

Standards of Conduct Committee

SOC(4)-04-13: Paper 1 – Tuesday 9 July 2013

Consideration of recommendations by GRECO (Group of States Against Corruption)

Purpose

1. The Committee is invited to consider recommendations made by the **Council of Europe's** Group of States Against Corruption (GRECO) in its Fourth Evaluation Round of the United Kingdom, and agree any further action it may wish to take as part of the current review of the Code of Conduct for Assembly Members and associated guidance.
2. This paper should be considered alongside the '**Code of Conduct for Assembly Members' Support Staff (AMSS)**', and the '**Guidance for Assembly Members on the Registration, Declaration and Recording of Members' Financial and Other Interests**'. The Committee is responsible for supervising arrangements for the Register of Interests, and agreed to update this guidance as part of the current phase 2 of the review of standards procedures.

Background

3. The Group of States against Corruption (GRECO) monitors the compliance of its 49 member **states with the Council of Europe's anti-corruption instruments**¹. The UK has been a member of GRECO since 1999. GRECO undertakes regular evaluations of arrangements in Member States and makes recommendations "intended to improve the capacity of states to fight corruption and to promote integrity."
4. **GRECO's** latest, Fourth Evaluation Round report **of the UK's parliament, judges and prosecutors** was largely positive.
5. The evaluation team (the GET) visited the UK in 2012. The team was composed of Mr Hugh Geoghegan, retired as judge of the Supreme Court of Ireland, Ms Jane Ley, Deputy Director of the US Office of

¹ Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: www.coe.int/greco.

Government Ethics, Mr José Manuel Igreja Martins Matos, a Portuguese Judge and Vice-President of the Ibero-American Group of the International Association of Judges, and Ms Marja Tuokila, Counsel to the Legal Affairs Committee of the Finnish Parliament. The National **Assembly for Wales'** gave input to the evaluation process via the **Assembly's** Head of Governance and Audit, also formerly clerk to the Standards of Conduct Committee.

6. Focusing on Parliament, the evaluation report acknowledges the steps taken to strengthen financial control in Westminster following the expenses controversy, and encourages further reinforcement of transparency and accountability mechanisms for MPs. Plans to regulate lobbying and to further develop internal mechanisms that prevent and sanction misconduct were noted.
7. The report made five recommendations concerning the UK Parliament, four of which are also specifically directed at the devolved legislatures, including the National Assembly for Wales. Implementation of the recommendations will be assessed by GRECO in the second half of **2014 through its "compliance procedure"**.
8. The Parliamentary Committee on Standards addressed the recommendations in a report published on 13 March 2013² and its conclusions are summarised below alongside the GRECO recommendations. The House will take the recommendations into account when it considers a revised Guide to the Rules of Conduct for MPs. The House of Lords is also expected to consider the GRECO recommendations shortly. The Scottish Parliament and Northern Ireland Assembly have not yet formally considered them.

Members' accountability for staff conduct

GRECO Recommendation:

- i. that, pending any introduction of an accountability system for staff conduct, it should be made clear that Members of the House of Commons and Members of the House of Lords can be responsible for the conduct of their staff when carrying out official duties on behalf of the Member and that, unless otherwise specified, the conduct of

² House of Commons Committee on Standards – Guide to the Rules Relating to the Conduct of Members: GRECO Report and other Developments, First Report of Session 2012-13, published 13 March 2013.

the staff should be judged against the standards expected of the Members. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation (paragraph 33);

9. In making this recommendation the GET noted that the Codes of Conduct for the Lords and Commons did not state that Members are responsible for the conduct of their personal staff when those individuals are carrying out official duties on behalf of the Member (in **effect acting as the Member's agent**). The GET welcomed the inclusion of this accountability of Members for their staff in the Scottish Parliament's **Code of Conduct**.

10. It was also understood that in Westminster, staff members are not subject to any other code of conduct, but some are required to register relevant interests and a failure to register can be investigated by the respective Commissioners.

