

## Standards of Conduct Committee

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Lleoliad:  
**Committee Room 1 – Senedd**

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Dyddiad:  
**18 October 2011**

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Amser:  
**09:30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch â:

**Lara Date**  
Clerc y Pwyllgor

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### Agenda

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- 1. Introduction, apologies and substitutions (09.30)**
- 2. Nomination of committee member under Section 10.2 of the Complaints Procedure**
- 3. Commissioner for Standards Annual Report 2010–11 (09.30 – 09.50)** (Pages 1 – 42)  
SOC(4)–01–11 (p1)  
  
Gerard Elias QC, Commissioner for Standards
- 4. Review of the Complaints Procedure, Code of Conduct and Standing Orders (09.50 – 10.30)** (Pages 43 – 49)  
SOC(4)–01–11 (p2)  
  
Gerard Elias QC, Commissioner for Standards
- 5. Review of Guidance for the Registration of Members' Financial and Other Interests (10.30 – 10.50)** (Pages 50 – 53)  
SOC(4)–01–11 (p3)  
  
Gareth Rogers, Head of Table Office

**National Assembly for Wales**  
Commissioner for Standards

Annual report  
01 April 2010 – 31 March 2011



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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**National Assembly for Wales**  
Commissioner for Standards

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## Introduction

1. I took up my role, as the first National Assembly for Wales Commissioner for Standards under the National Assembly for Wales (Commissioner for Standards) Measure 2009 (“the Measure”), on 1 December 2010, having been appointed by the Assembly following open competition.
2. Under the Measure, my role is not simply to seek to safeguard standards, but also to be proactive in promoting and encouraging the highest standards of conduct in the important public office of Assembly Member.
3. First, in this regard, I have promoted, and shall continue to promote, a culture in which it is accepted that we are all in this together – that is to say, it is the reputation of the National Assembly and its Members which we all seek to safeguard and improve – and that my role is not to be seen as being an adversary of any Member, still less the Assembly.
4. This is not to suggest, of course, that I shall do other than rigorously enforce standards, and where it is called for, subject a Member to searching inquiry and investigation.
5. Secondly, I am anxious to dispel any myth that standards are kept in a box to be brought out on high days and holidays. The appropriate standards for Assembly Members are not optional or reserved for special occasions. They are an all-embracing part of a Member’s existence whilst on Assembly business and should quickly become second nature to each one – if they are not already.
6. Thirdly, but not lastly, the electorate rightly expect high standards of their representatives. My role involves ensuring that the public have access to a complaints mechanism which calls to account where necessary and which deals with matters in a user friendly and efficient manner from their point of view.
7. It is appropriate, here, that I acknowledge the fact that, as will be seen from the information which follows, the conduct of Assembly Members during the last part of the Third Assembly drew very few complaints and none which today have been deemed admissible.
8. I am very grateful for the welcome I have received from all Party Leaders and Assembly Members, and for the very positive responses to my perception of my role as briefly set out above. I am always available to

help or discuss matters with any Member, in confidence where appropriate.

9. This Annual Report, required of me by the Measure, briefly details matters which were in the hands of the previous Commissioner, but only covers the very short period, from December 2010 until the end of March 2011, of my own stewardship. This year has been unusual in that not only have we had a referendum in Wales, but also Dissolution and Assembly elections which have truncated the normal pattern of Assembly business. It seems appropriate, therefore, to provide a report which encompasses the last session of the Third Assembly.
10. In future, I propose to present my Annual Report to the Assembly in July, covering the year to 31 March in each year.
11. For many years, my predecessor, Richard Penn, has dealt with public complaints against Assembly Members. I benefitted from his advice on taking up my post and have been able to see at first hand the breadth of matters with which he dealt. I am sure I speak for all in the Assembly and the Commission when I record our thanks to Richard for his sterling work in this important area.



**Gerard Elias QC**  
**Commissioner for Standards**

**October 2011**



## Complaints

### April to November 2010

12. Between 1 April and 30 November 2010, five complaints were received by the then Standards Commissioner, Richard Penn. All five complaints, which related to alleged breaches of the Code of Conduct for Assembly Members, were deemed to be inadmissible. No complaints remained open when Richard Penn's appointment as Standards Commissioner ceased on 30 November 2010.

### December 2010 to March 2011

13. Table 1 shows the complaints received between December 2010 and March 2011.

**Table 1 Complaints received (December 2010-March 2011)**

Complaints received	Admissible complaints	Inadmissible complaints	Complaints carried forward into 2011-12
12	0	4	8

14. During my period of office, December 2010 to March 2011, twelve complaints and preliminary complaints were logged. I rejected four of these as inadmissible. My investigations into the other eight continued into 2011-12. I will report on the admissibility of these complaints in my Annual Report for next year.

## Other activities

15. In addition to dealing with complaints, in February, together with the then Chair of the Committee on Standards of Conduct, Jeff Cuthbert AM, I addressed a meeting of Public Affairs Cymru.

16. In March I contributed to a meeting of Standards Commissioners from England, Ireland and Scotland, with whom I intend to remain in close contact.

17. At the last meeting in the Third Assembly of the Committee on Standards of Conduct, I presented a report, the terms of which were endorsed, suggesting that the equivalent Committee appointed in the Fourth Assembly might consider a review of the Code of Conduct and the

relevant Standing Orders; consider proposals to codify into one booklet the relevant standards provisions; and, in the light of experience, consider the procedures for complaint handling, both from the point of view of Assembly Members and the public.

## Expenditure

### April to November 2010

18. From April to November 2010, the expenditure on the Standards Commissioner's office was £17,836. This includes fees paid to the then Commissioner, and the reimbursement of expenses incurred in the course of his duties. This does not include the cost of staff support, which was undertaken as part of the other duties of Assembly Commission staff, and was not separately logged.

### December 2010 to March 2011

19. Under the terms of the Measure, the Commission is responsible for ensuring that the salary and allowances agreed in the terms and conditions of my appointment, and any reasonable liabilities incurred in the course of my duties, for example in directly employing staff, securing the provision of goods or services, or paying allowances or expenses of any persons giving evidence or producing documents, are charged on the Welsh Consolidated Fund. Table 2 sets out this expenditure for the period December 2010 to March 2011.

Table 2 Expenditure (December 2010 to March 2011)

Month	Hours worked	Total cost of hours worked (£)	Annual retainer (£)	Total cost per month (£)	Travel & Subsistence <sup>1</sup> (£)	Total cost per month (£)
Dec-10	22.50	1,080	425	1,505	0	1,505
Jan-11	27.75	1,332	425	1,757	0	1,757
Feb-11	22.00	1,056	425	1,481	0	1,481
Mar-11	17.50	840	425	1,265	0	1,265
<b>Total cost</b>	<b>89.75</b>	<b>£4,308</b>	<b>£1,700</b>	<b>£6,008</b>	<b>£0</b>	<b>£6,008</b>

20. My office receives confidential administrative and logistical support from staff of the Assembly Commission, provided as part of the duties of two

<sup>1</sup> Travel and subsistence is reimbursed in accordance with the Finance Manual of the National Assembly for Wales.

staff members. All time spent providing support to my office is logged separately. Table 3 shows the cost of this support.

**Table 3 Staff support received (December 2010 to March 2011)**

Month	Hours of staff time	Total cost of hours worked <sup>2</sup> (£)	Travel & subsistence (£)
Dec-10	4.5	81	0
Jan-11	4.8	86	0
Feb-11	1.8	32	0
Mar-11	7.0	161	0
<b>Total cost</b>	<b>18.0</b>	<b>£360</b>	<b>£0</b>

21. The total expenditure of my office while I was in post for the final four months of 2010-11, including staff costs, was therefore £6,368, an average of £1,592 per month.

### **Annual expenditure 2010-11**

22. In his report covering the period 15 March 2005 to 31 December 2009, Richard Penn set out the costs of his office, including the annual retainer, travel, and other expenses incurred in the course of his duties as Standards Commissioner.<sup>3</sup> The average annual cost of the office of Standards Commissioner during this period, excluding the estimated cost of staff time, was £18,998.<sup>4</sup> Richard Penn estimates that the average annual cost of staff support was approximately £10,250, resulting in an average cost of the office of Standards Commissioner of £29,248 per year.

