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## **FDA Wales Response to Standards of Conduct Committee's Code of Conduct and Associated Procedures consultation December 2020/January 2021**

### **Introduction and background**

FDA Wales welcomes the opportunity to contribute to this consultation.

The FDA led the long-running campaign for a fully independent complaints process in the House of Commons.

In Dame Laura Cox, QC's inquiry into bullying, harassment and sexual harassment in the House of Commons <sup>1</sup> she found that bullying and harassment had been allowed to thrive because the culture in Parliament both tolerated and concealed bullying and harassment. She recommended a fully independent policy for complaints in which MPs would play no part in the process up to and including decisions on sanctions. She also recommended that because there had been an inadequate process in Parliament staff should be able to bring past cases forward to be investigated in the new system. These recommendations were exactly what the FDA had been calling for.

In June 2020 the House of Commons approved the final stage of the independent process by voting through a motion to establish the new Independent Expert Panel (IEP) to make decisions on sanctions on upheld complaints of bullying, harassment and sexual harassment against MPs. The final stage of the process was designed by the FDA's House of Commons branch, and I offer any and all support from the FDA in the implementation of an independent process for the Senedd.

Our responses to the questions posed by the consultation are set out below.

In responding to this consultation, a key expectation from FDA Wales is that the Senedd must implement a similar, fully independent, process for dealing with complaints of bullying, harassment and sexual harassment. The objective of the Senedd should be to have a robust policy to deal with complaints against elected officials that is broadly comparable to an employer's disciplinary policy. Members of staff should feel confident to put in their complaint and that it will be investigated independently and fairly and a sanction determined free from political interference.

It is the FDA's experience, from all corners of the UK, that only an independent process that is completely free from political interference can work. If there is any opportunity for self-regulation politics will take precedence over fairness and the survivors of bullying, harassment and sexual harassment will be failed. It is a

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<sup>1</sup> <https://www.parliament.uk/globalassets/documents/conduct-in-parliament/dame-laura-cox-independent-inquiry-report.pdf>

fundamental that everyone deserves to be treated with dignity and respect in the workplace.

**Question 1: We would welcome your views on our approach to the Code's structure, as: - a set of overarching principles which describe how Members should behave; and - a set of clear rules against which Members can be held to account.**

FDA Wales welcomes the admirable overarching principles, but those principles, and the code, will only be effective if backed up by an effective independent complaints procedure.

FDA Wales believes that it makes sense for there to be one policy that:

- Supports and enforces the code of conduct and associated procedures to bring about real cultural change.
- Is independent of MSs at all stages, including decisions on sanctions.
- Is resourced effectively so that complaints can be investigated efficiently and quickly and are fair to everyone.
- Has the ability to compel parties to take part.
- Has the trust and confidence of Senedd staff; the Senedd authorities and MSs.

**Question 2: The Committee would welcome views on the application of the Code to Members' private lives. Where should the balance be struck between Member's rights to private and family life and the public interest in maintaining high standards of conduct on the part of those holding public office?**

This is a complex issue and as a staff union we don't feel that this is within our remit to comment on. But as above, any code will only be as effective as the procedure underpinning it. Therefore, FDA Wales suggests that the Senedd should focus first on implementing a fully independent process for dealing with complaints of bullying, harassment and sexual harassment.

**Question 3: We would welcome your views on the approach we have taken in tailoring the wording associated with the seven Nolan principles, with the aim of making them applicable and relevant to the roles of Members of the Senedd. Would you suggest any further changes to this wording?**

FDA Wales notes the view of the Committee on Standards in Public Life that: *"The intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour."*

FDA Wales believes the best way of achieving the aim of making the tailored wording of the Nolan principles applicable and relevant to MSs is by underpinning the code with an independent complaints process.

**Question 4: We would welcome your views on our proposed additional principle of respect and accompanying rules. Do you think it is sufficiently clear in its expectations on how Members will behave?**

FDA Wales welcomes the additional principle of respect, but believes that it will only result in a desired culture change if underpinned by an effective, clear, and independent complaints process that has the trust and confidence of Senedd staff and MSs.

**Question 5: We would welcome your views on the rules set out in the updated Code: - are they sufficiently clear in setting out how Members must behave? - are there any rules or aspects of the rules in the updated Code that you believe Members should not be required to comply with? - are there any additional rules that you believe Members should be required to comply with?**

FDA Wales welcomes the rules in the updated code and the clear definitions of bullying, discrimination, harassment, and unwanted behaviour.

In particular, FDA Wales welcomes the rules around not applying pressure to individuals to:

- compromise the political impartiality of the Senedd Commission or Civil Service
- breach the Senedd Commission Staff Code of Conduct
- breach the Civil Service Code

**Question 6: The guidance at present is contained within the Code and procedure, and we are suggesting this should be standalone. We would welcome your views on whether there are particular areas of the Code, or the process for making complaints in general, that you would like to see guidance on.**

In addition to standalone guidance, FDA Wales believes it is imperative that the Senedd develop and introduce a suite of mandatory learning courses to cover:

- Diversity and Inclusion
- Unconscious Bias
- Bullying and Harassment

**Question 7: We would welcome your views on our proposed approach of setting out practical examples of Code breaches in guidance, and any other comments you may have on the development of guidance.**

Practical examples would be helpful, but they should be augmented by the mandatory learning courses outlined above.

