

Standards of Conduct Committee

Meeting Venue:
Committee Room 1 – Senedd

Meeting date:
24 April 2012

Meeting time:
09:15

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Lara Date
Committee Clerk

Standards@wales.gov.uk

Agenda

Private pre-meeting 09:15 – 09:45

1. Introduction and apologies 09:45

2. Review of the Code of Conduct and Complaints Procedure: Draft Revised Complaints Procedure and Next Steps 09:45 – 10:15 (Pages 1 – 27)

Gerard Elias QC, National Assembly for Wales' Commissioner for Standards

Agenda Item 2

Standards of Conduct Committee

SOC(4)-01-12 : Paper 1

24 April 2012

Review of Standards Procedures – Amended Procedure for Dealing with Complaints Against Assembly Members

Background

1. On 21 February 2012 the Committee considered proposals from the Standards Commissioner to amend and update the Complaints Procedure.
2. The Committee agreed the amendments in principle, subject to further consideration of the following:
 - the wording of paragraph 6.1, to take account of concerns regarding the handling of a criminal offence that is not subject to the provisions of section 36(7) of the Government of Wales Act and Standing Order 2 on the register of interests.
 - the re-wording of paragraph 8.2, for clarity;
 - to review the wording of section 8 (appointing an independently qualified person to consider an appeal) to introduce a safeguard to protect against conflict of interest.

Recommended Action for the Committee

3. The Committee is invited to:
 - consider the proposed additional amendments set out in Annex A of this paper at **paragraphs 6.1, 8.2 and 8.3**, with a view to agreeing these and all other changes to the Complaints Procedure;
 - note the agreement at the last meeting to have a four week ‘cooling off’ period after approving the final complaints procedure, which will then be translated. It is proposed that the Chair and Commissioner jointly issue a letter to all Members,

informing them of the revised procedure to be laid before the Assembly and published on the websites of the Assembly and the Commissioner.

- discuss next steps for phase 2 of the review of Standards procedures. This is expected to begin with consultation between the Commissioner and Assembly officials to establish ownership and responsibility for work on various elements of the guidance and Standing Orders associated with the Members' Code of Conduct.

Committee Service

Annex A – Tracked Changes and Explanation Grid

NATIONAL ASSEMBLY FOR WALES PROCEDURE FOR DEALING WITH COMPLAINTS AGAINST ASSEMBLY MEMBERS		
Approved by the Committee on Standards of Conduct on 3 June 2008 (Date of approval)		
Enquiries: Lara Date, Clerk to the Committee on Standards of Conduct		
New Para Number	Text	Explanation of changes/Comments
1.1	<p>1. GENERAL PROVISIONS</p> <p><u>Administrative Arrangements</u></p> <p>4</p> <p>5 1.1 Complaints should be made to the Commissioner for Standards (“the Commissioner”), who is an independent statutory officer appointed under the National Assembly for Wales Commissioner for Standards Measure 2009 (“the Measure”). The Commissioner’s 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 <u>complaint can only be considered formally</u> if the complainant is prepared for the details to be released to the Committee and the Member complained of.</p>	<p>Addition to take account of the Measure.</p> <p>Amendment – to differentiate between complaints that are dismissed by the Commissioner without investigation, i.e. vexatious complaints or those with no substance, and complaints that will be considered formally as to their admissibility. (see also 1.5 below).</p>
	<u>Investigations</u>	Amendment – use of ‘must’ rather than ‘shall’ for clarity throughout the

	<p>1.2 Investigations under this procedure shall must be conducted by the Commissioner for Standards (the Commissioner) appointed by the Assembly in accordance with the Measure.</p>	text.
	<p><u>1.3 When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the Assembly may appoint a person as an Acting Commissioner to discharge the functions of that office. Further provisions on the appointment of an Acting Commissioner are set out in Section 4 of the Measure.</u></p> <p>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.</p> <p>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 subject to Section 4, subsection 3 of the Measure, another person 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.</p>	<p>Addition – to take account of the Measure.</p> <p>Deletion – These two paragraphs are redundant now because there is machinery for appointing an Acting Commissioner in the Measure.</p>
	<p><u>Stages</u></p> <p>1.5 There are two possible stages to any investigation by the Commissioner into a complaint:</p>	<p>A matter of principle to consider here:</p> <ol style="list-style-type: none"> 1) Review of the stages of investigation. Other standards regimes use differentiated stages: it is important to consider