23. The total expenditure for the office of Commissioner for Standards in 2010-11, excluding the cost of staff support, was £23,844.

24. As Table 4 shows, the expenditure by the Commissioner for Standards' office in 2010-11 was broadly in line with that of previous years.

<sup>2</sup> Staff on-costs are included.

<sup>3</sup> National Assembly for Wales Commissioner for Standards Report for the Period 15 March 2005 to 31 December 2009, [http://www.assemblywales.org/report\\_of\\_commissioner\\_for\\_standards\\_2005-09\\_e.pdf](http://www.assemblywales.org/report_of_commissioner_for_standards_2005-09_e.pdf)

<sup>4</sup> Expenditure between March and December 2005 has been adjusted to estimate costs had the full calendar year been covered.

**Table 4 Annual expenditure**

	<b>Average annual expenditure (2005-09)</b>	<b>Expenditure (2010-11)</b>
Excluding staff costs	£18,998	£23,844
Including staff costs	£29,248 <sup>5</sup>	£31,037 <sup>6</sup>

## **Committee on Standards of Conduct**

25. I am extremely grateful to the Committee on Standards of Conduct, and particularly to its then Chair, Jeff Cuthbert AM, and the clerk, John Grimes, for the very real assistance given to me in getting to grips with my role. Thanks to them, it was a much less painful exercise than it might have been.

## **Miscellaneous**

26. Finally, may I thank the Commission and its Chief Executive, Claire Clancy, for ensuring that the office and administrative arrangements necessary to perform my functions have been so readily provided.

27. Helen Finlayson, my PA (on an “as required” basis) has, as in all my work, provided excellent support in producing this report, and to her I record my sincere thanks.

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<sup>5</sup> Based on estimated average staff costs of £10,250 per annum, as set out in paragraph 15 of the Commissioner for Standards’ Report for the period 15 March 2005 to 31 December 2009.

<sup>6</sup> Includes estimated costs for April to November 2010 based on average estimated staff costs of £10,250 per annum, and actual staff costs from December 2010 to March 2011.

# Code of Conduct for Assembly Members

## Purpose of the Code

1. The purpose of this Code of Conduct is:

(a) to provide guidance for all Members of the National Assembly on the standards of conduct expected of them in the discharge of their Assembly and public duties;

(b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the National Assembly perform their Assembly and public duties.

2. This Code applies to all Members of the National Assembly who have not taken leave of absence.

## General standards of conduct

### Personal conduct

3. Members of the Assembly:

(a) must comply with the Code of Conduct for Assembly Members;

(b) should act always on their personal honour;

(c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;

(d) must not vote on any Order or motion, or ask any question in plenary or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).

4. Members of the Assembly should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. The seven principles are:

(a) **Selflessness:** Holders of public office 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.

*Assembly Members should avoid conflict between personal and public interests and resolve any conflict between the two at once and in favour of the public interest.*

(b) **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

*Assembly Members should 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 should 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.*

(c) **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

(d) **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

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

(e) **Openness:** Holders of public office 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.

*Assembly Members must not prevent any person from gaining access to information which that person is entitled to by law, but must not disclose confidential information, including confidential information from Assembly Committees, without consent unless required to do so by law. Any such confidential material received by Members in the course of their Assembly duties should only be used in connection with those duties and must never be used for the purpose of financial gain. 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, Members must always bear in mind the need to be open and frank with other Assembly Members, and with officials.*

(f) **Honesty:** Holders of public office 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.

(g) **Leadership:** Holders of public office should promote and support these principles by leadership and example.

## **Specific standards of conduct**

### **Registration of interests**

5. Members of the Assembly must register in the Register of Members' Interests all relevant interests defined in the Annex to Standing Order 31, in order to make clear what are the interests that might reasonably be thought to influence their actions.

6. The categories of registrable interests (as set out in the Annex to Standing Order 31) are as follows:

- Directorships held by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, in public and private companies, including those which are individually unremunerated but where remuneration is paid through another company in the same group.
- Employment, office, trade, profession or vocation (apart from membership of the Assembly) for which the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, is remunerated or in which the Member has any pecuniary interest.
- The names of clients, when the interests referred to above include services by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, which arise out of, or are related in any matter to his or her membership of the Assembly.
- Gifts, hospitality, material benefits or advantage above a value specified in any resolution of the Assembly received by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, from any company, organisation or person and relating to or arising out of membership of the Assembly.
- Any remuneration or other material benefit which a Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, receives from any public or private company or other

body which has tendered for, is tendering for, or has, a contract with the Assembly.

- Financial sponsorship (i) as a candidate for election to the Assembly, where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses, or (ii) as a Member of the Assembly by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage.
- Subject to any resolution of the Assembly, overseas visits made by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, relating to or arising out of membership of the Assembly where the cost of any such visit has not been wholly borne by the Member or by public funds.
- Any land and property, of the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, which has a substantial value as specified in any resolution of the Assembly or from which a substantial income is derived other than any home used for the personal residential purposes of the Member or the Member's partner or any dependent child of the Member.
- The names of companies or other bodies in which the Member has, either alone or with or on behalf of the Member's partner or any dependent child, a beneficial interest or in which, to the Member's knowledge, the Member's partner or a dependent child has a beneficial interest in shareholdings of a nominal value greater than one per cent of the issued share capital, or less than one per cent but more than an amount specified in any resolution of the Assembly.
- Paid or unpaid membership or chairmanship by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, of any body funded in whole or in part by the Assembly.

### **Declaration of registrable interests**

7. Members of the Assembly must declare, before taking part in any Assembly proceedings, any interest which is a relevant interest, under Standing Order 31, in the context of the debate or the matter under discussion. A declaration must relate to a decision to be made at the meeting in question. It must concern a matter where the Member (or their partner or dependent children) might gain a financial advantage from such a decision, where that advantage would be greater than that which other persons generally affected by their decision might receive. This is necessary



in order that their audience may form a balanced judgement of their arguments.

### **Prohibition of voting in relation to registrable interests**

8. A Member is prohibited from voting in any proceedings of the Assembly if, in relation to any interest which is required to be registered, a particular decision of the Assembly or a Committee might result in a direct financial advantage to the Member greater than that which might accrue to persons affected by the decision generally.

### **Use of Assembly resources**

9. Members are required to comply with the *Guidance for Members on the Use of Assembly Resources* and any guidance on the use of Assembly resources specifically relating to an election campaign.

### **Public access to information**

10. The principles under which the National Assembly for Wales provides information are detailed in the *Code of Practice on Public Access to Information* which has been approved by the Assembly Commission. Assembly Members seeking information are required to comply with the Code by making a request in writing to the Access to Information Advisor, Corporate Unit, National Assembly for Wales. The Code is published on the NAW website at <http://www.assemblywales.org/abthome/abt-foi/abt-foi-cop-pub.htm>.

### **Relationships between Assembly Members and Assembly staff**

11. All staff of the National Assembly for Wales (Assembly Commission staff) are bound by Staff Code of Conduct, whilst Welsh Assembly Government Staff continue to be bound by the Civil Service Code. Members should at all times, in their dealings with the staff of these bodies, respect the principles of both Codes. Relationships between Members and staff should be professional and based on mutual respect, and Members should have regard to the duty of staff to remain politically impartial when carrying out their duties.

### **Members' salaries and allowances**

12. Members are required to comply with *The National Assembly for Wales (Assembly Members and Officers) (Salaries, Allowances etc.) Determination* as approved by the National Assembly.

13. The Determination sets out the salaries and allowances which Members are entitled to as a result of the discharging of their Assembly duties.

### **Duties in respect of the Commissioner for Standards and the Committee on Standards of Conduct**

14. Members shall cooperate, at all stages, with any investigation into their conduct by the Commissioner for Standards in accordance with Standing Order 33; or by the Committee on Standards of Conduct in accordance with Standing Order 16.1(i).

