

THE NATIONAL ASSEMBLY FOR WALES: COMMITTEE ON STANDARDS OF CONDUCT

REPORT 01-2007 – Presented to the National Assembly for Wales on 17 July 2007 in accordance with Standing Order 16.8

COMPLAINT AGAINST AN ASSEMBLY MEMBER

Purpose and Scope of Report

1. This is a report to the Assembly by the Committee on Standards of Conduct under Standing Order 16.8 about a complaint which it has considered against an Assembly Member. The complaint alleged a breach of the Code of Conduct for Assembly Members regarding the publication of 'offensive material' contained within a Blog entry.
2. Full details of the allegations made are set out in the Commissioner's report to the Standards Committee at Annex A.

Standards Committee Terms of Reference

3. Standing Order 16.1(i) provides for the Committee on Standards of Conduct to:

“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 ... (d) any Assembly resolution relating to Members' standards of conduct...”
4. An extract from Standing Orders, which sets out the Committee's remit in full, is at Annex B. A list of the Committee's current membership is at Annex C.

The Complaint

5. The publication of the 'blog' entry resulted in 149 e-mailed 'complaints' being made to the Welsh Assembly Government's Complaints Unit. The Complaints Unit does not have a remit to consider complaints against Assembly Members and consequently each of these complaints was forwarded to the office of the Commissioner for Standards.
6. Of the e-mails received, 63 sought to make a formal complaint about the actions of the Member, the remainder made points of argument against the 'blog' entry but made no reference to making an official complaint. In considering this, the Commissioner for Standards decided to deal with the matter as if it was one complaint rather than dealing with each complaint separately.

7. The Commissioner for Standards, therefore, in accordance with the *Procedure for Dealing with Complaints against Assembly Members* (the Complaints Procedure)¹, undertook an investigation into the complaint.

Summary of the Commissioner's Investigation

8. There are two possible stages to any investigation by the Commissioner into a complaint:
 - (i) a **Preliminary Investigation** in order to determine whether or not a complaint is admissible; and if the complaint is admissible;
 - (ii) a **Formal Investigation** of the complaint leading to a report to the Committee on Standards of Conduct.
9. The Commissioner concluded that the complaint was admissible and informed the Member and the complainants that he would be proceeding to the Formal Investigation stage.
10. The Commissioner provided a report on his Formal Investigation to the Committee, the Member and the Complainants on 4 July 2007. A copy of his report had been seen in draft by the Member in advance and the Commissioner had taken account of their comments.

Summary of the Committee's Consideration of the Complaint

11. The Committee met in private, in accordance with Standing Order 16.6, on 12 July 2007, to consider the Commissioner's report. The Member attended the meeting to make oral representations to the Committee, and had also provided written representations to the Committee.
12. The Committee considered the report of the Commissioner for Standards in which he had concluded that the Member had breached paragraph 4(b) of the Code of Conduct under:

'(Integrity)'

That:

'Assembly Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and refrain from any action which would bring the Assembly, or its Members generally, into disrepute'.

- 13 Accordingly the Committee's considerations concentrated on the Commissioner's conclusion.

¹ approved by the Standards Committee on 18 November 2004

Conclusion and Recommendation

14. Taking account of all of the evidence provided to them and the representations which had been made, the Committee concluded that the Member had breached the Code of Conduct for Assembly Members and therefore the terms of Standing Order 16.1(i)(d). It was however the view of the Committee that the breach was of a minor nature and that it was appropriate to recommend to the Assembly, in line with Paragraph 7.12 (ii) of the Complaints Procedure, that 'a breach has been found but that it was trivial or inconsequential and that the complaint should be dismissed'.

Committee on Standards of Conduct

17 July 2007

STRICTLY PRIVATE AND CONFIDENTIAL

Reference: C066-07

Report to the Committee on Standards of Conduct by the Commissioner for Standards following a Formal Investigation of a complaint against an Assembly Member.

