

National Assembly for Wales
Standards of Conduct Committee

**Report 01-16 to the Assembly under
Standing Order 22.9**

January 2016

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Standards of Conduct Committee

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Standards of Conduct Committee

The Standards Committee was established on 22 June 2011. The Committee's role is to carry out the functions set out in Standing Order 22. These include: the investigation of complaints referred to it by the Standards Commissioner; consideration of any matters of principle relating to the conduct of Members; establishing procedures for the investigation of complaints, and arrangements for the Register of Members' interests and other relevant public records determined by Standing Orders.

Committee membership:



Mick Antoniw (Chair)
Welsh Labour
Pontypridd



Llyr Gruffydd
Plaid Cymru
North Wales



Mark Isherwood
Welsh Conservatives
North Wales



Eluned Parrott
Welsh Liberal Democrats
South Wales Central

John Griffiths was present as an alternative member for Mick Antoniw on 9 December under Standing Order 22.5.



John Griffiths
Welsh Labour
Newport East

Mick Antoniw resigned as Chair of the Standard Committee on 11 December 2015, in accordance with Standing Order 22.4 no substitution was made for the meeting of 12 January 2016.

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Finding and Recommendation

Finding of the Committee: Having reviewed the report from the Commissioner for Standards the Committee finds that a breach of the Code of Conduct has taken place in respect of both Mark Drakeford AM and Jenny Rathbone AM, in relation to their failure to register an interest in accordance with Standing Order 2. (Page 7)

Recommendation of the Committee: The unanimous decision of the Committee is to recommend to the Assembly, in accordance with 7.11(iii) of the Procedure for Dealing with Complaints against Assembly Members, that a breach has been found but no further action should be taken. (Page 8)

1. Introduction

1. The terms of reference of the Standards of Conduct Committee (“the Committee”) are set out in Standing Order 22.¹ In accordance with functions set out in Standing Order 22.2 the Committee must:

“investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards.”²

2. This report is made to the Assembly under the Procedure for Dealing with Complaints against Assembly Members³ (“the Procedure”) and Standing Order 22.9 in relation to a complaint made against Mark Drakeford and Jenny Rathbone AM.

3. The report from the Commissioner for Standards (“the Commissioner”) on his investigation of the complaint is attached at Annex A. It sets out the details of the complaint and the findings of the Commissioner’s formal investigation.

4. This report sets out the details of the complaint and the way in which the Committee arrived at its recommendation.

¹ National Assembly for Wales, [Standing Orders of the National Assembly for Wales](#), Standing Order 22

² National Assembly for Wales, [Standing Orders of the National Assembly for Wales](#), Standing Order 22(i)

³ The National Assembly for Wales’ Procedure for Dealing with Complaints Against Assembly Members

2. Consideration of the Complaint

5. The complaint alleged that the Members concerned failed to comply with paragraph 5 of the Code of Conduct for Assembly Members, which states:

“Members of the Assembly must register in the Register of Members’ Interests all relevant interests defined in the Annex to Standing Order 2, in order to make clear what are the interests that might reasonably be thought to influence their actions.”⁴

6. In this instance the complaint related to the appointment of the Members concerned in previous roles as Chair of the All-Wales European Programme Monitoring Committee (“the PMC”) and that neither Member had registered this with the Registrar.

7. The Committee met on Tuesday 8 December 2015 to consider the report of the Commissioner. The Committee was satisfied that the Commissioner’s report contained sufficient information upon which to base its deliberations, and that it was not necessary to seek further written or oral evidence.

8. The Committee met again on Tuesday 12 January 2016 to agree its report in respect of this complaint.

Committee’s Consideration of its Decision

9. The Committee considered whether the Members concerned were in breach of Standing Order 22.2(i), additionally, the Committee recognises that this specific breach could constitute an offence under section 36(7) of the Government of Wales Act 2006.⁵

10. In considering whether a breach took place the Committee reviewed the information contained within the report from the Commissioner, and noted the Commissioner’s opinion that a “clear breach” took place.