	<p>Preliminary Investigation Stage which consists of investigating and determining whether a complaint is admissible; and</p> <p>if the complaint be admissible, Formal Investigation stage which consists of further investigation of the complaint, and reporting upon it to the Committee on Standards of Conduct.</p>	<p>the function they serve, eg in delineating the roles of the Commissioner and the Committee/Chair in the complaints process. Currently a complaint of a ‘minor’ nature, even if it is a breach, may be dismissed at the preliminary stage with the agreement of the Chair (or Member nominated under 10.2 if the Chair is the subject of the complaint) but without referral to the full Committee. It is not referred to in the procedure but the Commissioner can decide that there is a further first ‘filter’ stage of deciding whether a complaint is a standards issue in the first place, before determining admissibility. The “formal investigation stage” may also not need to involve any further investigation beyond that conducted at “preliminary” stage, but this stage indicates clearly the point at which the Committee becomes formally involved in the process.</p>
	<p><u>Conduct of Investigations</u></p> <p>1.6 Subject to the provisions of the procedure, it is for the</p>	

	<p>Commissioner to decide when and how to carry out any investigation at each stage.</p> <p>1.7 Each stage of an investigation into a complaint must 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 <u>and must do so if the formal investigation has not been completed within six months of the Commissioner finding that the complaint is admissible.</u></p> <p>1.8 <u>If investigation of a complaint is on-going at the start of an Assembly election period, it will be suspended and will re-commence at the end of that election period. Consideration of a complaint against a Member who is re-elected will be concluded in accordance with this procedure. In the case of a Member who is not re-elected the sanctions which can be applied in the case of a finding of a breach are restricted and the Committee may take that into account when considering what action to take in relation to any report by the Commissioner on the complaint.</u></p>	<p>Amendment – para 4.7 added in here.</p> <p>Amendment – to consider how complaints that are not concluded before an election period are dealt with elsewhere – raised in Committee by Mark Isherwood AM 18.10.11. The former Member concerned may still wish to give their defence of the complaint. But what does this mean in practice? In England all investigation ceases when a Member of Parliament ceases to be an MP. There is a need to consider the consequences.</p>
	<p>2. PRELIMINARY INVESTIGATION STAGE</p> <p>2.1 At this stage, the Commissioner shall <u>must</u> investigate and determine whether a complaint is admissible within the terms of <u>paragraph 3 below</u>. 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.</p>	<p>Amendment – Is it appropriate for the Commissioner to contact the AM at all at this preliminary stage, unless it is to</p>

	<p>The Commissioner may also, at his/her discretion, contact the Member complained of <u>if the Commissioner believes that it is necessary to do so in order to decide whether the complaint is admissible.</u></p>	<p>determine admissibility? It should be kept within bounds. In the past there has been duplication and lack of clarity as to the status of the investigation being carried out by the Commissioner at this stage.</p>
2.2	<p>If the Commissioner considers that the complaint is admissible, the Commissioner shall <u>must</u> proceed to a Formal Investigation into the complaint. and shall must 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 must also:</p> <p>i. notify the Member concerned that a complaint has been made and of its nature; and</p> <p>ii. except where the Commissioner considers that it would be inappropriate to do so, inform the Member of the name of the complainant.</p>	<p>Matter of principle to consider here:</p> <p>What is the practical benefit of the Committee knowing that a formal investigation is taking place, given the requirement in 4.2 for it to receive and consider a report of the formal investigation?</p>
2.3	<p>If the Commissioner considers that the complaint is inadmissible, the Commissioner shall <u>must</u> dismiss the complaint and must inform the complainant and the Member concerned accordingly, together with the reasons for that view.</p>	<p>As above - is it necessary to notify a Member of an <u>inadmissible</u> complaint. What is the value of telling a Member who is likely to want more information, and should the Commissioner disclose the identity of the complainant to the Member in this case?</p>
3.	<p>ADMISSIBILITY OF COMPLAINTS</p>	
3.1	<p>A complaint is admissible under this procedure if:</p>	

	<ul style="list-style-type: none"> i. it is in writing*; 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 Order 16.1(i) 22.2(i). <p>* Where the complainant is unable to make a complaint in writing, facilities will be made available through the Secretariat <u>Commissioner's office</u> so that he or she can agree the terms of a written statement.</p>	<p>Amendment – new Standing Order.</p> <p>Amendment to footnote – to take account of the Commissioner's independent status.</p>
	<p>4. FORMAL INVESTIGATION STAGE</p> <p>4.1 At this stage, the Commissioner shall <u>must</u> investigate an admissible complaint with a view to:</p>	

* Where the complainant is unable to make a complaint in writing, facilities will be made available through the ~~Secretariat~~ Commissioner's office so that he or she can agree the terms of a written statement.