11. The GET was informed of past instances of MPs being held responsible for the actions of their staff (e.g. breaches of confidentiality rules, campaigning in elections), but that the **accountability mechanism applied to Members' staff depended on the circumstances in the absence of a clear rule**. The report stated:

“Since many of the staff are paid from public funds and supervised by the Member when carrying out official duties on his/her behalf, the GET believes that a clear and effective system of accountability for staff actions is also of key importance to the actual and perceived integrity of Parliament.”

12. The Commons Committee on Standards has responded by noting that there **“are already accountability systems in place for Members' staff”, and** that the first paragraph of the proposed revised Guide to the Rules for MPs contains a footnote to make it clear that: **“Members are personally responsible for their adherence to the Code even when breaches may have been caused by the actions of a member of staff.”** The Committee also says it will continue to hold MPs responsible for the actions of their staff, when it is appropriate to do so.

13. The National Assembly for Wales requires **Assembly Members'** support staff (AMSS) to sign a Code of Conduct which forms part of

their conditions of employment by the Member, and is based on the Nolan principles of standards in public life. The Code covers key areas, such as propriety, confidentiality, outside occupations and working with others. Breaches of the Code may result in disciplinary action up to and including dismissal. The Assembly is the first legislature in the UK to develop a Code of Conduct for AMSS.

Action for the Committee:

The Committee is invited to consider a) whether the Code of Conduct for Assembly Members' **Support Staff** meets the GRECO recommendation about **Members' accountability** for conduct of their personal staff when those individuals are carrying out official duties on behalf of the Member, **and b) whether the Assembly's amended Code of Conduct should give** reference to the accountability systems in place in Wales.*

* Any changes to the Code of Conduct for Assembly Members (including **revised wording of the 'Nolan Principles' in accordance with the** recommendations of the Committee on Standards in Public Life) should also be included in the AMSS Code of Conduct provided to support staff **as part of their contract of employment via Members' Business Support.**

Thresholds for reporting financial holdings

GRECO Recommendation:

ii. that consideration be given to lowering the thresholds for reporting financial holdings (such as stocks and shares). The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation (paragraph 41);

14. In making this recommendation about the registration of interests, GRECO notes that certain categories of financial interests are still subject to threshold values before triggering registration – “For example, there are no limitations on the number or value of company shares, bonds and notes which can be held by Members of Parliament as long as they are reported when their value reaches a certain threshold.”

15. The thresholds for shareholdings are set out in Table 3 of the report, as follows:

	House of Commons	House of Lords	National Assembly for Wales	Northern Ireland Assembly	Scottish Parliament
Shareholdings	Greater than the 15 % of the issued share capital of the company or 15% or less of the issued capital, but greater than the current parliamentary salary (£66,000)	Amounting to a controlling interest or not amounting to a controlling interest but exceeding £50,000 in value	With a market value less than 1 % of the issued share capital where the value of those shareholdings exceed 50% of the basic gross annual salary(£26,926)	The nominal value of the shares is greater than 1 % of the total nominal value of the issued share capital or the market value or the shares exceeds 50 % the current salary of an assembly member (£21,550)	The nominal value of the shares is greater than 1 % of the total nominal value of the issued share capital or the market value of the shares exceeds 50 % (£28,760) the current salary of an assembly member

16. In concluding that the thresholds are too high, the report gives the example of an MP who could have an investment of £60,000 in each of 10 mobile phone service providers and none would appear in the register. It accepts the arguments that in spite of the thresholds, the Member would be expected, firstly, to abide by the general obligation upon Members to keep the overall definition of the **Register's purpose** (openness) in mind when registering their interests; and that if certain interests do not fall clearly into one of the specified categories, Members are nevertheless expected to register such interests under **"miscellaneous"** (in the Scottish **Parliament there is a 'voluntary'** category of the register for MSPs to declare such interests). In addition, the MP would be required to declare an interest in the industry before engaging in parliamentary activities affecting mobile phone service providers according to the rules on declaration. But GRECO goes on to say:

"That however, would give the public little or no notice of the interest before the Member acted and the purpose of the Registers is to give public notice of those interests which might be thought **to influence a Member's conduct. The GET takes account of these** arguments, but is not fully convinced that these are sufficient, and **efficient, safeguards for openness and transparency of a Member's** financial interests, not only in theory, but also in practice. The GET notes that the high threshold for reporting these types of interests (as opposed to remunerated services) reflects a policy priority on registering interests where actual payments are involved (earned

income, lobbying for a fee, and expenses), rather than investments. However, the GET is of the view that a Member may be more influenced by the effect of a matter on his/her stocks than by **the receipt of a payment for a speech.” [bold added]**.

17. The same formula for calculating thresholds for registering shareholdings is used in all three devolved institutions, and the threshold figures are significantly lower than in Westminster. However, the principle concerning multiple shareholdings still applies in Wales. For the example given by GRECO, of shareholdings in mobile phone providers, an Assembly Member could hold shares to the value of just under £27,000 in any number of companies in a related area of interest, without a requirement to publish that information.

Comparison of rules and guidance on registration and declaration

18. The current guidance for Assembly Members on registering interests states, in relation to the **declaration** of interests (but not the **recording of interests in the first place**) that “The main policy behind the requirement for a declaration of interest is to ensure that Assembly Members and the public are aware of any financial or other interest which might reasonably be thought to be relevant to the **proceedings in which the Member wishes to speak.**” The guidance also clearly states the importance of Members declaring interests that they may expect to have in the future, as well as those they currently have.
19. With regard to registering shareholdings, the current Assembly guidance does not make reference to either: a) a general obligation to **keep the overall definition of the Register’s purpose (openness)** in mind when registering interests; b) if certain interests do not fall clearly into one of the specified categories, an expectation that Members will register such interests under a “**miscellaneous**” category; or c) a specific requirement to declare an interest arising from multiple shareholdings in a particular industry or service area before engaging in parliamentary activities affecting that industry or service area.
20. Assembly Members must be absolutely clear about what interests they are required to register, particularly given the potential criminal implications of a failure to register under Section 36(7) of the Government of Wales Act 2006. **The Assembly’s register could not therefore include a ‘miscellaneous’ or ‘voluntary’ category unless this**

was introduced under a separate new Standing Order, making a clear distinction between interests that are registered and/or declared on a voluntary basis, and the existing categories of interests that are subject to the provisions of Section 36(7).

21. In responding to GRECO, the Commons Committee on Standards points out that its threshold for registration of individual holdings follows the recommendation of the Parliamentary Commissioner and is **“broadly unchanged”, but that the Guide to the Rules for MPs notes** that shareholdings falling below the threshold should be registered in **the miscellaneous category “if the Member nevertheless considers that it meets the *test of relevance*; in other words, that it might reasonably be thought by others to influence his or her actions or words as a Member.” It also goes on to say that the requirement to declare interests goes beyond the registration requirements, to “non-registrable interests of a financial nature when these are affected by the proceedings in question”. The revised guide makes it even clearer that this requirement extends to:**

“Financial interest of a sort which do not require registration, including for example blind trusts, and interests which fall below the financial threshold.”

Registration of blind trusts and other ‘miscellaneous’ interests

22. This Committee may recall that the registering of blind trusts was raised in a paper considered on 18 October 2011 (SOC(4)-01-11 : Paper 3), and that the current guidance for Assembly Members does not cover a requirement to declare or register details of such trusts. In the Assembly, it is the responsibility of the Member to judge whether a formal declaration in Assembly proceedings is required. The requirements are set out in Standing Order 2.6 and 2.7. Participating in proceedings without **making a ‘required’** declaration is an offence under section 36(7)(a) of the Government of Wales Act.