1. Background to the complaint

1.1 On 11 February 2007 an Assembly Member posted the following entry on their 'blog' [weblog or online diary] site:

“The Sundays ... feature the funding of the BNP, a nasty, mean, distasteful and grubby bunch of sub-human flotsam and jetsam who we need to ensure do not prosper from the democratic process.”

1.2 The publication of this 'blog' entry resulted in 149 e-mailed 'complaints' being made to the Welsh Assembly Government's Complaints Unit. The Complaints Unit does not have a remit to consider complaints against Assembly Members and consequently each of these complaints was forwarded to my office.

1.3 Of the e-mails received, 63 sought to make a formal complaint about the actions of the Member, the remainder made a point of argument against the 'blog' entry but made no reference to making an official complaint against the Member. However, in considering this, I decided to deal with the matter as if it was one complaint rather than dealing with each complaint separately.

1.3 I therefore, in accordance with the Procedure for Dealing with Complaints² against Assembly Members (the Complaints Procedure), undertook a Preliminary Investigation into the complaint.

2. Preliminary Investigation Stage – Admissibility

2.1 The Complaints Procedure sets out a series of six 'tests' to determine whether a complaint is 'admissible':

i. it is in writing;

ii. it is about the conduct of an Assembly Member;

² as approved by the Committee of Standards of Conduct on 16 November 2006

- iii. *it is not anonymous and clearly identifies the complainant in a way which provides for further communication with him/her;*
- iv. *it clearly identifies the Assembly Member complained of;*
- v. *it is made within one year from the date when the complainant could reasonably have become aware of the conduct complained about; and*

2.2 The complaint against the Member clearly met the first five tests. The sixth test of admissibility is that:

- vi. *it appears, at first sight that, if all or part of the conduct complained about is established to have been committed by the Member, it might amount to a breach of any of the matters encompassed within Standing Order 16.1(i).*

2.3 My primary consideration in determining the admissibility of the complaint was therefore whether it also met the test of criteria (vi). In relation to this particular complaint, any breach would fall under Standing Order 16.1(i)(d), through a breach of the Code of Conduct for Assembly Members (Code of Conduct), a copy of which is at Annex A.

The Investigation

2.4 On 12 March 2007 I wrote to the Member to advise of the complaint against them and to seek their response to the allegations. I subsequently met them on 30 March 2007 to discuss the complaint. The Member does not dispute that the 'blog' entry which is the subject of the complaint appeared on his website. However, the Member does not accept that in publishing the article they had breached the Code of Conduct.

2.5 I suggested to the Member that, in view of the reaction of the complainants to his 'blog' entry, they may wish to consider whether they were prepared to apologise to the complainants. Had the Member been willing to do so, this would have enabled me to act under paragraph 10.1 of the Complaints Procedure by recommending to the Chair of the Standards Committee that, although at first sight a breach of the Code of Conduct had occurred, a formal investigation should not be pursued. However, the Member confirmed that they were not prepared to apologise for the comments.

Conclusion on 'admissibility' of the complaint:

2.6 In reaching my conclusion on 'admissibility' I carefully considered the representations from the Member and the complainants together with the Code of Conduct.

2.7 After considering the evidence presented I concluded that, at first sight, the conduct of the Member might amount to a breach of Standing

Order 16.1(i)(d) in that the publication of this article on their 'blog' might amount to a breach of the Code of Conduct in respect of the requirement generally that Members of the Assembly should observe the seven general principles of conduct identified by the Committee on Standards in Public Life and specifically in respect of the requirement in paragraph 4 (b) of the Code of Conduct under:

'(Integrity)'

that

'Assembly Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and refrain from any action which would bring the Assembly, or its Members generally, into disrepute'.

2.8 I therefore concluded that the complaint was 'admissible' and proceeded to the Formal Investigation stage of the Complaints Procedure.

