not covered by Standing Orders.*

18. It is almost inevitable that any such record would become the subject of a Freedom of Information request as soon as its existence became known and the Assembly may be criticised for attempting to conceal the information.

19. As a consequence, a new register established under Standing Orders as described in paragraph 17 would appear to be the best approach combining both transparency and fairness. In order to ensure that such a Register would meet all the needs of the Assembly, the Commission may wish to seek the views of the Standards Committee in developing formal proposals for changes to Standing Orders for submission to the Business Committee and ultimately the Assembly.

20. In the case of any of the last 3 options, the type of detail which could usefully be recorded in a Register of whatever nature is suggested at Annex A. A check box could easily be added to the form completed by an Assembly Member when employing a new member of staff asking whether they were related and reminding them of the need to register the fact.

### *Bonuses*

21. In addition to any of these, consideration should be given to whether a limit on the amount of bonuses that may be paid to an individual in any one year should be introduced. The House of Commons sets a limit of 15 per cent of salary received on the amount of any bonus(es) paid to an individual in any one financial year, however, these limits were breached in the case on Mr Conway's son.

22. If the Commission were to agree such a limit, the Guidance Note at Annex B could be issued to all Assembly Members.

### *Record keeping*

23. Guidance on the type of records which AMs should be keeping in relation to their staff (family and other staff) should also be issued as this was also



identified as a shortcoming in Mr Conway's case. A draft Guidance Note is at Annex C.

## **Governance Matters**

### **Financial implications**

24. Provision for the payment of allowances has been included in the Commission's budget previously approved by the Assembly. None of the recommendations contained in this paper would increase the total amounts payable.

### **Risk Assessment**

25. The main risks would appear to be:

- the reputational risk to the Assembly of Assembly Members using public funds to pay salaries to family members and not receiving the appropriate work in return;
- the reputational risk to the Assembly of accusations of attempting to hide information from the public if nothing is done.

26. These risks can be mitigated by taking action to limit the potential for abuse of the facility and by referring the matter to the next phase of work of the Panel on Financial Support for Members, to see what more radical steps might be required.

### **Compliance**

27. Section 20(6) of GOWA allows for the Assembly Commission to be conferred the responsibility for setting the levels of allowances for Assembly Members. Standing Order 1.7 confers this responsibility on the Commission.

28. Any changes to Standing Orders requires a two-thirds majority of the Assembly in plenary.

29. There is no direct impact on the Assembly's statutory duties in relation to race equality or sustainable development.

**May 2008**



## **Annex A**

### **Items which might be included in a register of Members' employed family members**

- Member's Name;
- Employee's Name;
- Relationship
  - Spouse/Civil Partner/Partner;
  - Former Spouse/ Civil Partner/Partner;
  - Child (including step, foster, adopted or in-law);
  - Grandchild (including step, foster, adopted or in-law);
  - Sibling;
  - Parent (including step, foster, adopted or in-law);
  - Grandparent
  - Uncle/Aunt/Cousin (including step, foster or adoptive);
- Date employment commenced;
- Date employment ceased;
- Hours worked per week;
- AMSS Band.



## **Annex B**

### **SUGGESTED GUIDANCE TO BE ISSUED TO ASSEMBLY MEMBERS**

#### **PAYMENT OF BONUSES TO ASSEMBLY MEMBERS' SUPPORT STAFF (AMSS)**

At its meeting on [date] the Assembly Commission agreed that a limit should be applied to the level of bonuses which could be paid from the Staff Salaries Allowance to individual AMSS.

With immediate effect, no bonus can be paid to an individual AMSS if that bonus would take the total of all bonuses paid in a financial year over a level of 15 per cent of the gross salary (before any salary sacrifice arrangement entered into) in that financial year.





## **Annex C**

### **SUGGESTED GUIDANCE TO BE ISSUED TO ASSEMBLY MEMBERS**

#### **EMPLOYMENT OF FAMILY MEMBERS – Record keeping requirements**

To maintain public confidence in the proper use of public money, particularly when Members employ support staff coming from their own families, Members are reminded that they should maintain records of the working hours/patterns of all their staff. These records should include:

- Hours worked;
- Contractual changes (which should also be reported to the Members' HR & Allowances Team);
- Annual Leave Taken;
- Sickness absence (which should also be reported to the Members' HR & Allowances Team as salary payments may be affected in certain cases);
- Projects worked on;
- If bonuses are paid to staff, the reason for the bonus.

Further advice is available from the Members' HR & Allowances Team