	<ul style="list-style-type: none"> 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 <u>Standing Order 16.1(i)22.2(i)</u>. 	<p>Amendment – new Standing Order.</p>
	<p>4.2 When a formal investigation into a complaint has been completed, the Commissioner shall <u>must</u> make a report to the Committee on Standards of Conduct. The report shall <u>must</u> include:</p> <ul style="list-style-type: none"> 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, <u>and any facts provided by the Police, Crown Prosecution Service or the Courts in the case of evidence having been referred (see section on Criminal Offences)</u>; 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) 22.2(i); but 	<p>Amendment – inclusion of information relating to conduct that could constitute a criminal offence (see also separate section on Criminal Offences below).</p> <p>Amendment – new Standing Order.</p>

	<p>v. <u>shall may not include any comment or recommendation as to express any view upon what sanction, if any, should be imposed on the Member in question would be appropriate for any breach.</u></p> <p>vi. <u>whether, in the Commissioner's view, the complaint raises any issues of general principle.</u></p> <p><u>If, in the course of carrying out an investigation, the Commissioner becomes aware of any circumstances which give rise to issues of general principle or of general practice relevant to the Clerk's functions under Section 138 of the Act as principal accounting officer, or could, upon further consideration by the Clerk give rise to a duty on the Clerk under Section 9, the Commissioner must also separately communicate those circumstances in writing to the Clerk.</u></p>	<p>Amendment - to reflect the wording of 10(4) of the Measure 2009.</p> <p>Amendment - to include point at 6.4(v) - section on Criminal Offences.</p> <p>Amendment - to note as part of the Procedure, but separate from the requirement to report directly to the Committee, the Commissioner's duty under Section 10.5 of the Measure to directly report to the Clerk any relevant matters that might require a tightening up of Assembly operating procedures..</p>
4.3	<p>No report, concluding that a Member has breached one of the matters within Standing Order 16.1(i) <u>22.2(i)</u> shall may 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 there is any comment that is not accepted by the Commissioner the report to the Committee shall <u>must</u> include details of those disputed facts.</p>	<p>Amendments - (1) new Standing Order. (2) Clarity of wording - <i>any</i> issues that are in dispute will be included in the Commissioner's report.</p>
5.4	<p>Copies of the Commissioner's final report to the Committee of a formal investigation shall <u>must</u> be made available to the complainant and the Member complained of at the same time that it is provided to the Committee.</p>	

	<p>4.5 The Member complained of will be informed <u>by the Committee</u> that they have <u>he or she</u> has the right to:</p> <ul style="list-style-type: none"> i. make written representations to the Committee within a specified time; and ii. to make oral representations at an oral hearing of the Committee. 	<p>Amendment – to make it clear that the Committee handles this aspect of the complaints procedure. Amendment – Gender neutral language</p>
	<p>4.6 The Commissioner’s report should <u>remains</u> confidential until the Committee has concluded its consideration of the complaint. Those sent copies of the report will be asked to respect this confidentiality.</p>	<p>Code of Conduct (and associated Code of Practice on Access to Information) would need to be strengthened to specifically say the contents of the Commissioner’s report should not be disclosed until it has been published. This also relates to section 7.5 – whether a complaint is considered in private or public – and the need for Members to cooperate with the process.</p>
	<p>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 process of the investigation.</p>	<p>Amendment -incorporated into 1.7 above.</p>
	<p>5. CO-OPERATION OF MEMBERS</p> <p>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</p>	<p>See also 4.6 above.</p>

