

Response 7:

Undeb Gwasanaethau Cyhoeddus a Masnachol
Public and Commercial Services Union

Response to the Senedd Standards of Conduct Committee's Consultation on a new Code of Conduct for Members

Response on behalf of PCS – the Public and Commercial Services Union

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PCS represent staff across the Public Sector in Wales and those Commercial Services which service Public Sector Estates. This includes staff of the Senedd Commission, Members Support Staff and staff of third party contractors who work on the Senedd Estate and in Members' Constituency Offices across Wales.

PCS also represents staff in a number of other Public Sector Organisation across Wales (and the wider UK) who Members may frequently come into contact with. As examples this includes staff within the Welsh Language Commissioners' Office, Sports Wales and all Civil Service Departments within Wales.

Original Senedd Consultation Documents can be found:

<https://business.senedd.wales/mgConsultationDisplay.aspx?ID=412>



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Question 1: We would welcome your views on our approach to the Code's structure, as:

- A set of overarching principles which describe how Member should behave; and
- A set of clear rules against which Members can be held to account

It is good to be able to respond to this consultation on the structure of the Code. However, we also note with disappointment that the documentation mentions the importance of Guidance that will accompany the code and without this guidance it feels very difficult to comment on how complete this code is.

The numbering system within the proposed new Code of Conduct is really difficult to reference. Hopefully this is a result of speedy drafting and will be standardised before the Code of Conduct is presented for ratification by the Senedd.

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?

Members are appointed as office holders who are a Member of the Senedd 24/7. It is not a role that can be picked up and put down at will. This means they expect to be supported as such by the Senedd Commission to be able to work 24/7. As such they should be expected to abide by the Code of Conduct 24/7.

Social Media is seen as a practical way of communicating with the People of Wales. Social Media is inherently a public communication channel, a mode of broadcasting a message into a public space. Anything that a politician posts, or that is posted in the name of that politician through an official account on their behalf, should be deemed to be said by that Member and so the code must apply to them through what they wish to voice (or have voiced) through their Social Media channels.

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?

PCS welcomes the clarity that the new language used in the Code of Conduct provides.

However, the use of "should" in a code of conduct does not give the force and power of the use of a "must". Particularly when discussing the overarching principles by which Members "must" behave.

We would like to see all "should" 's replaced with a "must" as these are key to how a Member is expected to behave. This is particularly important in Part 2 Line 6, where "the Overarching Principles" are laid out.

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?

It is good to see the principles of Dignity and Respect carried into the Code of Conduct from the Dignity and Respect Policy adopted by the Senedd in May 2018¹. Key to this is that "at all times, in all places and in all contexts" the Code of Conduct governs the Members of the Senedd's behaviour. It is important that this concept carries through into the revised Code of Conduct for Members.

In particular PCS welcomes the introduction of language such as "respect" and "unwanted behaviour" coming into the Code of Conduct. Such wording is vital as any behaviour that is unwanted by the recipient must be considered as "any behaviour which is not encouraged or reciprocated by the recipient, regardless of whether it was meant to cause offence, and whether it is repeated or an isolated incident"². Everyone who works at the Senedd, or with Members in other contexts, is expected to show a high degree of respect for the dignity of others and to be capable of assessing whether behaviour risks being perceived as inappropriate by the recipient.

¹ <https://senedd.wales/help/complaints/welsh-parliament-dignity-and-respect-policy/>

² <https://senedd.wales/help/complaints/welsh-parliament-dignity-and-respect-policy/>

The main concern from PCS when considering these changes is that matters of Dignity and Respect become enforceable through the updated Members Code of Conduct. Each group working in the Senedd has their own Code of Conduct (and associated Dignity and Respect Policy) to abide by. These documents all need to interact to ensure that all working to support Members as well as Members themselves will be treated with Dignity and Respect in the workplace.

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?

Social Media is seen as a practical way of Members communicating with the People of Wales. Social Media is inherently a public communication channel, a mode of broadcasting a message into a public space. Anything that a politician posts, or that is posted in the name of a politician through an official account on their behalf, should be deemed to be said by that Member in public and so the code must apply to them through what they wish to voice (or have voiced) through their Social Media channels.

PCS also welcomes the proposed phrasing of 16 (i) as an improvement to the clarity on the importance of the confidentiality of documents shared by the Senedd Commission containing protective marking. Such markings are in place to allow the staff of the Senedd Commission to share pertinent information with Members of the Senedd on a basis of trust. This information is shared to assist Members in performing their role but the marking is applied as (at the time of sharing with the Member at least) this information is not ready for full disclosure to the public.

To further add clarity on this point we would recommend that 16(i) be split into 2 lines to separate information shared in confidence from information that is protectively marked. There is a key difference between information that is shared in confidence (but not protectively marked) and information that is protectively marked (where that marking may or may not include "confidential").

(16)(ia) confidential information is only be disclosed when authorised to do so by the person or authority controlling the information or when disclosure is required or permitted by law;

16(ib) that protectively marked materials are only disclosed or otherwise shared when authorised to do so by the person or authority controlling the information or when disclosure is required or permitted by law;

We agree that 9 (9) Members must: Comply with the Rules on the Use of Senedd Resources should be sufficient to cover any such Rules, ordinary time or specifically for election periods. For the sake of clarity and transparency we would like to see this line amended slightly to include the word "published" to read something like:

9 (9) Members must: Comply with the published Rules on the Use of Senedd Resources in effect at any particular time.

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.

As long as the guidance is given the same status as the Code of Conduct itself then, beyond the principles being contained in the full Code, we have no view on whether other items go in the Code or the associated Guidance.