3. Formal Investigation Stage

3.1 The purpose of the Formal Investigation stage is for the Commissioner for Standards to investigate an 'admissible complaint' with a view to:

- i) establishing the facts in relation to whether the Member concerned has committed the conduct complained about; and
- ii) reaching a conclusion as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i).

3.2 I have established the following facts:

(a) In relation to point (i) above, the Member has confirmed that they published the relevant website entry. The Member also confirmed that they were not willing to apologise to the complainants. It therefore cannot be in dispute that the conduct complained about was committed by the Member; and

(b) In relation to point (ii) above, the number of complaints received, together with the nature of those complaints, makes it clear that the 'blog' entry was offensive to a large number of people.

3.3 The question I therefore had to consider was whether the publication of this 'blog' entry was in breach of the Code of Conduct.

4. Summary and Conclusion

- 4.1 I have conducted a Formal Investigation in line with the Complaints Procedure into the complaint against the Member that, in publishing an offensive website entry, they had breached the Code of Conduct for Assembly Members.
- 4.2 It is clear that the website entry, as published on 11th February 2007, has caused offence to a number of people. It is also clear that the website entry was published by the Member.
- 4.3 I have carefully considered paragraph 4 (b) of the Code of Conduct together with the representations received from all parties. **I have concluded that the website entry published by the Member has caused offence to a number of people. In doing so, the Member's conduct is in breach of Paragraph 4(b) of the Code of Conduct for Assembly Members and is therefore a breach of Standing Order 16.1(i)(d).**

Richard Penn
Commissioner for Standards

June 28 2007

NATIONAL ASSEMBLY FOR WALES

CODE OF CONDUCT FOR ASSEMBLY MEMBERS

Purpose of the Code

1. The purpose of this Code of Conduct is:
 - (a) to provide guidance for all Members of the National Assembly on the standards of conduct expected of them in the discharge of their Assembly and public duties;
 - (b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the National Assembly perform their Assembly and public duties.
2. This Code applies to all Members of the National Assembly who have not taken leave of absence.

General Standards of Conduct

Personal conduct

3. Members of the Assembly:
 - (a) must comply with the Code of Conduct for Assembly Members;
 - (b) should act always on their personal honour;
 - (c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;
 - (d) must not vote on any Order or motion, or ask any question in plenary or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).
4. Members of the Assembly should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. The seven principles are:
 - (a) **Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Assembly Members should avoid conflict between personal and public interests and resolve any conflict between the two at once and in favour of the public interest.

- (b) **Integrity:** Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Assembly Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and refrain from any action which would bring the Assembly, or its Members generally, into disrepute. Members should not ask civil servants to act in any way which would compromise the political impartiality of the Civil Service or conflict with the Civil Service Code.

- (c) **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- (d) **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

No improper use shall be made of any payment or allowance made to Assembly Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

- (e) **Openness:** Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions, and restrict information only when the wider public interest clearly demands.

Assembly Members must not prevent any person from gaining access to information which that person is entitled to by law, but must not disclose confidential information, including confidential information from Assembly Committees, without consent unless required to do so by law. Any such confidential material received by Members in the course of their Assembly duties should only be used in connection with those duties and must never be used for the purpose of financial gain. In any activities in relation to, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, Members must always bear in mind the need to be open and frank with other Assembly Members, and with officials.

- (f) **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- (g) **Leadership:** Holders of public office should promote and support these principles by leadership and example.