Finding of the Committee - Having reviewed the report from the Commissioner for Standards the Committee finds that a breach of the Code of Conduct has taken place in respect of both Mark

⁴ National Assembly for Wales, [Code of Conduct for Assembly Members](#)

⁵ [Government of Wales Act 2006](#)

Drakeford AM and Jenny Rathbone AM, in relation to their failure to register an interest in accordance with Standing Order 2.

Committee's Recommendation - Sanctions

11. In considering its recommendation the Committee noted that information regarding these appointments was in the public domain.

12. The Committee also noted that both Members acknowledged that their appointment as Chair of the PMC should have been registered.

13. The Committee considers that a breach by any Assembly Member is a serious matter. The reputation of the National Assembly for Wales as an institution, and the public's trust and confidence in it, rely upon Members demonstrating integrity and leadership by their actions.

14. However, whilst recognising the seriousness of the breach that has taken place the Committee accepts that neither Member made a deliberate attempt to conceal information and the information was publicly available.

Recommendation of the Committee - The unanimous decision of the Committee is to recommend to the Assembly, in accordance with 7.11(iii) of the Procedure for Dealing with Complaints against Assembly Members, that a breach has been found but no further action should be taken.

15. A copy of this report has been provided to the Members concerned, who were also notified of their right to appeal under section 8 of the procedure.

16. The Committee Chair has tabled a motion (in accordance with Standing Order 22.11 and paragraph 9.1 of the procedure) calling on the Assembly to endorse the Committee's recommendation.

STRICTLY CONFIDENTIAL

From: Gerard Elias QC, Commissioner for Standards
To: Standards of Conduct Committee

FORMAL INVESTIGATION REPORT

Mark Drakeford AM & Jenny Rathbone AM

The Complaint

1. By letter from the Clerk to the National Assembly dated 3 November 2015, I received a request for advice in relation to a case of possible non-compliance with the Assembly's rules on Members' interests.
2. Initially, information had come to light as a result of a written answer provided by the Welsh Government on 23 October 2015 in response to a written question from Andrew RT Davies AM of 15 October that Jenny Rathbone AM had been Chair of the All-Wales European Programme Monitoring Committee (the PMC) and that such post had been remunerated. Further investigation established that Mark Drakeford AM had similarly held such post prior to Jenny Rathbone AM.
3. This information being in the public domain, I decided to treat this matter as a complaint upon the basis that Members of the National Assembly had failed to comply with the Code of Conduct for Assembly Members and, specifically, paragraph 5 which provides (and did so at all relevant times for the purposes of this complaint) that:

Members of the Assembly must register in the Register of Members' Interests all relevant interests defined in the Annex to Standing Order 2, in order to make clear what are the interests that might reasonably be thought to influence their actions.
4. On preliminary investigation, it appeared that Mark Drakeford AM and Jenny Rathbone AM had, during the currency of the Fourth

Assembly, been appointed chair of the PMC and that neither Member had registered such interest with the Registrar. Therefore, I was satisfied that the complaint was admissible in that the requirements of paragraph 3.1 (i)-(vi) of the applicable Procedure for Dealing with Complaints against Assembly Members (“the Procedure”) had been fulfilled. Accordingly, I moved to the Formal Investigation Stage.

Commissioner’s Formal Investigation

5. I requested and was supplied with the following:

- The names of the Assembly Members who had been appointed to Chair the PMC during the Fourth Assembly and the dates of their terms of office;
- The remuneration provided to each;
- The details of any registration of such interest by any chair so appointed.
- The observations and representations of Mark Drakeford AM and Jenny Rathbone AM.