For guidance to have the full effect of adding to the weight of the Code of Conduct, any such guidance should be ratified by the Senedd and then published alongside the full text of the guidance to ensure that Members have signed up to the guidance to the Code of Conduct.

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.

It is difficult to comment fully on guidance that we have not yet had sight of.

For guidance to have the full effect of adding to the weight of the Code of Conduct, any such guidance should be ratified by the Senedd and then published alongside the full text of the guidance to ensure that Members have signed up to the guidance to the Code of Conduct.

Question 8: We would welcome your views on any changes that you would like to see in the procedure (for dealing with Complaints against Members of the Senedd)

One tension with the current Code of Conduct that is not clearly addressed in the redraft is where a Member is accused of something that could also be considered a crime and is also simultaneously under investigation by other bodies. We would like to see a clearer procedure for how complaints of this nature will be able to pass through an internal process and ensure that inappropriate behaviour is challenged in a timely way without prejudice to any ongoing criminal or other legal proceedings.

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

Sanctions need to be sanctions. Banning a Member during recess is not a suitable sanction as it has not discernible effect on that Member.

Some of the current sanctions include actions that prevent the Member from performing their representative role. There should be some provision for another person to take on the representative role of that Member during the time of their suspension. This may include things such as proxy voting rights given to another Member of their Party/Group to ensure that vote can be cast in their absence or the appointment of a substitute Member to represent these Constituents. This would also ensure that those employed by the Member, through the Members' allowances, had a clear route to continue having funds authorised (or losses due to the cancellation of events authorised) during the absence of that Member from the office.

Rules relating to contacting a Member of the Senedd who does not directly represent you for matters of Casework should also be considered for relaxation where a member's representative role is suspended for a period of time to ensure that Constituents who have voted for a Member of a particular colour retain their ability to interact with a member from that Party/Group during the suspension.

Sanctions also need to be clear and enforceable by Senedd Commission Staff - if a Member is banned from the Senedd Estate for a period of time, what exactly is that period of time? If the period of time includes a recess period, are they banned for all term time days but permitted to come onto Senedd Estate during recess or is the ban 3 term time weeks and any recesses in between.

PCS would like to see a push for some of the additional sanctions mentioned in the consultation document to be considered in due course. However we feel the phrasing may need to be revised before taking these two suggestions forwards:

- Requiring repayment of sums knowingly inappropriately claimed
- The power to recommend that a member is made subject to a recall petition - or otherwise considered for expulsion from office and replaced on a more permanent basis.

The ultimate sanction for breaking the Code of Conduct for a staff member is always loss of employment. Members of the Senedd should be facing similar jeopardy should their behaviour be deemed suitably grossly inappropriate after following a due process.

The Code of Conduct needs to be enforceable for it to have a full effect on Members. That must include the ability to reclaim funds that have been deemed improperly claimed. As with all things, there would be caveats to this but we feel that the fact that a recommendation to sanction agreed by the Standards of Conduct Committee must then be debated and agreed by the Senedd is a suitable check and balance to the availability of such a sanction for those Members who knowingly and successfully claim monies that are not properly due to them.

Finally, a range or scale of sanctions is required. With the current application of the Code there appears to be a large jump to the first level of sanctions that can be applied to a Member through the Complaints process, which can lead to smaller matters going unchallenged. An effective Code of Conduct can ensure that small discrepancies in behaviour are challenged, leading to improved practices and possibly preventing the larger offences from ever occurring.

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.

Whilst we can see that in an ideal world there should be a time-limit to prevent malicious timing of the reporting of allegations, this can pose as a difficulty for complainants. There is a particular difficulty with a formal time-limit where a series or pattern of behaviour wishes to be established but previous instances could not be considered as a part of the process due to the age of behaviour.

The strict time-limit can also present a difficulty in determining when a complaint is formally made. Some complainants, particularly on matters of Dignity and Respect, may need additional

support before they feel that they wish to complain about the actions of a Member. The Senedd's current process offers "Contact Officers" to "discuss concerns which an individual may find unacceptable or to find out how to make a complaint".³ It would potentially put these role holders in a very difficult position if they were also against a clock for turning an enquiry into a formal complaint before the 12 month deadline.

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

PCS welcome the consideration of adding an ability to release a redacted version of the Standards Commissioner's report. We recognise the need to balance transparency with maintaining the confidentiality for those complaining or providing evidence to an investigation. For this to be an effective means of achieving this, those giving evidence would need to be able to be assured at the point of giving evidence (or before) that their evidence would not be published as a part of the published report.

For many who may seek to complain or who may be called on to provide evidence it is not only the publication of the report but the sharing of the detail of their evidence with the person being investigated which can be problematic/traumatic. Consideration will also need to be given to the balance between Members who are under investigation (and those supporting that Member) having access to the full range of evidence against them and protecting those asked to give such evidence.

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

Any fair process for discipline and/or grievance in the workplace must include an ability for appeal against any formal decision made.⁴ Given that the members of the Standards of Conduct Committee will have been involved in the making of the initial decision regarding a breach of the Code of Conduct it would not be appropriate for any members of that committee to be a part of the appeals process.

³ <https://senedd.wales/help/complaints/welsh-parliament-dignity-and-respect-policy/>

⁴ <https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html>

We acknowledge the potential cost that would be incurred by a Member invoking their right to an appeal. However, cost should not be a limiting factor to maintaining a fair process.

Having said that, PCS would be open to consideration of other suggestions that maintained the ability for an independent review of the process followed or the arrival of new evidence in a case. One suggestion would be to have a "shadow Standards of Conduct Committee" who would be made of up Members not involved in the initial investigation and supported by a different group of Senedd Commission Staff. This would allow for that independence from the initial process without the expense of an additional external specialist needing to be involved.