	<p>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.</p>	
	<p>5.2 The making of such a report shall<u>does</u> not prevent the Commissioner or the Committee from continuing to consider the complaint in line with this procedure.</p>	
	<p>CRIMINAL OFFENCES</p> <p>6.1 If at any stage in the consideration of a complaint:</p> <p>(i) evidence arises of conduct which could involve a breach of section 36(7) of the Government of Wales Act 2006 or any other criminal offence the Commissioner must inform the Clerk to the Standards Committee immediately. The Clerk to the Committee must refer the papers concerned to the Police in accordance with the protocol agreed with the Police and Crown Prosecution Service.</p> <p>(ii) <u>evidence arises of conduct which could involve the commission of any other criminal offence, subject only to the expectation that such evidence will usually be referred to the Police, the Commissioner shall use his/her discretion in determining if, when, and by what mechanism the matter may be referred to the Police.</u></p>	<p>Matter for Consideration – this whole section on Criminal Offences needs reviewing, i.e whether it is necessary to have all points 6.1 – 6.7, and for these to be a separate detailed section of the procedure.</p> <p>Amendments – (1) A complaint of misconduct could involve other offences, e.g. fraud. (2) There may be no Standards Committee in existence at the time, and in any case the protocol is held by the Clerk’s office, not the Committee. (3) differentiation between (i) and (ii) – to deal with the one situation where the Commissioner <u>must</u> refer to the Clerk and give the Commissioner a wider (albeit pointed) discretion re other</p>

		criminal matters.
6.2	In such circumstances all consideration of the complaint under this procedure will be suspended until such time as the final outcome of any investigation of the matter by the Police, Crown Prosecution Service or the Courts is known.	Amendment – consideration will be affected by what the judicial system determines.
6.3	The Committee, the Member concerned and the Complainant will be notified of any decision to refer a complaint to the Police.	For consideration – It is recommended that this this is left to the Commissioner’s discretion in each case, given that the investigation is still confidential. For example, why would the police want the possibility of an allegation to be telegraphed to the defendant in advance?
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 <u>must</u> 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;	Is this necessary? Reporting to the Committee is already outlined in 4.2. The Commissioner’s investigation is likely to be held in abeyance pending the outcome of any police investigation, prosecution etc., and then simply resumed at the end of it. Naturally the Commissioner’s investigation will be influenced by the outcome of the police investigation but the final outcome is fundamentally the same, i.e. a report to the Committee on the complaint. Recommend this should be deleted.

	<p>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) <u>22.2(i)</u>; and</p> <p>v.—whether, in the Commissioner’s view, the complaint raises any issues of general principle.*</p>	
	<p>6.5—The Committee shall meet in private to consider the Commissioner's report under <u>paragraph 6.4</u> above. At this meeting the Committee may decide:</p> <p>i.—to dismiss the complaint;</p> <p>ii.—to dismiss the complaint but consider any general principles that arise from it; or</p> <p>iii.—to continue consideration of the complaint.</p>	<p>This also is otiose & recommend should be deleted.</p>
	<p>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 <u>paragraph 6.4</u> of this procedure.</p>	<p>Recommend should be deleted</p>
	<p>6.7—Where the Committee decides to continue consideration of a complaint:</p> <p>i.—it shall not express any view upon whether the Member is in breach; and</p>	<p>Recommend should be deleted</p>

	<p>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.</p>	See comment on 6.4 above.
	<p>7. CONSIDERATION BY THE STANDARDS COMMITTEE</p> <p><u>Initial Consideration</u></p> <p>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:</p> <p>(a) any witnesses should be invited to give evidence to the Committee at an oral hearing; and</p> <p>(b) the Committee should consider the complaint in public or private.</p>	
	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 <u>may</u> not attend this initial private meeting unless invited by the Committee.	
	7.4 In accordance with Standing Order 16.4 <u>22.5</u> , where a Committee Member is subject to a complaint he or she shall	Amendment - new Standing Order.