15. No Member shall lobby a member of the Committee on Standards of Conduct in a manner calculated or intended to influence their consideration of a complaint of a breach of any matter encompassed under Standing Orders 16.1(i).

16. No Member shall misrepresent any recommendation made by the Committee on Standards of Conduct in relation to any complaint it has considered under the *National Assembly for Wales' Procedure for Dealing with Complaints against Assembly Members*.

### **Enforcement of the Code of Conduct**

17. Any allegations of non-compliance with this Code will follow the process set out in the *National Assembly for Wales' Procedure for Dealing with Complaints against Assembly Members*, as approved by the National Assembly Committee on Standards of Conduct.

18. Information on the role of the Commissioner for Standards, including contact details can be found on Assembly's web-site ([www.assemblywales.org](http://www.assemblywales.org)) or from the Commissioner's office.

# Procedure for dealing with complaints against Assembly Members

(Approved by the Committee on Standards of Conduct on 3 June 2008)

## 1. General provisions

### Administrative arrangements

1.1 Complaints should be made to the Commissioner for Standards. The Commissioners Office will log the correspondence and send a letter to acknowledge receipt to the complainant. The letter will explain that this does not necessarily mean that the complaint is admissible and that the case will only proceed if the complainant is prepared for the details to be released to the Committee and the Member complained of.

### Investigations

1.2 Investigations under this procedure shall be conducted by the Commissioner for Standards (the Commissioner) appointed by the Assembly under Standing Order 33.1.

1.3 In the event of the Commissioner being unable, for whatever reason, to carry out an investigation, the Chair to the Standards Committee shall seek the agreement of the Committee on Standards of Conduct to invite the Parliamentary Commissioner for Standards, the Scottish Parliamentary Commissioner for Standards or the Northern Ireland Assembly Ombudsman to conduct the investigation.

1.4 In the event that none of the above is able to conduct an investigation, the Committee Chair shall, after consulting Members of the Committee and Party Leaders, propose to the Assembly that a temporary Independent Adviser be appointed to conduct an investigation. Any such proposal will take precedence over other Plenary Business and will not be subject to debate.

### Stages

1.5 There are two possible stages to any investigation by the Commissioner into a complaint:

- **preliminary investigation stage** which consists of investigating and determining whether a complaint is admissible; and

- if the complaint is admissible, **formal investigation stage** which consists of further investigating the complaint and reporting upon it to the Committee on Standards of Conduct.

## **Conduct of investigations**

1.6 Subject to the provisions of the procedure, it is for the Commissioner to decide when and how to carry out any investigation at each stage.

1.7 Each stage of an investigation into a complaint shall be conducted in private. However the Commissioner may at any time make a report to the Committee as to the progress of an investigation into a complaint.

## **2. Preliminary investigation stage**

2.1 At this stage, the Commissioner shall investigate and determine whether a complaint is admissible within the terms of paragraph 3 below. The Commissioner may contact the complainant to elicit more details and to ascertain whether or not he or she is willing for his or her name to be released to the Member complained of and the Committee. The Commissioner may also, at his/her discretion, contact the Member complained of.

2.2 If the Commissioner considers that the complaint is admissible, the Commissioner shall proceed to a Formal Investigation into the complaint and shall make a report to the Committee on Standards of Conduct informing it of the fact and setting out the main factors identified by the Commissioner in coming to that conclusion. The Commissioner shall also:

- i. notify the Member concerned that a complaint has been made and of its nature; and
- ii. except where the Commissioner considers that it would be inappropriate to do so, inform the Member of the name of the complainant.

2.3 If the Commissioner considers that the complaint is inadmissible, the Commissioner shall dismiss the complaint and shall inform the complainant and the Member concerned accordingly, together with the reasons for that view.

## **3. Admissibility of complaints**

3.1 A complaint is admissible under this procedure if:

- i. it is in writing<sup>7</sup>;
- ii. it is about the conduct of an Assembly Member;
- iii. it is not anonymous and clearly identifies the complainant in a way which provides for further communication with him/her;
- iv. it clearly identifies the Assembly Member complained of;
- v. it is made within one year from the date when the complainant could reasonably have become aware of the conduct complained about; and
- vi. it appears that there is enough substance to justify further investigation (i.e. there is enough evidence to suggest that the conduct complained about may have taken place, and if proved might amount to a breach of any of the matters encompassed within Standing Orders 16.1(i).

#### **4. Formal investigation stage**

4.1 At this stage, the Commissioner shall investigate an admissible complaint with a view to:

- i. establishing the facts in relation to whether the Member concerned has committed the conduct complained about; and
- ii. reaching a conclusion as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i).

4.2 When a formal investigation into a complaint has been completed, the Commissioner shall make a report to the Committee on Standards of Conduct. The report shall include:

- i. details of the complaint;
- ii. details of the investigation carried out by the Commissioner;
- iii. the facts found by the Commissioner in relation to whether the Member concerned has committed the conduct complained about;
- iv. the conclusion reached by the Commissioner as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i); but

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<sup>7</sup> Where the complainant is unable to make a complaint in writing, facilities will be made available through the Secretariat so that he or she can agree the terms of a written statement.

v. shall not express any view upon what sanction would be appropriate for any breach.

4.3 No report, concluding that a Member has breached one of the matters within Standing Order 16.1(i) shall be made to the Committee unless the Member and the complainant have been given a copy of the draft report and an opportunity to comment on factual accuracy. If the Commissioner does not accept any of these comments, the report to the Committee shall include details of these disputed facts.

4.4 Copies of the Commissioner's final report to the Committee of a formal investigation shall be made available to the complainant and the Member complained of at the same time that it is provided to the Committee.

4.5 The Member complained of will be informed that they have the right to:

i. make written representations to the Committee within a specified time; and

ii. to make oral representations at an oral hearing of the Committee.

4.6 The Commissioner's report should remain confidential until the Committee has concluded its consideration of the complaint. Those sent copies of the report will be asked to respect this confidentiality.

4.7 If the Commissioner has not completed a formal investigation within six months of finding that the complaint is admissible, the Commissioner shall report to the Committee on the progress of the investigation.

## **5. Co-operation of Members**

5.1 This procedure is based on the principle that Assembly Members will co-operate fully with any investigation into a complaint. Members are expected at all times to respond in person to any request from the Commissioner. If at any stage in the consideration of a complaint the Commissioner has reason to believe that any Member is not co-operating, the Commissioner may, having first given notice of the intention to do so to the Member complained of, report this view to the Committee on Standards of Conduct who may arrange for the report to be published and laid before the Assembly as soon as may be.

5.2 The making of such a report shall not prevent the Commissioner or the Committee from continuing to consider the complaint in line with this procedure.

## 6. Criminal offences

6.1 If at any stage in the consideration of a complaint evidence arises of conduct which could involve a breach of section 36(7) of the Government of Wales Act 2006 the Commissioner shall inform the Clerk to the Standards Committee immediately. The Clerk to the Committee shall refer the papers concerned to the Police in accordance with the protocol agreed with the Police and Crown Prosecution Service.

6.2 In such circumstances all consideration of the complaint under this procedure will be suspended until such time as consideration of the complaint by the Police, Crown Prosecution Service or the Courts has fully concluded.

6.3 The Committee, the Member concerned and the Complainant will be notified of any decision to refer a complaint to the Police.

6.4 As soon as may be after consideration of a complaint by the Police, Crown Prosecution Service or the Courts has concluded, the Commissioner shall prepare a report for the Committee setting out:

- i. the details of the complaint;
- ii. details of any investigation carried out by the Commissioner up to the point where the complaint was referred to the Police;
- iii. any facts found by the Commissioner or provided by the Police, Crown Prosecution Service or the Courts;
- iv. any conclusions that the Commissioner has been able to reach, on the evidence available at that time, as to whether the Member has breached one of the matters encompassed within Standing Order 16.1(i); and
- v. whether, in the Commissioner's view, the complaint raises any issues of general principle.

