

National Assembly for Wales
Standards of Conduct Committee

Fourth Assembly
Legacy Report

March 2016

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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The Role of the Standards of Conduct Committee

1. The Standards of Conduct Committee (“the Committee”) was established on 22 June 2011. The Committee’s role is to carry out the functions set out in Standing Order 22¹. 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.

Membership

2. At the end of the Fourth Assembly the Committee membership stood as:
 - John Griffiths AM (Chair)
 - Mark Isherwood AM
 - Llyr Gruffydd AM
 - Eluned Parrott AM
3. Previous members of the Committee were:
 - Mick Antoniw AM
 - Kirsty Williams AM
4. We would like to thank these members for their contribution to the work of the Standards Committee during the Fourth Assembly.
5. During the Fourth Assembly, the Committee put forward an amendment to Standing Order 22 to allow a nominated alternative member to participate in complaint proceedings if a member is subject to or directly connected to a complaint. The alternate member is nominated in accordance with Standing Order 22.4. This was approved by the Assembly on 17 June 2015², and came into effect in June 2015.

22.4A The Assembly must elect an alternate member from the same political group for each member of the responsible committee, for the purposes of Standing Order 22.5

22.5. Where a member of the responsible committee is subject to, or otherwise directly connected with, a complaint under Standing Order 22.2(i), he or she may take no part in any consideration of the complaint by the responsible committee. In such circumstances and in relation solely to the consideration of the complaint concerned, that member may be replaced by his or her alternate member elected in accordance with Standing Order 22.4A. The alternate member may participate in the meetings of the responsible committee to consider the complaint as if he or she were a member of it.³

¹ National Assembly for Wales, **Standing Orders**, Standing Order 22

² National Assembly for Wales, **Plenary Record of Proceedings 17 June 2015**, item 4

³ National Assembly for Wales, **Standing orders**, Standing Order 22.2

Recommendation 1. As a small committee, the provision of alternative Members has provided protection against potential quorum issues when considering a complaint, and we recommend this is continued.

Standards Commissioner

6. Gerard Elias QC, has been the Commissioner for Standards⁴ (“the Commissioner”) throughout the Fourth Assembly. During the course of this Assembly he has built on and developed the role of independent commissioner as set out in the National Assembly for Wales Commissioner for Standards Measure 2009⁵ (“the Standards Measure”). The Commissioner has provided clear and impartial advice on a wide range of standards issues to both the Committee and Assembly Members more generally. He has played a key role in facilitating and promoting discussions about matters pertaining to standards to a range of audiences through discussions with party groups, establishing and hosting a series of lectures on public life, and participation in the cross parliamentary standards network.
7. Additionally, the Commissioner has brought forward four annual reports, which have provided a useful summary of his work and a necessary reassurance that complaints coming forward are being dealt with, in the most appropriate manner. As part of his annual report 2011-2012, the Commissioner included the updated procedure for dealing with Complaints against Assembly Members, which came into effect in June 2012. A copy of this procedure is available on the Committee webpages⁶.
8. The Committee would formally like to put on record our very sincere thanks for all the hard work carried out by the Commissioner during his period in office.
9. The term of the current Commissioner ends in November 2016. The recruitment process of a new Commissioner has taken place. At our Committee meeting on 8 March 2016 the Committee held a confirmation hearing⁷ with the proposed new Commissioner, Sir Roderick Evans, QC who will be appointed under section 1(2) of the Standards Measure.

⁴ Gerard Elias QC, Commissioner for Standards

⁵ National Assembly for Wales Commissioner for Standards Measure 2009

⁶ National Assembly For Wales Procedure for dealing with complaints against Assembly Members (approved July 2013)

⁷ Standards of Conduct Committee, Record of Proceedings, 8 March 2016

Reports to the Assembly under SO22.9

10. Standing Order 22.2 states that

22.2 The responsible committee must:

(i) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards that a Member has not complied with:

a) Standing Order 2;

b) any Assembly resolution relating to the financial or other interests of Members;

c) Standing Order 5;

d) any Assembly resolution relating to Members' standards of conduct;

e) any code or protocol made under Standing Order 1.10 and in accordance with section 36(6) of the Act;

f) Standing Order 3; or

g) Standing Order 4;

11. Standing Order 22.9 then requires that:

22.9 If the responsible committee has investigated a complaint referred to it by the Commissioner for Standards, it must report to the Assembly as soon as possible after completion of the investigation.

12. The Committee has published five reports under Standing Order 22.9, during the Fourth Assembly. Copies of these reports can be found on the Committee webpages.⁸

13. The Committee noted in one of its reports that the sanctions available to the Assembly particularly pertaining to matters relating to personal conduct may not be sufficient. This led to the Committee's review of sanctions, as part of the wider review of standards procedures. Further information on this review can be found in the following chapter of this report.