	<p>may 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.</p>	
	<p><u>Oral Hearing</u></p> <p>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 <u>on behalf of the Assembly Clerk</u>, that it should meet in public – to consider:</p> <ul style="list-style-type: none"> i. any oral or written evidence or representations that the Member complained of wishes the Committee to consider; and ii. any oral or written evidence from witnesses. <p><u>The Commissioner may be invited to give evidence at the meeting at the discretion of the Chair.</u></p>	<p>Amendments – (1) updated language. (2) acting on any relevant advice provided to the Assembly, avoiding the specific title of Chief Legal Adviser.</p> <p>See earlier comment at 7.1</p> <p>This is how the procedure has been interpreted in the past – that the AM has the same right to introduce matters of evidence as any other witness, and the Committee conducts a full ‘trial’ of the complaint, even though the Commissioner has investigated.</p> <p>There is no explicit reference to the Commissioner being at the hearing or what role he/she plays. Standing Order 17.23 makes it clear that the Committee Chair controls meeting procedures, subject to guidance issued by the PO.</p>

	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 <u>other</u> matters. of argument	Amendment - clarity of language.
	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.	
	<u>Committee's Consideration of its Decision</u> 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) <u>22.2(i)</u> 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.	Technical issue - The casting vote has been considered before, and this wording was agreed in June 2008. The current arrangements mean that the Committee, which has cross-party representation, must come to a majority decision. However, given the

		<p>small number of Members on the Committee it could reach deadlock – e.g. it may agree a breach but not the sanction. If the Chair had a casting vote that could be exercised substantively in the affirmative, i.e. not only in the negative so as to postpone a decision, then that would be inconsistent with Standing Orders 6.20 and 17.37. Referral of the Committee’s report to plenary is currently on an unamendable motion. It may therefore be considered that the current arrangements should stand.</p>
	<p><u>Committee’s Recommendations</u></p> <p>7.11 The Committee may take a decision to recommend any of the following:</p> <ul style="list-style-type: none"> 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 <u>such a</u> minor nature and that the complaint should be dismissed; <p><u>Or the Committee may decide, pending any appeal by the Member concerned, to recommend to the Assembly:</u></p> <ul style="list-style-type: none"> iii. that a breach has been found and <u>but</u> that no further action should be taken; 	<p>Amendment – in the case of i and ii the Committee will not make a recommendation to the Assembly, but will simply dismiss the complaint.</p> <p>Amendment – ii) originally said “trivial” but there was resistance to the idea that any complaint should be regarded as “trivial”. But one needs to distinguish between ii) and iii).</p>

	<p>iv. that a breach has been found and that the Member should be “censured” under Standing Order 16.9 <u>22.10</u>; or</p> <p>v. that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time in accordance with Standing Orders.</p>	<p>Amendment – new Standing Order.</p> <p>Nb. Currently, Exclusion is only possible in relation to breaches of Standing Order 2.</p>
<p>8.1</p>	<p>8. REPORTING AND APPEAL PROCEDURE</p> <p>7.12 As soon as may be following it’s <u>the Committee’s</u> decision; but not sooner than 10 working days after providing the Member complained of <u>must be provided with a copy of the Committee’s report, which must be treated in confidence by all parties.</u> In those cases where the Commissioner has recommended that a report <u>Committee has</u> should be considered <u>the complaint</u> in private, and where there is no breach or the case is dismissed, the Committee may decide <u>must arrange for that the report should to</u> be anonymised.</p> <p><u>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 provided with the Committee’s report, appeal to the Presiding Officer.</u></p> <p><u>The Committee will must publish the report of its considerations and lay it before the Assembly along with the Commissioner’s report to the Committee. Where the Presiding Officer informs the Committee that an appeal has been made under section 8 below, the Committee shall may not publish its report or lay it before the Assembly until</u></p>	<p>Amendments – to update the procedure; to clarify matters of confidentiality; and to clarify the process and timing of reporting and appeal: i.e.</p> <p>In all cases the Committee will publish a report, but if it decides on dismissal – (i) or (ii) above, or the appeal dismisses the complaint the report will be anonymised. If the Committee decides on (iii), (iv) or (v), and this is upheld on appeal, then the report will be referred to the Assembly for consideration.</p> <p>(wording in bold changed to prevent time for appeal running out before the Member has actually seen the report, rather than the date it was ‘sent’).</p>