6.5 The Committee shall meet in private to consider the Commissioner's report under paragraph 6.4 above. At this meeting the Committee may decide:

- i. to dismiss the complaint;
- ii. to dismiss the complaint but consider any general principles that arise from it; or

iii. to continue consideration of the complaint.

6.6 Where the Committee dismisses a complaint it shall, as soon as may be following its decision, publish a report of its considerations and lay it before the Assembly along with the Commissioner's report to the Committee under paragraph 6.4 of this procedure.

6.7 Where the Committee decides to continue consideration of a complaint:

- i. it shall not express any view upon whether the Member is in breach; and
- ii. the complaint shall be considered from the point in this procedure that had been reached prior to the complaint being referred to the Police and shall be dealt with thereafter under the arrangements set out in this procedure.

## 7. Consideration by the Standards Committee

### Initial consideration

7.1 The Committee will meet first in private to consider the details of the complaint, **but will make no findings of substance on the complaint at this stage**. The purpose of the private meeting will be to consider whether, in the light of the Commissioner's report, and any other written evidence that it considers appropriate:

- (a) any witnesses should be invited to give evidence to the Committee at an oral hearing; and
- (b) the Committee should consider the complaint in public or private.

7.2 The Committee may also consider how it proposes that the Member or witnesses should be questioned.

7.3 The Commissioner for Standards shall not attend this initial private meeting unless invited by the Committee.

7.4 In accordance with Standing Order 16.4, where a Committee Member is subject to a complaint he or she shall take no part in any consideration of the complaint by the Committee. In such circumstances, another Member from the same political group may replace that member in accordance with the arrangements set out in Standing Orders.



## **Oral hearing**

7.5 The Committee will meet in private - unless it has decided, having taking into consideration the circumstances of the case and any advice received from the Commissioner for Standards or Counsel to the Assembly Parliamentary Service, that it should meet in public - to consider:

- i. any oral or written representations that the Member complained of wishes to make; and
- ii. any oral or written evidence from witnesses.

7.6 At any oral hearing, the Member complained of, or any witnesses who choose to give evidence, may be accompanied by an adviser.

7.7 A verbatim transcript of the proceedings of any oral hearing will be provided. The general presumption is that the Committee will only ask questions of the Member or witnesses to clarify matters of fact. The Member or any witnesses would have the right to ask and have answered factual questions about procedural or technical matters; they do not have the right to question the Commissioner or the Committee about matters of argument.

7.8 If the Member or witnesses are accompanied, the chair may give permission for that person to make oral representations and the same rules would apply.

## **Committee's consideration of its decision**

7.9 Following any oral hearing, the Committee will meet in private to consider whether the Member is in breach of one of the matters encompassed within Standing Order 16.1(i) and what action if any it should advise the Assembly to take if a breach is found.

7.10 In order for the committee to take a decision to make a recommendation, as detailed at 7.11, a clear majority must exist in favour of the recommendation.

## **Committee's recommendations**

7.11 The Committee may take a decision to recommend any of the following:

- i. that no breach has been found and that the complaint is dismissed;
- ii. that a breach has been found but that it is a failure of a minor nature and the complaint should be dismissed;

- iii. that a breach has been found and that no further action should be taken;
- iv. that a breach has been found and that the Member should be “censured” under Standing Order 16.9; or
- v. that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time.

7.12 As soon as may be following its decision, but not sooner than 10 working days after providing the Member complained of with a copy of the Committee’s report, the Committee will publish the report of its considerations and lay it before the Assembly along with the Commissioner’s report to the Committee. In those cases where the Commissioner has recommended that a report should be considered in private, and where there is no breach or the case is dismissed, the Committee may decide that the report should be anonymised.

7.13 Where the Presiding Officer informs the Committee that an appeal has been made under section 8 below, the Committee shall not publish its report or lay it before the Assembly until consideration of the appeal has concluded.

## **8. Appeal procedure**

8.1 Where a Member has been found in breach by the Committee, and the Committee does not recommend that the complaint be dismissed, the Member complained of may, within 10 working days of being sent the Committee’s report, appeal to the Presiding Officer.

### **Establishment and composition of appeals panel**

8.2 The Presiding Officer shall on each occasion establish a panel to consider the appeal according to arrangements that he shall agree from time to time with the Standards Committee. The panel shall comprise four Assembly Members and an independent legally qualified person who shall not be an Assembly Member or a member of the Assembly’s staff. Each of the Assembly Members shall be drawn, as far as possible, from different political groups represented in the Assembly.

8.3 Members of the Standards of Conduct Committee, the Presiding Officer and Deputy Presiding Officer, the First Minister and the leaders of political groups, a complainant or witness shall not serve as Members of an appeal panel.

## **Consideration of appeals**

8.4 Appeals will only be considered on the following grounds:

- i. that the Committee's conclusions are based on significant factual inaccuracies which, had they been known, might have led to the Committee finding differently;
- ii. that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.

8.5 The appeal panel will consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant. It will not conduct oral hearings nor will it consider representations from any other source.

8.6 The appeal panel shall either:

- i. uphold the appeal and dismiss the complaint. In such cases it shall lay a report before the Assembly explaining its decision. Any such report shall include the reports of the Commissioner and the Standards of Conduct Committee; or
- ii. dismiss the appeal. In such cases it shall take no action other than to present a report to the Standards of Conduct Committee explaining its decision.

## **9. Consideration by the Assembly**

### **Where there is no appeal or an appeal is unsuccessful**

9.1 Where an appeal is unsuccessful or where no appeal is made to the Presiding Officer and where the Committee does not recommend dismissal, the Chair of the Standards Committee shall table a motion calling on the Assembly to endorse the Committee's recommendations. Such motions will not be subject to amendment. Time to debate the motion shall be made available as soon as may be.

### **Where a successful appeal has been made**

9.2 When an appeal has been upheld by the appeal panel and their report laid before the Assembly, the case is dismissed and all further consideration of the complaint ends.

## **10. Where breach rectified or complaint dismissed**

10.1 Where, during preliminary investigation, the facts are not disputed and the Member immediately rectifies or apologises for a failure of a minor nature the Commissioner may recommend to the Chair of the Standards Committee that a formal investigation should not be pursued. If the Chair agrees, the Commissioner shall inform the Member and the complainant that although a breach has been found no further action will be taken against the Member.

10.2 If the Chair is the subject of such a complaint, the Commissioner may make the recommendation to a member of the Committee on Standards of Conduct who has been nominated by the Committee to act in this respect. The Clerk to the Committee will ensure that a Committee member is so nominated.

10.3 In these circumstances, the Commissioner need not report to the Standards Committee except to recommend any action that may be needed to clarify or interpret rules for future reference. Where the Commissioner does choose to report in this way, the name of the Member and complainant need not be identified.

## **11. Annual report**

11.1 The Commissioner shall prepare an annual report, for inclusion in the Committee's annual report, setting out the total number of cases dismissed at the preliminary stage together with such other information and general conclusions, which the Commissioner considers appropriate or the Committee may from time to time require.

**Committee on Standards of Conduct**  
**3 June 2008**

## **National Assembly for Wales Commissioner for Standards Measure 2009**

A MEASURE of the National Assembly for Wales to establish a Commissioner to investigate complaints about the conduct of Assembly Members and to report to the Assembly on the outcome of such investigation; and for connected purposes.

This Measure, passed by the National Assembly for Wales on 14 October 2009 and approved by Her Majesty in Council on 9 December 2009, enacts the following provisions:-

### **The National Assembly for Wales Commissioner for Standards**

#### **1 The Commissioner**

(1) There is to be a National Assembly for Wales Commissioner for Standards (in this Measure referred to as "the Commissioner").

(2) The Commissioner is to be appointed by the Assembly.

(3) A person is not eligible to be appointed as the Commissioner if that person-

(a) is an Assembly Member,

(b) has been an Assembly Member at any time during the period of 2 years prior to the date when the appointment is to take effect,

(c) is a member of staff of the Assembly,

(d) has been a member of the staff of the Assembly at any time during the period of 2 years prior to the date when the appointment is to take effect,

(e) is a member of the staff of the Welsh Assembly Government, or

(f) has been a member of the staff of the Welsh Assembly Government at any time during the period of 2 years prior to the date when the appointment is to take effect.

