

Comisiynydd Safonau Commissioner for Standards

SOC(4)-01-11 : Paper 2

“Way Ahead” paper – October 2011

To: Standards of Conduct Committee

From: Gerard Elias QC, Commissioner for Standards

Background

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

The remit

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



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

Recommendations

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

Stage one: the Complaints Procedure

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

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

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

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

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

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

Recommendation

11. The Committee is invited to:

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

The consultation process

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

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

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

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

Recommendation

15. The Committee is invited to:

- agree the proposals for consultation in stage one.

Timing (stage one)

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

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

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

Recommendation

18. The Committee is invited to:

- approve the proposed indicative stage one timetable.

Further steps

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

20. Although I estimate that the consultation processes on stage two are likely to take up at least the then remaining part of 2012, I believe that in the following year it should be possible to finalise proposals to complete

this process. I, therefore, respectfully invite the Committee to confirm its aim to complete the review of stage two and the Codification envisaged in stage three well within the lifetime of the Fourth Assembly.

Recommendation

21. The Committee is invited to:

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

Gerard Elias QC
Commissioner for Standards

5 October 2011

Summary of recommendations

The Committee is invited to:

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