	<p><u>consideration of the appeal has concluded.</u></p> <p><u>If a complaint is referred back to the Committee under paragraph 8.6 i8.5 i. the Committee must, at the conclusion of its further consideration of the complaint, prepare a revised report. Paragraph 7.12 8.1 will then apply to the revised report instead of to the original report.</u></p>	
	<p>7.13 Where the Presiding Officer informs the Committee that an appeal has been made under section 8 below, the Committee shall <u>may</u> not publish its report or lay it before the Assembly until consideration of the appeal has concluded.</p>	<p>Deletion - included above.</p>
	<p>8. APPEAL PROCEDURE</p> <p>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.</p>	<p>Deletion - included above.</p>
8.2	<p><u>Establishment and Composition of Appeals panel</u><u>Appointment of a Person to Consider an Appeal</u></p> <p>8.2 The Presiding Officer shall <u>must</u> on each occasion establish a panel to consider the appeal according to arrangements that he/she shall agree from time to time with the Standards Committee. The panel shall comprise four Assembly Members and appoint an independent legally qualified person to <u>decide the appeal</u>. The person appointed, who shall <u>may</u> not be an Assembly Member or a member of the Assembly's staff, <u>must have been</u></p>	<p>Amendment - The procedure for appointing a panel was agreed by SOC Committee in 2006 and is attached as Annex B. But suggest this protocol be removed and the formula inserted at 8.2 to ensure clarity and independence. Given that this is essentially a legal judicial review process, it is highly questionable whether Members should be involved. An independent appointee</p>

	<p>nominated, at the request of the Presiding Officer, by the senior Presiding Judge of the Wales circuit . Each of the Assembly Members shall be drawn, as far as possible, from different political groups represented in the Assembly.</p>	<p>could easily carry out the task set out in 8.4 below no doubt more expeditiously. (see also 8.6 and 8.7 below regarding the powers of the panel and/or individual appointee).</p> <p>Amendment - Gender neutral language.</p>
	<p>8.3 The Commissioner, Members of the Standards of Conduct Committee, the Presiding Officer, the First Minister and the leaders of political groups, a complainant or witness shall <u>may</u> not serve as Members of an appeal panel.</p>	<p>Amendment - Recommend Deletion - unnecessary</p>
8.3	<p><u>8.3 Following nomination and prior to appointment of the legally qualified independent person, the Presiding Officer shall afford the Member complained of an opportunity to make representations in writing as to any ground for the non appointment of such person, within five working days of being informed of the name of the nominee. In the event that the Presiding Officer accepts any such ground as valid and determines not to appoint the nominated person, he/she shall seek another nomination as in paragraph 8.2.</u></p>	<p>Amendment - to provide for a review of the nominated person, to deal with e.g. a situation where, perhaps unbeknown to the PO or the Presiding Judge, there are reasons why the person nominated is unsuitable.</p>
8.4	<p><u>Consideration of Appeals</u></p> <p>8.4 Appeals will only be considered on the following grounds:</p> <ul style="list-style-type: none"> 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	<p>8.5 The appeal panel <u>independent legally qualified person appointed to decide the appeal</u> will consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant. <u>That person</u> it will not conduct oral hearings nor will it consider representations from any other source.</p>	Amendment – as above.
8.6	<p>8.6 The appeal panel <u>person appointed to decide the appeal</u> shall <u>must prepare, and provide to the Member and to the Committee, a report of his or her consideration of the appeal and must either:</u></p> <ul style="list-style-type: none"> i. <u>if the grounds of appeal are established, uphold the appeal and refer</u> dismiss <u>the complaint back to the Committee for further consideration; 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</u> ii. <u>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.</u> 	Matter for consideration – Should the independent legally qualified person also have the power of a (iii) option – to refer the matter back to the Committee, e.g. if there has been some procedural error but it is still not clear that the complaint should be dismissed? If the appeal is considered by one independent person the options would be either to uphold the appeal and refer the matter back to the Committee, or to dismiss the appeal, but NOT to dismiss the complaint itself.
8.7	<p><u>The Committee must lay before the Assembly the report of the person appointed to decide the appeal, together with the report of the Commissioner and the report or (if the matter has been referred back to the Committee under paragraph 8.6 i.) revised report of the Committee itself.</u></p> <p><u>In those cases where the Committee has considered the complaint in private, and where the Committee has, after it</u></p>	Amendment – new paragraph to replace 8.6 and clarify responsibility for reporting.