**Question 8: We would welcome your views on any changes that you would like to see in the procedure.**

The consultation document summarises the Senedd's current complaint and appeals mechanism as:

*'Once a complaint is found to be admissible, the Senedd's complaints procedure is a three stage process involving: -*

- *an investigation by the independent Commissioner; -*
- *a consideration of the Commissioner's findings by a cross-party Standards of Conduct Committee; and*
- *if a breach has been found in the above stages, a final decision on whether there has been a breach of the Code by the Senedd as a whole.*

*In addition, Members can currently appeal the decision of the Standards of Conduct Committee, to an independent legally qualified person, based on significant new evidence or procedural irregularity. The person appointed does not consider the merits of the case, but will refer the report back to the Committee if the appeal is successful'.*

FDA Wales believes the current three stage arrangements are:

- a) too complex, with the possibility of leading to delays in dealing with complaints, and,
- b) lack full independence -the arrangements involve MSs, including the whole Senedd taking final decisions on breaches of the code - just like in the House of Commons there should be no involvement of elected politicians at any stage of the process;

FDA Wales finds it startling that final decisions on breaches of the code must be currently endorsed by the whole Senedd - a classic example of institutions 'marking their own homework'.

The process to find a complaint admissible is unclear, and members of staff may feel deterred from putting in a complaint due to a 'pre-investigation' stage. The consultative document refers to Dame Laura Cox's report on the Bullying and Harassment of House of Commons Staff, and comments that it 'led to the adoptions of the Senedd's Dignity and Respect Policy.

FDA Wales welcomes the Dignity and Respect policy, but calls on the Senedd to go further and follow the House of Commons in implementing Dame Laura's recommendation for a truly independent process by introducing an Independent Expert Panel, similar to that now in place in the House of Commons<sup>2</sup>.

The panel's functions should be:

- a) to determine outcome and appropriate sanction in cases referred to it by the Independent Commissioner,
- (b) to hear appeals against outcome decisions, and
- (c) to hear appeals against a sanction

**Question 9: We would welcome your views on the sanctions available to the Committee and any changes you think may be needed to them.**

FDA Wales agrees that there should be a range of sanctions, up to and including expulsion.

We believe that training and education to rectify (and stop) inappropriate behaviour should also be an option in addition to asking for a meaningful apology.

The potential difficulty with a recall petition is noted. FDA Wales believes that in cases of bullying and sexual harassment, expulsion is appropriate. It is 'cleaner' than recall, and akin to dismissal proceedings any other employer would take in similar circumstances.

There needs to be consideration for how sanctions can be applied to repeat offenders so that if there are subsequent upheld complaints the sanctions are more severe in the same way that would apply in an employment setting.

**Question 10: We would welcome your views on whether there should be a timeframe for complaints, and if not whether there should be any conditions on the admissibility of complaints over 12 months old.**

It is important to make the distinction between:

- (a) how far back any complaint may go; and
- (b) how long there should be the opportunity to raise historic allegations.

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<sup>2</sup> <https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliaments-behaviour-code/independent-expert-panel-appointed/>

We can understand the merits of a 'timeframe for complaints', this allows the Senedd to address issues of the past and move forward. It also encourages staff to come forward to submit their evidence which may bring to light some past offenders who thus far have been allowed to act with impunity.

However, when the procedure is first introduced there should be a window of opportunity for members of staff to bring historic complaints to be investigated. This is a necessary step to ensure there is no 'year zero' where the slate is wiped clean for the bullies, in particular repeat offenders.

If there were a 'timeframe' there would need to be exceptional cases that might be considered outside the window. For example, there may be circumstances where the behaviour of a particular MS may be such that a member of staff doesn't feel comfortable raising it until the MS has left the Senedd, and this is more likely to be the case with very serious allegations such as sexual harassment.

A timeframe would only be acceptable once an entirely independent process has been fully implemented. Clearly many members of staff will not want to raise their historic complaint until a fully independent process is implemented, therefore the window needs to be sufficiently long enough for staff to raise their complaint after an independent process is in place.

Moreover, the Senedd will need to make sure any timeframe is sufficiently long enough to allow staff on maternity leave, extended parental leave, a career break, or long-term sickness to raise their complaint on their return to work.

Finally, we would say that the timeframe should only involve raising the complaint, not the determination of the complaint. A staff member has no ability to predict how long the complaint will take to investigate and determine. It would be entirely unfair if a member of staff raised a complaint a month before the window of opportunity closed but was told this wouldn't be determined in time.

Moreover, including the determination of the complaint in the window incentivises MSs with complaints against them to 'run out the clock' by deliberately delaying the proceedings. The FDA would argue that, if introduced, the timeframe should only apply to the case being raised, not completed.

If any timeframe is introduced this should not apply to continuing acts - so a member of staff could bring a complaint that includes earlier acts providing that the last act of bullying, harassment and sexual harassment is in time.

As stated above, there does need to be discretion around timeframes because there may be circumstances where the behaviour of a particular MS may be such that a member of staff doesn't feel comfortable raising it until the MS has left the Senedd, and this is more likely to be the case with very serious allegations.

**Question 11: We would welcome your views on how the Commissioner's reports should refer to sensitive information relied upon for investigations.**

FDA Wales believes the importance of confidentiality must be emphasised to all the participants at each stage.

A complainant's name should only be published if they agree to it. In the event that a staff member's name becomes public, the Senedd should give them support, including media support and a single point of contact at senior management level.

**Question 12: We would welcome views on whether the additional appeals process to the independent person- detailed above- should remain within the procedure.**

FDA Wales believes the current appeals process, with the independent person referring back to the Standards of Conduct Committee (made up of MSs) *'if the appeal is successful'* is confusing, opaque, and is not truly independent.

That is why FDA Wales calls on the Senedd to introduce and Independent Expert Panel, with the authority to hear, and determine, appeals against investigation outcome decisions and sanctions.