(4) The Commissioner is to be appointed for a term of 6 years.

(5) A person who has held office as the Commissioner may not be appointed for a further term (whether consecutive or not).

(6) A person who has been appointed as the Commissioner may at any time—

(a) resign by notice given to the Assembly, or

(b) be removed from office by the Assembly.

(7) A person may not be removed from office as the Commissioner under subsection (6)(b) unless—

(a) the Assembly so resolves, and

(b) if the resolution is passed on a vote, the number of votes cast in favour of the resolution is not less than two thirds of the total number of votes cast.

(8) The appointment of a person as Commissioner ceases if that person—

(a) becomes a candidate to be an Assembly Member for an Assembly constituency or an Assembly electoral region,

(b) is appointed as, or designated to exercise the functions of, the Counsel General under section 49 of the Act, or

(c) is appointed to be a member of the staff of the Assembly or of the Welsh Assembly Government.

## **2 Principal aim of the Commissioner**

The principal aim of the Commissioner in exercising functions under this Measure is to promote, encourage and safeguard high standards of conduct in the public office of Assembly Member.

## **3 Further provision about the Commissioner**

The Schedule makes further provision about the Commissioner.

## **4 Appointment of an Acting Commissioner**

(1) When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the Assembly may appoint a person to discharge the functions of that office either generally or in relation to such case or class of cases, and until such time, as may be specified by the terms and conditions of such appointment; and a person so appointed is referred to in this section as the "acting Commissioner".

(2) The Commissioner and the acting Commissioner may each discharge the functions of the office of the Commissioner at the same time but in relation to different cases.

(3) A person who is not eligible to be appointed as the Commissioner is not eligible to be appointed as the acting Commissioner.

(4) A person appointed as the acting Commissioner-

(a) may at any time resign by notice given to the Assembly,

(b) may at any time be removed from office by the Assembly,

(c) ceases to hold office in the circumstances specified in section 1(8)(a), (b) and (c),

(d) in other respects, holds office on such terms and conditions as the Assembly may determine, and

(e) while holding that appointment is to be treated for all purposes (except those of section 1) as the Commissioner.

## **5 Independence of the Commissioner**

Subject to section 19, the Commissioner is not, in the exercise of any functions, to be subject to the direction or control of the Assembly.

## **Functions of the Commissioner**

### **6 Functions of the Commissioner**

(1) The functions of the Commissioner are-

(a) to receive any complaint that the conduct of an Assembly Member has, at a relevant time, failed to comply with a requirement of a relevant provision,

(b) to investigate any such complaint in accordance with the provisions of this Measure,

(c) to report to the Assembly the outcome of any such investigation,

(d) to advise Assembly Members and members of the public about the procedures for making and investigating complaints to which paragraph (a) applies, and

(e) the further functions conferred by section 7.

(2) A "relevant time" means a time when the requirement in question was in force but it is irrelevant whether the conduct in question is alleged to have taken place before or after this section comes into force.

(3) A "relevant provision" means–

(a) any provision of the Standing Orders relating to–

(i) the registration or declaration of financial or other interests,

(ii) the notification by Assembly Members of their membership of societies,

(iii) the registration or notification of any other information relating to Assembly Members or to persons connected to Assembly Members.

(b) any resolution of the Assembly relating to the financial or other interests of Assembly Members,

(c) any Code of Conduct approved by the Assembly relating to standards of conduct of Assembly Members,

(d) any resolution of the Assembly relating to standards of conduct of Assembly Members, and

(e) any provision included in the Standing Orders (or in any code or protocol made under them) in accordance with section 36(6) of the Act.

(4) It is irrelevant whether a relevant provision came into force before or after this section comes into force.

## **7 Further functions of the Commissioner**

The Commissioner may (and if requested by the Assembly to do so must) give advice to the Assembly–

(a) on any matter of general principle relating to relevant provisions or to standards of conduct of Assembly Members generally,

(b) on procedures for investigating complaints that Assembly Members have failed to comply with the requirements of relevant provisions,

(c) on any other matter relating to promoting, encouraging and safeguarding high standards of conduct in the public office of Assembly Member.



## **8 Ministerial Code**

(1) Nothing in this Measure authorises the Commissioner to express any view on–

(a) any provision relating to standards of conduct which is contained in a Welsh Ministerial Code,

(b) any provision relating to standards of conduct which could be contained in a Welsh Ministerial Code,

(c) any allegation that the conduct of any person was in breach of a provision relating to standards of conduct contained in a Welsh Ministerial Code, or

(d) the effectiveness of any provision contained in a Welsh Ministerial Code whether in relation to any specific conduct or generally.

(2) For the purposes of this section–

(a) a "Welsh Ministerial Code" means any document (however that document is described) containing provisions relating to standards of conduct–

(i) which has been promulgated by or under the authority of the First Minister,

(ii) which applies to the First Minister, Welsh Ministers, Deputy Welsh Ministers and Counsel General or to any of them,

(iii) which relates to standards of conduct in those offices, and

(iv) which seeks to apply standards of conduct different from or additional to those which apply to Assembly Members generally, and

(b) a provision relating to standards of conduct is one which could be contained in a Welsh Ministerial Code if that provision satisfies the requirements of paragraph (a)(ii), (iii) and (iv).

## **Functions of the Clerk**

### **9 Duty of the Clerk to refer a matter to the Commissioner**

If the Clerk has reasonable grounds for suspecting–

(a) that the conduct of an Assembly Member has, at a relevant time, failed to comply with a requirement of a relevant provision, and

(b) that the conduct in question is relevant to the Clerk's functions under section 138 of the Act (Clerk to be the principal accounting officer for the Commission), the Clerk must communicate those grounds in writing to the Commissioner and the Commissioner must treat the communication as a complaint to which section 6(1)(a) applies.

## **Investigation of Complaints**

### **10 Investigation of Complaints by the Commissioner**

(1) The Commissioner must investigate complaints and must, subject to subsection (3), report to the Assembly on the outcome of investigations, in accordance with—

(a) the provisions of the Standing Orders, and

(b) any rules relating to the consideration of complaints against Assembly Members which have been adopted by the Assembly under the Standing Orders.

(2) Subject to subsection (1), it is for the Commissioner to decide when and how to carry out an investigation and to report on its outcome.

(3) The Commissioner may, in such circumstances as may be prescribed by rules referred to in subsection (1)(b), dismiss a complaint summarily without reporting on it to the Assembly but must instead notify in writing the Assembly Member in question and the person who made the complaint, giving reasons for the dismissal.

(4) A report by the Commissioner to the Assembly on the outcome of an investigation may not include any recommendation as to what sanction, if any, should be imposed on the Assembly Member in question.

(5) If, in the course of carrying out an investigation, the Commissioner becomes aware of any circumstances which—

(a) give rise to issues of principle or of general practice relevant to the Clerk's functions under section 138 of the Act (Clerk to be the principal accounting officer for the Commission), or

(b) could, upon further consideration by the Clerk, give rise to a duty on the Clerk under section 9, the Commissioner must communicate those circumstances in writing to the Clerk.

## **Investigatory Powers of the Commissioner**

### **11 Power to call for witnesses and documents**

(1) The Commissioner may, in accordance with section 12, require any person–

(a) to attend before the Commissioner for the purpose of giving evidence, or

(b) to produce to the Commissioner documents in the possession or under the control of that person, concerning any matter relevant to an investigation which the Commissioner is carrying out under this Measure.

(2) For the purposes of this section,

(a) a person will be taken to comply with a requirement to produce a document if that person produces a copy of the document or an extract of the relevant part of the document,

(b) "document" means anything in which information is recorded in any form, and

(c) references to producing a document are to producing the information recorded in it in a visible and legible form.

(3) The Commissioner may pay such reasonable allowances and expenses to persons giving evidence before the Commissioner, or producing documents to the Commissioner, as the Commissioner may determine.