Specific Standards of Conduct

Registration of Interests

5. Members of the Assembly must register in the Register of Members' Interests all relevant interests defined in the Annex to Standing Order 31, in order to make clear what are the interests that might reasonably be thought to influence their actions.
6. The categories of registrable interests (as set out in the Annex to Standing Order 31) are as follows:
 - Directorships held by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, in public and private companies, including those which are individually unremunerated but where remuneration is paid through another company in the same group.
 - Employment, office, trade, profession or vocation (apart from membership of the Assembly) for which the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, is remunerated or in which the Member has any pecuniary interest.
 - The names of clients, when the interests referred to above include services by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, which arise out of, or are related in any matter to his or her membership of the Assembly.
 - Gifts, hospitality, material benefits or advantage above a value specified in any resolution of the Assembly received by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, from any company, organisation or person and relating to or arising out of membership of the Assembly.
 - Any remuneration or other material benefit which a Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, receives from any public or private company or other body which has tendered for, is tendering for, or has, a contract with the Assembly.
 - Financial sponsorship (i) as a candidate for election to the Assembly, where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses, or (ii) as a Member of the Assembly by any person or organisation, stating whether any such sponsorship includes any payment to the Member or any material benefit or advantage.
 - Subject to any resolution of the Assembly, overseas visits made by the Member or, to the Member's knowledge, the Member's partner or any

dependent child of the Member, relating to or arising out of membership of the Assembly where the cost of any such visit has not been wholly borne by the Member or by public funds.

- Any land and property, of the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, which has a substantial value as specified in any resolution of the Assembly or from which a substantial income is derived other than any home used for the personal residential purposes of the Member or the Member's partner or any dependent child of the Member.
- The names of companies or other bodies in which the Member has, either alone or with or on behalf of the Member's partner or any dependent child, a beneficial interest or in which, to the Member's knowledge, the Member's partner or a dependent child has a beneficial interest in shareholdings of a nominal value greater than one per cent of the issued share capital, or less than one per cent but more than an amount specified in any resolution of the Assembly.
- Paid or unpaid membership or chairmanship by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, of any body funded in whole or in part by the Assembly.

Declaration of Registrable Interests

7. Members of the Assembly must declare, before taking part in any Assembly proceedings, any interest which is a relevant interest, under Standing Order 31, in the context of the debate or the matter under discussion. A declaration must relate to a decision to be made at the meeting in question. It must concern a matter where the Member (or their partner or dependent children) might gain a financial advantage from such a decision, where that advantage would be greater than that which other persons generally affected by their decision might receive. This is necessary in order that their audience may form a balanced judgement of their arguments.

Prohibition of Voting in Relation to Registrable Interests

8. A Member is prohibited from voting in any proceedings of the Assembly if, in relation to any interest which is required to be registered, a particular decision of the Assembly or a Committee might result in a direct financial advantage to the Member greater than that which might accrue to persons affected by the decision generally.

Use of Assembly Resources

9. Members are required to comply with the Guidance for Members on the Use of Assembly Resources and any guidance on the use of Assembly resources specifically relating to an election campaign.

Public Access to Information

10. Members are required to comply with the Code of Practice on Public Access to Information, which has been approved by the National Assembly.

11. The aim of the Code is to set out the principles which underpin the National Assembly for Wales' approach to the promotion of open government, and to reinforce the Assembly's commitment to open government.

Members' Access to Information

12. Members are required to comply with the Code of Practice on Members' Access to Information, which has been approved by the National Assembly.

13. This Code sets out the basis upon which information will be provided to Members by Assembly staff, and stipulates the appropriate channels for Members to approach staff for advice.

Relationships between Assembly Members and Assembly Staff

14. Members are required to comply with the Protocol for Relationships between Assembly Members and Assembly Staff, which has been approved by the National Assembly.

15. The key principles are that relationships between Members and staff should be professional and based on mutual respect, and that the relationship between Members and staff should have regard to the duty of staff to remain politically impartial when carrying out their duties.

Members' Salaries and Allowances

16. Members are required to comply with The National Assembly for Wales (Assembly Members and Officers) (Salaries, Allowances etc.) Determination as approved by the National Assembly.

17. The Determination sets out the salaries and allowances which Members are entitled to as a result of the discharging of their Assembly duties.

Duties in respect of the Commissioner for Standards and the Committee on Standards of Conduct

18. Members shall cooperate, at all stages, with any investigation into their conduct by the Commissioner for Standards in accordance with Standing Order 33; or by the Committee on Standards of Conduct in accordance with Standing Order 16.1(i).