In general terms, Members must make an oral declaration of any interests included in the Annex to Standing Order 2 but only **if “a decision in those proceedings might result in a direct financial advantage to the Member, the Member’s spouse or any dependent**

child of the Member, which is greater than that which might accrue to persons affected by the decision generally”.

If a formal declaration is required, Members may participate in the debate (following the declaration) but are precluded from voting in it.

The test of relevance

23. In the House of Commons the Guide to the Rules includes a **‘test of relevance’** for MPs to apply when deciding whether to make a declaration:

“It is the responsibility of the Member, having regard to the rules of the House, to judge whether a financial interest is sufficiently relevant to a particular debate, proceeding, meeting or other activity to require a declaration. The basic test of relevance should be the same for declaration as it is for registration of an interest; namely, that a financial interest should be declared if it might reasonably be thought by others to influence the speech, representation or communication in question. A declaration should be brief but should make specific reference to the nature of the Member’s interest.”

24. In relation to voting, the guidance on the Rules states:

“For the purpose of taking part in any division in the House or in Committee, it is sufficient for the relevant interest to be disclosed in the Register of Members’ Financial Interests. A Member should seek to ensure prior to a vote taking place that any relevant interest is registered, or, where it is not, should register the interest immediately after the vote.”

25. These same provisions for a test of relevance and in relation to voting apply in the Northern Ireland Assembly.
26. It would be **difficult to establish a similar ‘test of relevance’** in the National Assembly for Wales given the potential criminal implications, unless the test of relevance related only to ‘informal declarations’. There is no guidance for Assembly Members about the practice of making informal declarations, and this is also a matter that the Standards of Conduct Committee may wish to consider when reviewing the existing guidance.

'Reasonable' disclosure

27. In responding to the GRECO report, the Commons Committee on Standards also notes the issue of defining what might be considered **'reasonable' in being disclosed, and the balances between privacy and openness**. In France members of the National Assembly have to declare interests to the Parliamentary Commissioner but these are kept private, and the House of Commons has decided that its Register should be a public document but not a full wealth declaration. The Committee thinks that the current balance is broadly correct, and that **"leaving aside questions of privacy, too low a threshold could obscure significant matters in a blizzard of trivial details."** It also says that regulation should be proportionate, and significant decisions are taken by the house as a whole, Committees or Ministers, not by individual Members.

Actions for the Committee:

The Committee is invited to consider whether a) any change is necessary to the current threshold for registering shareholdings; and b) if the review of the Guidance on the Registration and Declaration of Interests should include considering amendments to take account of the points made above.

Gifts

GRECO Recommendation:

- iii. (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts. The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation (paragraph 46);

28. The focus of this part of the report seems to be on practice in Westminster, but the report states:

"The GET found very little by way of advice or counselling to Members as to their expected conduct when receiving gifts. In this connection, the GET notes that there is no general ban on Members accepting gifts similar to that applicable to UK Ministers, civil

servants or judges where it is acknowledged that the receipt of a gift might be seen to compromise personal judgement or integrity. **In the GET's view, it would be helpful** if a clearer line would be drawn and explained to Members and the general public on such issues as, for example what can be considered an acceptable gift (e.g. what constitutes ordinary hospitality), the relationship between a benefit and paid advocacy etc.”