### **12 Witnesses and documents: notice**

(1) A requirement under section 11 may only be imposed on a person by the Commissioner giving the person in question notice in writing specifying–

(a) the time and place at which the person is to attend and the particular subjects concerning which the person is required to give evidence,

(b) the documents, or types of documents, which the person is to produce, the date by which and the person to whom they are to be produced and the particular subjects concerning which they are required.

(2) Notice under subsection (1) is to be given–

(a) in the case of an individual, by sending it in accordance with subsection (3) addressed to the person at the person's usual or last known address or,

where the person has given an address for service of the notice, at that address, or

(b) in any other case, by so sending it addressed to the person at the person's registered or principal office, but may only be given if the address in question is in Wales or in England.

(3) A notice is sent in accordance with this subsection if it is sent–

(a) by a registered post service (within the meaning of the Postal Services Act 2000(c.26)), or

(b) by postal service which provides for its delivery by post to be recorded.

### **13 Oaths and affirmations**

The Commissioner may–

(a) administer an oath or affirmation to any person giving evidence to the Commissioner, and

(b) require that person to take an oath or make an affirmation.

### **14 Privilege and public interest immunity**

(1) A person is not obliged by any requirement imposed under section 11(1) to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Wales or England.

(2) A person acting as prosecutor in criminal proceedings is not obliged under section 11(1) to answer any question or to produce any document concerning the operation of the system of criminal prosecution in any particular case if that person (or, if subsection (3) applies, the Counsel General) considers that answering the question or producing the document might prejudice criminal proceedings in the case or would otherwise be contrary to the public interest.

(3) This subsection applies if the proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General.

### **15 Offences**

(1) A person to whom a notice has been given under section 12(1) commits an offence if that person–

- (a) refuses or fails without reasonable excuse to attend before the Commissioner as required by the notice,
  - (b) refuses or fails without reasonable excuse, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice,
  - (c) refuses or fails without reasonable excuse to produce any document required to be produced by the notice, or
  - (d) intentionally alters, suppresses, conceals or destroys any such document.
- (2) Subsection (1) is subject to section 14.
- (3) Any person who, without reasonable excuse, refuses to take an oath or make an affirmation when required to do so under section 13 commits an offence.
- (4) If a person charged with an offence under subsection (1)(a), (b) or (c) or under subsection (3) adduces evidence of a reasonable excuse for the refusal or failure, it is for the prosecution to prove that the person did not have such an excuse.
- (5) A person guilty of an offence under this section is liable on summary conviction–
- (a) to a fine not exceeding level 5 on the standard scale,
  - (b) to imprisonment for a period not exceeding three months, or
  - (c) both.
- (6) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of–
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
- (7) In subsection (6) "director", in the case of a body corporate whose affairs are managed by its members, means a member of the body corporate.

## **16 Restriction on disclosure of information**

(1) Except as permitted by subsection (2), the Commissioner or the staff of, or any other person appointed by, the Commissioner must not disclose any information contained in the complaint or any information which is furnished to or obtained by them in the course of, or for the purposes of, an investigation into that complaint.

(2) Such information may be disclosed for the purpose of-

(a) enabling or assisting the Commissioner to discharge any functions imposed or conferred on the Commissioner by virtue of any provision in this Measure,

(b) enabling the Commissioner to comply with any duty imposed on the Commissioner by or under any other enactment, or

(c) the investigation or prosecution of any offence or suspected offence.

## **17 Protection from defamation actions**

(1) For the purposes of the law of defamation, any statement made in pursuance of the purposes of this Measure-

(a) by the Commissioner, or

(b) to the Commissioner is absolutely privileged.

(2) In subsection (1), "statement" has the same meaning as in the Defamation Act 1996 (c. 31).

## **18 Transitional provision**

(1) The Assembly may require the Commissioner to undertake an investigation into any complaint which, on the day when this section comes into force, has been received, or is under investigation, under rules referred to in section 10(1)(b).

(2) Any such requirement may direct the Commissioner to take into account any information in connection with the complaint which is specified in the direction.

(3) Subject to any such requirement, any complaint which the Commissioner is directed to investigate is to be treated in the same way as any other complaint which is made to the Commissioner.

## **General**

### **19 Annual report**

(1) The Commissioner must, as soon as possible after the end of each financial year, lay before the Assembly an annual report on the performance of the functions of the Commissioner throughout that year.

(2) Subject to subsection (3) the report must contain a concise statement of information relating to the financial affairs and transactions of the Commissioner in the performance of those functions during that year.

(3) The Commissioner must comply with any requirement imposed by the Assembly as to the form of the annual report and as to any specific information or class of information which it must contain.

(4) The Commissioner must, subject to subsection (5), comply with any requirement imposed by the Committee on Standards of Conduct–

(a) to attend before that committee,

(b) to provide the committee with such information as it may reasonably require in relation to any matter contained in a report which has been laid before the Assembly under subsection (1) or which was required to be contained in such a report.

(5) The Commissioner need not comply with a requirement under subsection (4)–

(a) if it is not reasonably practicable to do so, and

(b) except in the case of a requirement under subsection (4)(b) which is made orally to the Commissioner at a meeting of the committee, unless the requirement is in writing.

### **20 Interpretation**

(1) In this Measure–

"the Act" ("y Ddeddf") means the Government of Wales Act 2006 (c.32);

"Assembly Member" ("Aelod Cynulliad") includes–

(a) for the purposes of section 1(3)(a) and (b) only, the Counsel General even where that officer is not an Assembly Member, and

(b) except for the purposes of section 1(3)(a) and (b), a former Assembly Member,

"the Clerk" ("y Clerc") means the Clerk of the Assembly,

"the Commission" ("y Comisiwn") means the National Assembly for Wales Commission,

"Counsel General" ("Cwnsler Cyffredinol") means the Counsel General to the Welsh Assembly Government,

"the Committee on Standards of Conduct" ("y Pwyllgor Safonau Ymddygiad") means any committee or subcommittee of the Assembly to which there have been delegated, by or under the Standing Orders, functions relating to complaints that Assembly Members have failed to comply with the requirements of a relevant provision, and

"Standing Orders" ("Rheolau Sefydlog") means the Standing Orders of the Assembly.

(2) Any reference in this Measure to "the Assembly" is a reference to—

(a) the National Assembly for Wales, or

(b) other than in sections 1, 4, 6(3)(b), (c) and (d) and the Schedule, the Committee on Standards of Conduct.

## **21 Short title and commencement**

(1) This Measure may be referred to as the National Assembly for Wales Commissioner for Standards Measure 2009.

(2) This Measure comes into force as follows—

(a) this section and sections 1, 3 (including the Schedule) and 20 come into force on the day after that on which this Measure is approved by Her Majesty in Council, and

(b) the remaining provisions of this Measure come into force on the day after that on which notice under subsection (3) is published.

(3) The Clerk must, as soon as is reasonably practicable after the first appointment of a Commissioner under this Measure takes effect, cause to be published, in at least one newspaper circulating in Wales, notice of—



- (a) the fact that the appointment in question has taken effect, and
- (b) the fact that by reason of the publication of the notice all provisions of this Measure (other than those already in force) will come into force on the day after the day on which it is published.

## **Schedule**

(introduced by Section 3)

## **The National Assembly for Wales Commissioner for Standards**

### **Appointment**

1 The Assembly must make arrangements for-

- (a) ensuring that any person to be appointed as Commissioner has been identified by fair and open competition, and
- (b) settling the terms on which such appointment, when made, is to have effect.

2 Arrangements referred to in paragraph 1, (but not the appointment of the person so identified,) may be delegated by the Assembly, in whole or in part, to the Commission, to the Committee on Standards of Conduct or to the staff of the Assembly and such arrangements may include the involvement of persons independent of the Assembly.

### **Corporation sole**

3 The person for the time being holding office as National Assembly for Wales Commissioner for Standards is to be, by the name of that office, a corporation sole.

### **Documents**

4 (1) The application of the seal of the Commissioner is to be authenticated by the signature of-

- (a) the Commissioner, or
- (b) any person authorised by the Commissioner for that purpose.