Facts Found by Commissioner

6. The relevant facts which I find to be established are as follows:

- (i) The Chair of the PMC is required by Standing Order 2 of the Standing Orders of the National Assembly to register such detail,
- under Annex 5.(ii) “ *...office...for which the Member...is remunerated*” and/or
 - under Annex 5(x) “ *paid or unpaid...chairmanship by the Member...of any body funded wholly or in part by the Assembly Commission or the Welsh Government.*”
- (ii) During the Fourth Assembly to date, four Members have been appointed Chair of the PMC, namely:

Mark Drakeford AM	May 2011 to March 2013
Ken Skates AM	April 2013 to June 2013
Jenny Rathbone AM	July 2013 to October 2015
Mick Antoniw AM	October 2015 –

- (iii) Two holders of the post of Chair of PMC did not register the details of such appointment with the Registrar as required, namely Mark Drakeford AM and Jenny Rathbone AM.
- (iv) The Annex to the letters of appointment of Mark Drakeford AM and Jenny Rathbone AM contained the following paragraphs:

“Remuneration

In line with existing policy and procedures you will be entitled to a daily rate of £198 (exclusive of travel and subsistence costs) for between 10 and 12 days per year. This will cover your attendance at All-Wales PMC meetings, preparatory work and other agreed days as required.

As an Assembly Member you will already be aware that you will need to liaise with the appropriate officials in the National Assembly for Wales to register these additional payments”.

- (v) Payments, including daily fees, employer national insurance payments, travel and subsistence, have been made to date to both Members as follows:

Mark Drakeford AM	£1289.42 in total
Jenny Rathbone AM	£5233.76 in total

- (vi) The post of Chair of the PMC is a public position; the committee generally meets in public and the details of remuneration would be made available to anyone seeking the information.

Observations and Representations of the Members

7. Mark Drakeford AM acknowledged in writing that as Chair of the PMC the details of his appointment should have been registered. He added:

“Of course, my occupation of that post was an entirely public matter, and ‘declared’, for example, on my own website and in the biographical notes which I supplied at that time.

He said that the failure to register was an *“inadvertent oversight on my part.”*

8. **Jenny Rathbone AM** acknowledged in writing that as Chair of the PMC the details of her appointment should have been registered.

She wrote to me saying "This is a genuine over-sight" and added "I have always declared that position when relevant in any Committee or Plenary meeting where the potential for conflict of interest might have arisen"

9. I accept entirely, in both cases, that the failure to register was due to oversight and not because of any deliberate intent to suppress information. Further, I am satisfied that both Members, as Chair of PMC, made it widely known that they held that position and that it was a fact that was in the public domain.

Additional Consideration

10. As the Committee will be aware, it may constitute an offence under s36(7) of the Government of Wales Act 2006 for a Member to participate in Assembly business without having complied with the requirements of Standing Order 2. Pursuant to the report of the Standards Committee of the National Assembly on the Registration and Declaration of Members' Interests in July 2014, however, consideration as to whether it is appropriate to commence a criminal investigation for such breach has been, with the consent of the Director of Public Prosecutions (the DPP), left in the first instance in the hands of the Commissioner for Standards.

11. It is agreed with the DPP, and the Chief Crown Prosecutor for Wales, that in the exercise of this discretion, the Commissioner should have at the forefront of his considerations whether, in all the circumstances of the particular case, it is in the public interest to pursue a prosecution. This is not the only consideration, but it is an important one.

12. In this case, because I am entirely satisfied that the failure to register came about through oversight and not deliberation and that the important details which should have been registered were in large measure in the public domain, I have concluded that it is not in the public interest for me to refer this matter to the DPP.

Conclusions

13. I am satisfied that there has been a clear breach of Paragraph 3 (a) of the Code of Conduct by both Members concerned in that

they failed to register an interest in accordance with Annex 5 of Standing Order 2.

and both thereby fall to be dealt with by the Committee on Standards of Conduct under Standing Order 22.2.

Requirements under the Procedure for Dealing with Complaints

14. I confirm that:

- The Members concerned and the Clerk to the Assembly were provided with a draft of my final report and wished to raise no factual inaccuracy contained therein.
- Those sent copies of the draft report have been asked to respect the confidentiality of it until the Standards Committee has concluded its consideration of the complaints.

Miscellaneous

15. I confirm that both Members have consented to this matter being presented in one report to the Committee on Standards.

16. Further, it is appropriate to say that both Members responded immediately to my inquiry and both acknowledged their oversight, without reservation.



Gerard Elias QC
30.11.2015