Recommendation 2. The Committee recommends that the next committee with responsibility for Standards of Conduct maintains the procedure of informally reviewing the sanctions and powers of the Committee after the consideration of any complaint to ensure they remain relevant and fit for purpose.

⁸ Standards of Conduct Committee Reports

Reports of the Standards Committee

Review of the Standards procedures

14. The Committee agreed to a review of the Assembly's standards procedures in 2011 on the advice of the Commissioner. The intention was to 'update and streamline' procedures and to produce one codified volume.
15. As the Commissioner has a remit to advise the Assembly on standards issues, the Committee agreed that the Commissioner should lead the review, consulting all Assembly Members at relevant points. It was agreed that the review was undertaken in three phases:
 - Phase 1 – Review of the Complaints Procedure.
 - Phase 2 – Review of the Code of Conduct and Associated Guidance.
 - Phase 3 – 'Codify' all procedures into one accessible volume.
16. The Committee considered the format for Codes of Conduct in other legislatures in March 2012 and agreed a preferred format in four sections, to incorporate the Nolan principles, and to clearly set out:
 - 1) the range of possible breaches;
 - 2) the applicable legislation/Standing Orders;
 - 3) any guidance issued; and
 - 4) the range of sanctions available for breaches.
17. A copy of the codified volume was agreed by the Committee at its meeting on the 23 February 2016⁹.
18. The Committee also agreed that there should be some discretion for changes to this codified document by the Clerk to the Assembly. The chair of the responsible committee should be informed of changes, and an annual update of any changes should be provided to all members of the responsible Committee.

Recommendation 3. The Committee recommends that the next committee with responsibility for Standards of Conduct agrees the proposed management for the compendium early in the new Assembly, and then reviews whether the codified document is useful and considers any changes, at the midpoint of the next Assembly.

⁹ Standards of Conduct Committee, Agenda 23 February 2016

The Complaints Procedure

19. The Commissioner undertook an initial piece of work to consider the National Assembly for Wales' Procedure for dealing with Complaints against Assembly Members. In undertaking this review the Commissioner's aim was:

to update, streamline and expedite procedures, without compromising the need for openness and natural justice to prevail. In addition my intention was to make the procedure less complex and easier to understand, both for Members and the general public.¹⁰

20. The Commissioner undertook a wide consultation to gather the views of relevant parties, and identify best practice in this area. The updated complaints procedure came into effect from the end of June 2012.¹¹

Sanctions

21. As part of the review into standards procedures, the Committee considered the range of sanctions it had at its disposal. This review was considered important following a review of procedures stemming from a complaint referred by the Commissioner, which raised questions about whether the range of sanctions available was appropriately wide, particularly in relation to breaches of personal conduct, rather than breaches of financial or other interests.
22. The Committee considered the practices in other legislatures, the views of the political parties in the Assembly and officials within the Assembly Commission. The Committee proposed extending the range of sanctions, noting that it did so with the hope and expectation they would rarely, if ever, need to be exercised.
23. The Committee recommended that the following changes were introduced:
- A flexible approach to extending the provisions under Standing Order 2.10 (relating to exclusion from the Assembly) to breaches of other aspects of the Code of Conduct without specifying any minimum or maximum period of exclusion in Standing Orders.
 - That Standing Orders continued to only refer to removal of the Members salary, and not any other allowance, and that it was explicitly stated in the complaints procedure that Members support staff should not be penalised by any sanction.
 - That provision was included in Standing Orders stating that the Committee has discretion to recommend withdrawal of rights and privileges other than the removal of salary. Such rights and privileges could include withdrawal of a right of access as a member to the assembly estate, exclusion from other activities a member might have the right to attend and the removal of representation all, ceremonial and related privileges which a member might normally enjoy as a Member.
24. To date, the Committee has not needed to use the extended sanctions, but believes that the changes made were necessary and should be continued. As with all changes, the Committee believe this should be reviewed at a later point.

¹⁰ Standard Commissioner's Annual Report 2011-2012 (page 6)

¹¹ National Assembly For Wales Procedure for dealing with complaints against Assembly Members (approved July 2013)

Lobbying and cross party groups

25. The Presiding Officer wrote to the Committee in May 2012 regarding lobbying, asking the Committee to:

undertake a review to consider the (lobbying) regime that we have in place as it relates to Members and, if necessary, make recommendations to me about any additional arrangements that might be needed to strengthen them.¹²

26. As part of this review, the adequacy of arrangements for cross party groups was also considered. The terms of reference of the inquiry were to:

– assess whether the Assembly’s current arrangements relating to lobbying are sufficiently robust and fit-for-purpose for the Fourth Assembly;

– make recommendations to the Presiding Officer, the Assembly Commission and/or the Business Committee as to any further measures, either legislative or non-legislative, that should be considered to regulate lobbying activity in relation to individual Assembly Members;

– advise the Presiding Officer of the Committee’s findings in relation to the current arrangements regulating the operation of Cross Party Groups.