(2) A document purporting to be duly executed under the seal of the Commissioner or to be signed on the Commissioner's behalf may be

received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed.

## **Financial**

5 (1) The Commission must—

- (a) pay the Commissioner such salary and any such allowances, and
- (b) make any such payments towards the provision of superannuation benefits for or in respect of the Commissioner, as may be provided for by or under the terms of the Commissioner's appointment.

(2) The Commission must pay to or in respect of a person who has ceased to hold office as Commissioner such amounts (if any) by way of—

- (a) pension or gratuities, or
- (b) provision for those benefits

as may have been provided for by or under the terms of the Commissioner's appointment.

(3) The Commission must discharge such reasonable liabilities as the Commissioner has lawfully incurred—

- (a) in employing staff,
- (b) in securing the provision of goods or services, and
- (c) in relation to the allowances and expenses of persons giving evidence or producing documents.

(4) Sums required for the making of payments under sub-paragraphs (1) and (2) are to be charged on the Welsh Consolidated Fund.

## **Staff, goods and services**

6 (1) The Commissioner may, on such terms as the Commissioner may determine, appoint such staff or secure the provision of such goods or services as the Commissioner considers necessary for assisting in the exercise of the Commissioner's functions.

(2) The Commissioner may enter into arrangements with any public body or office holder, upon such terms as the Commissioner and such body or office

holder may agree, for the provision by that body or office holder of such services as the Commissioner considers necessary for assisting in the exercise of the Commissioner's functions.

(3) The Commissioner must, when exercising powers under sub-paragraphs (1) and (2) or under section 11(3), have regard to the responsibilities of the Clerk, as principal accounting officer for the Commission, under section 138(3)(a) of the Act.

(4) The Commissioner must, in relation to any liability which the Commission may be required to discharge under paragraph 5(3), consult the Clerk and must do so—

(a) if reasonably practicable to do so, before incurring the liability in question,

(b) if not, as soon thereafter as is reasonably practicable.

(5) The Commissioner must have regard to any representations which the Clerk may make when consulted under sub-paragraph (4).

(6) The Commissioner's duty to consult the Clerk under sub-paragraph (4) may be discharged in relation to a particular liability either—

(a) by providing the Clerk with particulars of the liability in question, or

(b) by notifying the Clerk that liabilities of a specified description up to a specified total amount may be incurred, provided that, where (b) applies, the particular liability in question falls within the description notified and does not, when taken together with any other liabilities to which that notification relates, exceed the total amount notified.

### **Financial information**

7 The Commissioner must provide the Commission with such information about the Commissioner's financial affairs and transactions as the Commission may reasonably require for the purpose of enabling it to comply with any requirement imposed on the Commission by a direction given to the Commission in relation to the Commissioner under section 137(1) and (2) of the Act.

# Agenda Item 4

## Comisiynydd Safonau

### Commissioner for Standards

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



SOC(4)-01-11 : Paper 2

**“Way Ahead” paper – October 2011**

**To:** Standards of Conduct Committee

**From:** Gerard Elias QC, Commissioner for Standards

#### **Background**

1. On 29 March, 2011, at the last meeting of the Committee on Standards of Conduct of the Third Assembly, it was agreed that it was appropriate to:
  - **review and where appropriate amend the Procedures for dealing with Complaints against Assembly Members;**
  - **review the Instruction and Guidance available to Assembly Members by updating the Code of Conduct;**
  - **consider the terms and adequacy of the relevant Standing Orders and amend as necessary; and**
  - **produce a single codified document/booklet dealing with Standards of Conduct to which both Assembly Members and the public may have easy access.**
2. It was determined that these matters should be referred to the new Committee in the Fourth Assembly, for it to consider how to take matters forward in these areas. This paper seeks to make proposals in this direction.
3. It is important to underline that the reviews were not suggested because of any perceived major failings of the system or specific concerns over standards of conduct, but rather to streamline and update the system as the Assembly grows and matures with experience.

#### **The remit**

4. The reviews proposed are obviously not matters which could be achieved in weeks but will need to be the subject of measured and careful scrutiny. The views of all “stakeholders” need to be carefully assessed.

5. The reviews comprise three quite distinct broad aims:
  - a streamlining of aspects of the Complaints Procedure such that it provides greater clarity and certainty, and less bureaucracy, for both Assembly Members and for the public;
  - clarification and updating, where appropriate, of both the Code of Conduct and Standing Orders; and
  - codification of all “Standards” materials into one easily referenced volume.
6. I respectfully suggest that a three stage approach is desirable:
  - the Committee considers the Complaints Procedure;
  - the Code and Standing Orders are reviewed; and, when all material is approved
  - the Committee approves Codification into one volume.
7. I estimate that such an approach would involve consultation and consideration over perhaps the next 6 to 9 months of the Fourth Assembly to take forward matters relating to Complaints Procedure. Thereafter, perhaps over a somewhat longer period, the review of the Code and Standing Orders could be achieved, followed by an agreed move to codification.

## **Recommendations**

8. The Committee is invited to:
  - endorse the view of the former Committee that a review is appropriate; and
  - approve the three stage approach to such a review.

## **Stage one: the Complaints Procedure**

9. In the light of experience I venture to suggest that aspects of the Procedure might be reconsidered in order both to streamline and speed up the process, without compromising the need for openness and natural justice to prevail. Whilst it is essential that public confidence in the system is not eroded, the need to weed out vexatious complaints and

ensure that real complaints are brought forward and handled in a timely fashion must be strongly borne in mind.

10. In addition, by way of example, the following specific aspects of the process could profitably be reviewed. The list is not exhaustive, and could usefully be informed by the Committee's discussions, and during the consultation process:

- whether there should be an Initial stage (before the Preliminary Investigation Stage) which essentially seeks to determine, for example, whether the "complaint" could ever be admissible, as there are from time to time complaints made which on any view could rarely satisfy 3.1.vi. of the Procedure (e.g. a complaint concerning the "quality" of representation by a Member). This is not merely a cosmetic matter, because the need to record the number of "complaints" – even if they are subsequently deemed "inadmissible" – may have reputational issues for the National Assembly. If all communications were to be initially classified "Referrals" before being allowed to proceed even as "Preliminary Complaints", it could permit what might be considered an appropriate filter;
- the inter-relationship between 3.1.vi, and 4.1 – it appears unclear how far the Commissioner may proceed down the line of seeking to establish whether 3.1.vi is established without embarking upon the Formal Investigation envisaged under 4.1 of the Procedure;
- similarly, section 10 of the Procedure for Dealing with Complaints provides a resolution of the matter during the preliminary investigation stage – why should this procedure not be available (in appropriate cases where the Chair agrees) at any stage of the Complaint process?;
- whether under 2.3 of the Procedure, where a complaint is dismissed (or a Referral, if such a process were adopted) without prior reference to the Member concerned because it is inadmissible, whether it is necessary and/or desirable that the Member be notified that the issue has been raised and/or rejected;
- the requirements of, and enforceability of, confidentiality during the various processes. Thus, for example, is "will be asked to

respect this confidentiality” (section 4.6 of the Procedure) sufficient?; and/or

- whether the provisions of Section 6 (parallel criminal investigations) meet the needs of the National Assembly in terms of protecting its reputation in circumstances where a Member is accused of serious criminal conduct.

### **Recommendation**

11. The Committee is invited to:

- agree the broad areas that the Commissioner should cover in the initial review of the Complaints Procedure.

### **The consultation process**

12. It is proposed that, guided by the Chair and Committee members, the Commissioner initiates and steers the process of consultation as the proposals develop. Such consultation could initially involve:

- engagement with party leaders and the Presiding Officers, party offices, each individual Member and the Clerk of the Assembly as to their views on the current procedures and any suggested amendments thereto; and
- informal consultation with the Commissioner’s counterparts in other legislatures to identify best practice procedures and, where appropriate, lessons learnt.

13. I would propose to ensure that all party leaders, party groups and individual Members, as well as the Presiding Officer and her Deputy, were aware of the opportunity to make representations to me during the consultation process and I would be prepared to meet individuals and /or groups as requested as well as to receive representations in writing.