	<p><u>has been referred back to the Committee by the person appointed to decide the appeal, dismissed the complaint, the Committee must arrange for its revised report and that of the person appointed to decide the appeal, to be anonymised.</u></p>	
	<p>9. CONSIDERATION BY THE ASSEMBLY</p> <p><u>Where there is no appeal or an appeal is unsuccessful.</u></p> <p>9.1 Where an appeal is unsuccessful or where no appeal is made to the Presiding Officer and where the Committee does not recommend decide on dismissal, the Chair of the Standards Committee shall <u>must</u> 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 <u>must</u> be made available as soon as may be.</p>	<p>Amendment – This isn't really a recommendation but actually a dismissal by the Committee (see changes to 7.11).</p> <p>This section still needs further consideration, i.e to ensure it is compatible with other procedures in Assembly Standing Orders.</p>
	<p>Where a successful appeal has been made</p> <p>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.</p>	<p>Amendment – deleted – see 8.6 above.</p>
	<p>10. WHERE BREACH RECTIFIED OR COMPLAINT DISMISSED</p> <p>10.1 Where, <u>at any stage of an</u> during preliminary investigation, the facts are not disputed and the Member immediately rectifies or apologises satisfactorily for a failure of a minor nature the Commissioner may recommend to the Chair of the Standards Committee that <u>the</u> a formal investigation should not be pursued. If the Chair agrees, the Commissioner shall inform the Member and the complainant</p>	<p>For consideration – Why should this power only operate during preliminary stages?</p> <p>An important question is raised here about who the Member apologises to? The complainant may not be happy with an apology to the Committee or</p>

	that although a breach has been found no further action will be taken against the Member.	Commissioner but not to them directly. It will depend on the nature of the issue.
	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.	
	<p>11. ANNUAL REPORT</p> <p>The Commissioner shall must, as soon as possible after the end of each financial year, lay before the Assembly (the Committee on Standards of Conduct) an annual report on the performance of the functions of the Commissioner throughout that year, in accordance with the requirements of section 19 of the National Assembly for Wales Commissioner for Standards Measure 2009, prepare an annual report, for inclusion in the Committee's annual report; setting out the total number of cases dismisses 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.</p>	Deletion – as reporting of complaints is a requirement set out in the Measure.

Procedure for Dealing with Complaints against Assembly Members

Presiding Officer's Arrangements for Establishing Appeal Panels

1. These arrangements are made in accordance with the Procedure for Dealing with Complaints against Assembly Members (the Procedure). When the Presiding Officer receives an appeal that meets one of the criteria in paragraph 8.3 of the Procedure he shall:

- a) Contact the leaders of the political groups represented in the Assembly for a nomination from their respective parties to sit on the appeal panel; and
- b) Invite the Presiding Judge for the Wales and Chester Circuit to nominate an ‘independent legally qualified person’, in accordance with the protocol set out at Annex A. The independent member shall chair the Panel.

2. In the event of the Presiding Officer being unable, for whatever reason, to establish an appeal panel, the Deputy Presiding Officer shall establish the appeal panel.

3. If the leader of a political group represented in the Assembly is unavailable, the Presiding Officer shall contact the Business Manager of the relevant political group(s) for a nomination.

6 4. 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.

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8 Administrative Arrangements

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10 5. Once nominations have been received, and the Panel established, the Presiding Officer shall notify the Clerk to the Committee on Standards of Conduct, who will make the necessary administrative arrangements for the appeal.

Made by the Presiding Officer: August 2006
Agreed by the Committee on Standards of Conduct: August 2006

Annex A

PROTOCOL BETWEEN THE PRESIDING OFFICER AND THE PRESIDING JUDGE OF THE WALES AND CHESTER CIRCUIT

1. This protocol sets out arrangements that have been agreed between the Presiding Officer of the National Assembly for Wales (the Presiding Officer) and the Presiding Judge for the Wales and Chester Circuit (the Presiding Judge).
2. The protocol deals with the way in which the 'Independent legally qualified person' is nominated to sit on an appeal panel established in accordance with the 'Procedure for Dealing with Complaints against Assembly Members'.
3. The Presiding Judge shall:
 - i. maintain a list of persons who would be willing to act as the independent legally qualified member of an appeal panel. That list shall comprise retired Judges and retired Employment Appeal Tribunal Chairmen; and
 - ii. on each occasion, nominate one name from the list to act as the independent legally qualified person.
4. In the event of a valid appeal being made, the Presiding Officer shall:
 - i. contact the Presiding Judge seeking the nomination of a person to act as the independent legally qualified person on the appeal panel.

Signed:

Presiding Officer: Date:
Lord Dafydd Elis-Thomas, AM

Presiding Judge: Date:

The Honourable Mr Justice Roderick Evans