27. In consideration of this inquiry the Commissioner carried out a wide ranging consultation and concluded that the arrangements in place regulating lobbying Members of the National Assembly for Wales are essentially sufficiently robust and fit for purpose.

28. The Committee agreed with the Commissioner’s findings, and made recommendations to reinforce the arrangements for the future. The Committee focused its approach on the activity of lobbying, rather than lobbyists, as this was clearer to define rather than defining the interaction of 60 members with a wide range of representatives from Welsh civic society.

29. Through its recommendations the Committee sought to introduce a 'made in Wales' approach to address the activity of lobbying. The Committee believed that transparency regarding the meetings of professional lobbyists was needed without any unnecessary burden on the public purse. The Committee recommended that the Assembly adopted guidance on lobbying and access to Members¹³, which the Assembly did by resolution on 26 June 2013¹⁴. The Committee also recommended that the Presiding Officer reviews this guidance every three years.

30. Developments have taken place in the UK since the publication of the Committee's report, the Transparency of Lobbying non-party Campaigning and Trade Union Administration Act 2014¹⁵, has been passed in Westminster. The Scottish Government introduced the Lobbying (Scotland) Bill¹⁶ in October 2015, with the aim of increasing public transparency. This was passed on 10 March 2016.

¹² Report 03-13 to the Assembly on Lobbying and Cross-Party Groups (May 2013)

¹³ National Assembly For Wales’ Guidance on Lobbying and Access to Assembly Members (May 2013)

¹⁴ National Assembly for Wales Plenary Record of Proceedings 26 June 2013

¹⁵ Transparency of Lobbying non-party Campaigning and Trade Union Administration Act 2014

¹⁶ Lobbying (Scotland) Bill

Recommendation 4. The Committee recommends that the next Committee with responsibility for Standards of Conduct considers how UK Legislation and Scottish Legislation, and the approach adopted in Northern Ireland, in relation to lobbying are functioning, and whether they are achieving the aim of greater transparency.

31. The Committee report also proposed that stronger rules were introduced for the operation of cross party groups in the Assembly. It recommended that while these groups should remain out of the purview of Standing Orders, there needed to be more accountability.
32. As a result of these recommendations, Table Office produces an annual report on the number of groups, and whether they are adhering to the rules set out in the report. These reports are submitted to the Presiding Officer and to the Committee.
33. Following the final annual report on cross party groups of the Fourth Assembly, the Presiding Officer wrote to the Committee with some proposed amendments to the rules for operation of these groups. The Committee considered and agreed with these, and also proposed that the following amendments to the rules:
 - The Annual General Meeting (AGM) for cross party groups should be within a 13 month period and not a 12 month period as currently stated. This would ensure that the administrative burden would remain reasonable, and not too onerous as it would ensure that there was at least a year between meetings.
 - Cross party groups should be able to request an extension of up to one month to the requirements for an annual report/AGM by writing to the Table Office.
 - Cross party groups should be able to be created in the last 12 months of an Assembly, prior to dissolution but any group established within this period would still be required to hold an AGM.
34. The Committee believes that the annual monitoring is important and should continue into the next assembly.

Recommendation 5. The Committee recommends that the rules for Cross Party groups should be reviewed by the next Committee with responsibility for Standards of Conduct, and that the Committee should consider the Presiding Officer's recommendations to clarify the rules in relation to cross party groups.

Registration and Declaration of interests

35. In October 2014, the Committee published a report on the registration and declaration of Members interest. The Committee considered this to be an important area of consideration, as there had not been any major updates to the rules since 2006.
36. The Committee made a series of recommendations to update the requirements for registering and declaring relevant interests, which were agreed by the Business Committee, and came into effect on 1 September 2015.
37. Of particular note, were the changes made in relation to the scope for oral declarations. The Commissioner argued the need to declare was too limited and may inadvertently deprive the public of knowledge of interests which should be disclosed. The Commissioner suggested changing the test of relevance in Standing Order 2.7 from 'greater than that which may accrue to **persons affected by the decision generally**' to 'greater than that which may accrue to

the electorate generally'. As this then would capture instances where a Member is part of a minority group who would benefit from a certain piece of legislation.