14. As Commissioner, I have a remit to ensure that any system remains transparent and user friendly for the public. I am satisfied that during this stage of the review it is not necessary for there to be any formal public consultation, not least because no changes will have been crystallised.

### **Recommendation**

15. The Committee is invited to:

- agree the proposals for consultation in stage one.

### **Timing (stage one)**

16. To allow sufficient time for full and appropriate consultation and give the Committee time to digest and reflect upon all possible amendments and proposals, I respectfully suggest the following indicative timetable:

- a three month consultation period followed by a report on those consultations – to incorporate possible options, where appropriate – to the Committee on **21 February 2012**;
- draft Procedure proposals to be tabled for consideration by the Committee on **20 March 2012**; and
- at this stage consider any further evidence and/or consultation process which the Committee then deems appropriate.

17. I envisage that when any new Complaints Procedure has been approved by the Committee, that Procedure will be submitted to the Assembly for ratification.

### **Recommendation**

18. The Committee is invited to:

- approve the proposed indicative stage one timetable.

### **Further steps**

19. Stage two will involve consideration of the existing Code, Standing Orders and Guidance so as to ensure fitness for purpose and that all documentation is updated to reflect any recent changes. The consultation stage in this process will inevitably involve a wide range of stake holders. As Commissioner, I stand ready to lead this consultation process if so invited, once the stage one consultation process has been completed.

20. Although I estimate that the consultation processes on stage two are likely to take up at least the then remaining part of 2012, I believe that in the following year it should be possible to finalise proposals to complete this process. I, therefore, respectfully invite the Committee to confirm its aim to complete the review of stage two and the Codification envisaged in stage three well within the lifetime of the Fourth Assembly.



## **Recommendation**

21. The Committee is invited to:

- note the proposed further steps; and
- endorse the provisional timetable.

**Gerard Elias QC**  
**Commissioner for Standards**

**5 October 2011**

## **Summary of recommendations**

The Committee is invited to:

1. endorse the view of the former Committee that a review is appropriate;
2. approve the three stage approach to such a review;
3. agree the broad areas that the Commissioner should cover in the initial review of the Complaints Procedure;
4. agree the proposals for consultation in stage one;
5. approve the proposed indicative stage one timetable;
6. note the proposed further steps; and
7. endorse the provisional timetable.

## Standards of Conduct Committee

SOC(4)-01-11 : Paper 3

### Register of Members' Financial Interests

1. The purpose of this paper is to provide the Standards Committee with an outline of Assembly's requirements in relation to the Registration and Declaration of Members' Interests and to inform the Committee of specific issues and difficulties that have arisen in relation to the Rules on Registration and Declaration.
2. The appointment of the first Statutory Commissioner has paved the way for a fresh approach to 'standards' within the National Assembly for Wales. The Registration and Declaration of Members' Interests forms a key part of that standards regime and it is vital that the relevant Standing Orders and guidance are robust, clear and fit for purpose.

### Background on the Register

3. Section 36 of the Government of Wales Act 2006 (the Act) requires the Assembly's Standing Orders to include provision for a Register of Members Interests. Failure to correctly register Members' interests is potentially a criminal offence under Section 36(7) of the Act.
4. The specific requirements for registration are set out in the Assembly's Standing Order 2, and these are supplemented by detailed guidance that is adopted by resolution of the Assembly in Plenary. For ease, this paper refers to the Standing Order requirements and the Guidance collectively as the 'Rules on Registration and Declaration'.
5. In accordance with Standing Order 22.2, the Standards Committee must "supervise the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests...and the form and content of the Register...". Under this remit the Committee has responsibility for preparing and maintaining the Rules on Registration and Declaration.
6. The Registrar of Members' Interests has a duty to provide advice to Assembly Members on the interpretation of the Rules. The current Registrar is Sian Wilkins, Head of Legislation and Chamber Services, and day to day advice is provided on the Registrar's behalf by the Table Office, which also maintains and published the formal Register.

### General Review of the Rules

7. In 2001, the Standards Committee commissioned an overarching review of the standards regime of the National Assembly for Wales, which was undertaken by Professor Diana Woodhouse of Oxford Brookes University<sup>1</sup>. This review, and its recommendations, laid the foundation for the current Rules on Registration and Declaration, as well as for the Code of Conduct and the Complaints Procedure.

8. However, the Rules on Registration and Declaration have not been reviewed for a number of years, and there is need, as a minimum, to update the Rules to reflect correct and current terminology. The Committee may also consider it appropriate to undertake a wider review of the Rules, and to inform the Committee's consideration, this paper outlines a number of areas that have caused Members difficulty when making decisions about registration, or where concern has been raised on the content of the Rules. The Committee may wish to consider these specific matters in deciding whether, and how, any review of Registration and Declaration may be taken forward.

## **Specific Issues Identified by the Registrar**

### **The Receipt of Pensions by Assembly Members**

9. The current Rules are silent on whether the receipt of private or occupational pensions by Assembly Members should be registered and the Rules are therefore open to some interpretation. Some consideration could be given to clarifying the Rules in this area.

### **Category (vi) Financial Sponsorship**

10. This category, and the associated Rules, are both difficult to understand and can be difficult to meet in practice. It is vital that Members are able to determine whether, or not, any financial sponsorship they receive falls under the Rules for registration. The Rules in this area could therefore benefit from having more clarity.

### **Category (ix) shareholdings**

11. This category generally works well and the Rules are clear, but for the first time in the Fourth Assembly we were asked to consider whether shares held in 'blind trusts' should be registered – a matter not currently covered by the Rules. The issue of blind trusts has raised

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<sup>1</sup> The Report of the Woodhouse review is published by the Standards Committee on the Assembly's website:

<http://www.assemblywales.org/bus-home/bus-third-assembly/bus-committees/bus-committees-previous-committees/bus-committees-first-std-home/bus-committees-first-std-reports.htm>

some concern/criticism in the UK Parliament – this is a matter that the Committee may therefore wish to consider further.

## **Registration of Dependent Children**

12. Some concern has been expressed that Members are required to register the interests of their ‘dependent children’ – particularly in relation to their employment. Children can hold part time employment from the age of thirteen, and questions have been raised as to whether it is appropriate, or necessary, to register the employment of children of that age.

## **Receipt of Public Funds by Members**

13. The Registrar has received a number of queries relating to the receipt of ‘public funds’ by Assembly Members or their partners, and whether these should be specifically and/or separately registered. One area that generated considerable interest was the receipt of subsidies by farmers.

14. Current Rules are silent on this matter, however in relation to the Rules that are in place, it is clear that Assembly Members are not required to register specifically or separately the fact that they receive public funds. The Committee may wish to consider this matter in more detail and to make the rules more robust if necessary.

## **Declarations of Interests**

15. The current Rules on the formal Declaration of interests in Assembly proceedings limit the occasions where a formal Declaration is required. Members are only required to declare an interest if ‘a particular decision in Assembly proceedings might result in a direct financial advantage to the Member ... greater than that which might accrue to persons affected by the decision generally’.

16. Given the way in which the Assembly proceedings operate since formal separation of the Government / Assembly, the circumstances when a formal declaration is required are very limited. The Committee may wish to consider whether the Rules on declaration are still fit for purpose in the Fourth Assembly.

## **Summary / Recommendations**

17. The areas highlighted in this paper provide the Committee with an overview of some of the difficulties experienced by both Members and the Registrar of Members’ Interests in considering the current Rules on Registration and Declaration.

18. Although issues have arisen, it is important to stress to the Committee, and to the wider public, that there has been no breach of the Rules on Registration and Declaration. Members continue to maintain the highest of standards in this area. However, it is vital that there is continuous review of the Rules to ensure that they are robust, fit for purpose and provide Assembly Members with the clarity they need in considering the registration and declaration of their financial interests.

19. The Committee therefore is invited to consider the issues raised in this paper and agree its preferred way forward.

**Gareth Rogers**  
**Head of the table Office**