19. No Member shall lobby a member of the Committee on Standards of Conduct in a manner calculated or intended to influence their consideration of a complaint of a breach of any matter encompassed under Standing Orders 16.1(i).

Enforcement of the Code of Conduct

20. Any allegations of non-compliance with this Code will follow the process set out in the National Assembly for Wales' Procedure for Dealing with Complaints against Assembly Members, as approved by the National Assembly Committee on Standards of Conduct.

21. Information on the role of the Commissioner for Standards, including contact details can be found on Assembly's web-site (www.assemblywales.org) or from the Commissioner's office.

Approved by the National Assembly for Wales on 10 May 2006

NB: To reflect the provisions of the Government of Wales Act 2006, and changes in the Assembly's Standing Orders, the requirement to comply with the following matters has been removed from the Code of Conduct:

- Propriety Issues in the Handling of Planning Casework
- Guidance for Members of the House Committee

STANDING ORDER 16 – Committee on Standards of Conduct

Title and Terms of Reference

16.1 There is to be a Committee on Standards of Conduct, which 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 31;
 - (b) any Assembly resolution relating to the financial or other interests of Members;
 - (c) Standing Order 32;
 - (d) any Assembly resolution relating to Members' standards of conduct; or
 - (e) any code or protocol made under Standing Order 1.13 and in accordance with section 36(6) of the Act;
- (ii) consider any matters of principle relating to the conduct of Members generally;
- (iii) supervise the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests and the Record of Membership of Societies and the form and content of the Register and the Record;
- (iv) present an annual report to the Assembly on the complaints made under Standing Order 16.1(i), and the action taken in consequence, and on its conclusions in respect of ethical standards in the conduct of the Assembly's business; and
- (v) establish and lay before the Assembly procedures for the investigation of complaints under Standing Order 16.1(i).

Membership

16.2 The Presiding Officer must not be a member of the Committee, but is entitled to submit papers to it for the purpose of drawing to its attention such considerations as he or she considers appropriate.

16.3 Subject to Standing Order 16.4, Standing Order 10.42 shall not apply to the Committee on Standards of Conduct.

- 16.4 Where a member of the Committee is subject to a complaint under Standing Order 16.1(i), he or she may take no part in any consideration of the complaint by the Committee. In such circumstances and in relation solely to the consideration of the complaint concerned, another Member from the same political group, who has been nominated in advance by the leader of that group, may replace that member. The nominated Member may participate in the meetings of the Committee to consider the complaint as if he or she were a member of it. No Member may replace more than one Committee member at a meeting.

Meetings

- 16.5 The Committee must meet as soon as possible after a complaint has been referred to it by the Commissioner for Standards; and at other times as convened by the chair.
- 16.6 The Committee may meet in public or in private, but when deliberating upon a complaint, the Committee must meet in private unless it resolves otherwise.
- 16.7 Any Member who is the subject of an investigation by the Committee must be permitted to make oral or written representations to it and may be accompanied at oral hearings by another person (who may participate in the proceedings with the permission of the chair, but may not vote).

Reports

- 16.8 If the 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.
- 16.9 A report under Standing Order 16.8 may include a recommendation to censure a Member for failing to comply with any of the matters encompassed within Standing Order 16.1(i).
- 16.10 If a motion to consider a report under Standing Order 16.8 is tabled by a member of the Committee, time must be made available as soon as possible for the motion to be debated. No amendment may be tabled to such a motion.

Annex C

MEMBERSHIP OF THE COMMITTEE ON STANDARDS OF CONDUCT

Jeff Cuthbert (Chair)	Caerphilly	Labour
Christopher Franks	South Wales Central	Plaid Cymru
Brynle Williams	North Wales	Conservative
Kirsty Williams	Brecon & Radnorshire	Liberal Democrats
Clerk	Andrew George	
Deputy Clerk	Gareth Rogers	
Commissioner for Standards	Richard Penn	