38. If a Member has a registrable interest which is required to be declared, the Member would also not be allowed to vote under Standing Order 2.9. Participation in proceedings without complying with these requirements would remain a criminal offence as set out in Section 36(7) Government of Wales Act 2006.¹⁷
39. In addition to changes to the rules on declaring 'registrable interests', the changes include creating a new, non-criminal Standing Order requirement for Members to make an oral declaration of 'any relevant interest' which the Member or a family member has or is expecting to have in any matter arising in those proceedings. 'Any relevant interest' in this instance is if an interest might reasonably be thought by others to influence the Member's contribution to a debate or discussion. These new requirements are set out in Standing Orders 13.8A, 13.8B, 17.24A and 17.24B and should be made at an appropriate time in Committee or Plenary proceedings.
40. The introduction of the requirement to declare relevant interests has increased the instances where oral declarations are required by Members during Assembly proceedings. Although cases of non-compliance under this new requirement do not carry criminal sanctions, and do not result in any restrictions on voting, the Commissioner may investigate any complaint made regarding a Member's non-compliance with the new requirements. It may therefore be prudent for a future Standards Committee to review this requirement, to consider whether it is achieving the aim of greater transparency or if it is creating an unnecessary burden.
41. Alongside, the agreed changes to the registration and declaration of interests the report made two further recommendations which are still in progress.

Recommendation 11. The Committee recommends that the Commissioner for Standards discuss the proposal for utilising the mechanism under the Electoral Administration Act 2006 to remove the "double registration" requirement with the relevant bodies and report back to the Standards of Conduct Committee in due course.

Recommendation 15. The Committee recommends that the Commissioner for Standards discuss the proposal for introducing an independent person to consider breaches of Standing Order 2 in the first instance with the relevant bodies and report back to the Standards of Conduct Committee in due course.

42. Assembly Officials met with the Electoral Commission in December 2015, to discuss the options for removing "double registration". In order to achieve this, a future committee will need to undertake a piece of work mapping out the Assembly's rules on registering Members' interests with the provisions set out in Political Parties, Elections and Referendums Act 2000.

Recommendation 6. The Committee recommends that the next Committee with responsibility for Standards of Conduct take forward the work to remove the "double registration" requirement.

¹⁷ Government of Wales Act 2006

- 43.** The aim of Recommendation 15 was to introduce an element of proportionality to the system when dealing with ‘trivial’ cases of non-compliance (e.g. when a Member had registered details later than the 4 week deadline). The Commissioner has taken this forward with the Department for Public Prosecutions and Assembly officials and produced a protocol to cover this. The initial intention from the Committee was that the ‘independent person’ in this instance would be the Commissioner, although this is something which a future Committee may wish to discuss with the future Commissioner, in terms of practicalities.

Recommendation 7. The Committee recommends that the protocol for notifying breaches under Standing Order 2 should come into force in May 2016. The next Committee with responsibility for Standards of Conduct may wish to review the effectiveness of this protocol in the next Assembly.

Looking to the Fifth Assembly

44. In this legacy report a number of recommendations have been made which the next Committee with responsibility for Standards of Conduct may wish to take forward relating to its previous work. There are two further areas which the Committee would suggest that the next Committee should consider.

Social Media

45. The Committee considered a paper on the use of Social Media on 2 February 2016.
46. In considering this matter the Committee noted that 'Guidance on use of Social Media' is included in the Scottish Parliament's Code of Conduct for Members, and believed this would be helpful guidance for elected Members.
47. Additionally, the Committee considered *The Speaker's Commission of Digital Democracy*, which reported in 2015, which commissioned the Chartered Institute of Public Relations and recommended guidance for the use of Twitter by politicians.¹⁸ The Committee noted that this generated quite a lot of media interest.¹⁹
48. In considering the use of Social Media the Committee believed that the Assembly should have a social media guidance which sits separately from the ICT policy and reminds Members that social media is published information, the policy could also contain safety advice and provide clarity over the use of Assembly resources.
49. Additionally, Members believed there could be merit in having guidance for Members support staff who tweet on behalf of a Member.

Recommendation 8. The Committee believe that guidance in relation to social media could be a useful document and recommends that the next Committee with responsibility for Standards matters undertakes a piece of work to further consider the merits of guidance in this area.

Guidance for Members involved in planning matters.

50. The Commissioner for Standards considered a number of complaints in relation to Member involvement with planning matters. He considered that this was an area which may benefit from some best practice guidance particularly highlighting the need for transparency. This was not taken forward until the work of the Committee on the registration and declaration of interests was complete, but may be something which the Committee would like the new Commissioner to undertake.

Recommendation 9. The Committee recommend that the Commissioner undertake a piece of work to produce some best practice guidance for Members involved in planning matters.

¹⁸ **Speaker's Digital Democracy Commission: Recommended guidance for the use of Twitter by politicians - Members of Parliament and the House of Lords**, The Chartered Institute of Public Relations

¹⁹ Article in INFLUENCE, **Twitter advice for MPs is good advice for everyone**, 22 July 2015