29. The report notes that the threshold for registering accepted gifts is significantly lower in Wales and Northern Ireland, as it is 0.5% of basic gross annual salary, rather than the 1% of salary which applies in the Commons and Scotland (i.e. £270 for AMs as opposed to £575 for MSPs and £660 for MPs). But nevertheless it notes that the threshold for UK Ministers is much lower, at £140, and recommends that the devolved institutions consider taking action in accordance with the recommendation.
30. There are proposals from the Standards Committee of the House of Commons to lower the threshold for MPs, to gifts over £300 from a single source in a single year. The Committee considers that MPs should use their judgement to decide whether to accept gifts and hospitality and that **“given the range of individual circumstances, general guidance is impracticable”**, but Members should consider carefully the proportionality and appropriateness of any gifts or hospitality they receive, bearing in mind the requirements of the Code of Conduct and Guide to the Rules.
31. The guidance to Assembly Members on registering interests includes a section on registering gifts – category (iv). The Assembly does not take the same approach as the Commons, as every gift is considered separately against the threshold, even if received from the same source. The Standards of Conduct Committee decided in the past **not to adopt this ‘cumulative’ approach** to registering gifts. The guidance also asks Assembly Members to note that registration below the prescribed threshold could “lead to unfavourable comparisons being drawn between those who properly meet the requirements of the Act and standing orders and those who choose to exceed them.”
32. Category (v) of the register also requires any remuneration or material benefit from a public or private company to be registered – and there is no threshold for this. Any gifts or hospitality which are

not registrable under category (iv) above, but given by a company with contractual links with the Assembly, would need to be identified in this category.

33. The Welsh Ministerial Code discourages the acceptance of gifts by Welsh Ministers, requires that all gifts are notified to the Ministerial Services Division and that details of gifts over the value of £260 are published (consistent with the threshold for all Assembly Members). Any change to the conditions of the Welsh Ministerial Code is a matter for the First Minister.

Action for the Committee:

The Committee is invited to consider whether a) any change is necessary to the current threshold for individual Assembly Members registering accepted gifts, and b) whether any amendments are required to the guidance for Assembly Members on acceptance of gifts.

Lobbying standards and guidance

GRECO Recommendation:

v. that the Codes of Conduct and the guidance for both the Commons and the Lords be reviewed in order to ensure that the Members of both Houses (and their staff) have appropriate standards/guidance for dealing with lobbyists and others whose intent is to sway public policy on behalf of specific interests. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation (paragraph 53);

34. Paragraphs 49-53 of the GRECO report consider the ban on paid advocacy, lobbying and contact with third parties. **GRECO's recommendation is made "regardless of the outcome of the legislative proposal on a statutory register of lobbyists", and noting that, for the lobbying process to be properly beneficial, both sides (the lobbyist and the person being lobbied) need to act appropriately with regard to one another.**

Action for the Committee:

The Committee has recently reported on Lobbying and Cross-Party Groups and made recommendations in line with this recommendation from GRECO.

Sanctions

GRECO Recommendation:

v. (i) reviewing the available disciplinary sanctions for misconduct of Members of the House of Commons and Members of the House of Lords in order to ensure that they are effective, proportionate and dissuasive; and (ii) better describing in the relevant guidance to the Codes of Conduct the applicable sanctions for breaches of the rules (paragraph 73);

35. The **recommendation is made in the context of the GET's recognition of "positive steps" being taken in the Houses of Parliament "to hopefully help win back some of the trust that has been lost in the expenses case". The recommendation is not extended to the devolved institutions, and in any case the Assembly's Standards Committee and Commissioner for Wales have reviewed sanctions arrangements in Wales and recently made recommendations to the Business Committee as a result.**³

Next Steps

36. **The report states that "Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of the United Kingdom to submit a report on the measures taken to implement the above-mentioned recommendations by 30 April 2014. These measures will be assessed by GRECO through its specific compliance procedure."**

37. In monitoring compliance, GRECO states that "A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary." The UK Ministry of Justice is the lead department for liaison with GRECO. They have said that the GRECO team will undertake a review of progress but how this is done will be for GRECO to decide. It may be through dialogue with someone in the Department of Justice, or speaking to people more widely, or undertaking a more formal follow-up visit.

Action for the Committee

³ Standards of Conduct Committee Report 04-13 to the Assembly on Sanctions, May 2013.

38. The Committee is invited to consider the paper and whether it wishes to take any further action(s) **in relation to GRECO's** recommendations at this time.