

SOC(4)-02-11 : Paper 1

Review of Standards Procedures – February 2012

To: Standards of Conduct Committee

From: Gerard Elias QC, Commissioner for Standards

Background

1. At the Committee's previous meeting on 18 October 2011, it was agreed that it was appropriate to:
 - **review and where appropriate amend the Procedure 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 agreed that the review would be conducted in three phases, beginning with a review of the Complaints Procedure. Details are set out in paper SOC(4)-01-11:paper 2 considered on 18 October.
3. I subsequently consulted with all party leaders and individual Assembly Members, the Presiding Officer and the Assembly Clerk, to seek their views on the current Complaints Procedure. I was pleased to meet with the 12 Members who sought one-to-one discussion sessions with me. I also undertook informal consultation with my counterparts in other legislatures, notably the UK Parliament, Scottish Parliament, Northern Ireland and Ireland, to identify best practice procedures and, where appropriate, lessons learnt. I am also grateful to the Assembly's legal advisers and other officials involved in this process of review.

Summary of proposals

4. Proposed amendments to the Complaints Procedure are set out at **Annex A** of this paper. The overall aim is to streamline and speed up the process, without compromising the need for openness and natural

justice to prevail. The amendments are not intended to reduce the protection of Members from vexatious complaints, but to make the procedure less complex and easier to understand, both for Members and the general public. It is obviously essential that public confidence in the system is not eroded, and that real complaints can be handled in a timely fashion.

5. The current Complaints Procedure was approved in June 2008, therefore many amendments are routine updates, for example to take account of the provisions of the 2009 Assembly Measure by which I was appointed to the statutory role of Commissioner for Standards. Other proposals are more substantive, or go to more significant matters of principle. These include:

Stages of investigation – as noted in my previous paper to Committee, much consideration has been given to the various stages of considering a “complaint”, and how those stages are delineated in the Procedure. No changes to **section 1.5** are suggested, although it is recognised that there is an initial filter stage (before the Preliminary Investigation Stage) where it is my role to use my discretion to determine whether the “complaint” could ever be admissible under 3.1.vi of the Procedure and to handle it appropriately. The extent of further investigation that is required at the *formal* investigation stage, once a complaint has been deemed admissible at the *preliminary* stage, will depend upon the case, but it is important that the Procedure indicates that there are both preliminary and formal investigation stages, as it is the outcome of the formal investigation that must then be reported to the Committee for consideration. **Section 10.1** of the Procedure provides for a resolution of the matter during the preliminary investigation stage, and it is proposed that this is amended to apply at any stage. In relation to this section the question is also raised as to who a Member should apologise to – the Commissioner, the Committee, the complainant directly or otherwise – and what is deemed a ‘satisfactory’ apology. Again it is suggested that this is a matter of exercising discretion depending on the nature of the issue.

Conduct of Investigations – the addition of **Section 1.8** has been suggested to deal with the matter raised in the Committee’s last meeting concerning complaints that are not concluded before an election period.

Confidentiality – The requirement on Members to cooperate with the Complaints Procedure and the need to maintain confidentiality throughout the process have been considered. It is suggested that

sections 2.2 and 2.3 are amended, as whilst there may be cases where it will be entirely appropriate for the Commissioner to disclose details of a complaint to a Member before the formal investigation stage has been reached, I do not consider it should be an obligation under the Procedure to do so in all cases. Likewise it is suggested that **section 6.3**, requiring the Commissioner to notify a Member of a decision to refer a matter to the police, is deleted, as this could potentially lead to a perversion of the course of justice. It is suggested that to enforce the requirement to 'respect confidentiality' at **section 4.6** of the Procedure, the Code of Conduct and associated Code of Practice on Access to Information would need to be strengthened, and that this could be considered at phase 2 of the review.

Criminal Offences – I have considered 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. Amended wording to **section 6.1** is suggested. The procedure can also be significantly simplified with the deletion of **sections 6.4 to 6.7**, and the requirement to report the outcome of criminal investigations to the Committee (currently in section 6.4) to be included in **section 4.2.iii** instead.

Consideration by the Standards Committee – Section 7 – **Section 7.10** raises a technical procedural issue concerning the use of the casting vote – after consideration Members may be minded to retain the wording agreed in 2008. Amendment to **section 7.11** is suggested for clarity as to the Committee's decision and subsequent recommendations arising from that decision.

Appeal Procedure – **Section 7.12 and Section 8** concerns the appeal procedure. It is suggested that the requirement at **section 8.2**, for the Presiding Officer to establish an appeal panel of Members is an unnecessarily complex arrangement to consider an appeal in accordance with section 8.4. Significant amendments are suggested to simplify and clarify this part of the procedure for all concerned.

Next steps

6. In accordance with Standing Order 22.2(iv), once approved by the Committee, any revised Complaints Procedure will be laid before the Assembly. The Committee will no doubt wish to consider how it internally communicates changes to the Complaints Procedure to all Members. I am currently in the process of developing an outline communications plan

for my office, and there will be continued liaison with the Committee to coordinate communications activity that serves both our purposes in promoting standards of conduct for Members.

7. Phase two of the review of procedures 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. As for phase one, I would expect this work to progress in close cooperation with the Committee Chair and Members.

Recommended Action for the Committee

8. The Committee is invited to:
 - consider the proposed amendments set out in Annex A of this paper with a view to agreeing changes to the Complaints Procedure;
 - identify any areas where further work or consideration of issues arising from the Complaints Procedure may be required;
 - agree a timetable for further work, i.e. to agree a final version of the Complaints Procedure, and proposals for phase 2 of the review, at a future meeting proposed for **Tuesday 24 April**.

Gerard Elias QC
Commissioner for Standards

21 February 2012