

Review of the Procedure for Dealing with Complaints against Members of the Senedd

July 2022

The Standards of Conduct Committee (“the Committee”) is responsible for establishing and laying before the Senedd procedures for the investigation of complaints under Standing Order 22.2(i). The Committee agreed to consider the existing procedure and consider whether it remained fit for purpose as its first substantive piece of work in the Sixth Senedd.



1. Chair's foreword

As elected politicians we have a responsibility to ensure that we set the highest standards of behaviour. The Procedure for Dealing with Complaints against Members of the Senedd regulates the process for making, investigating and determining complaints against Members, and is a key tool in setting expectations for the way Members should behave.

In reviewing the Procedure substantially for the first time since it was introduced, the Committee has endeavoured to make it clearer and more accessible to the public. To that end, an explanatory guide in easily understood and accessible language has been produced to sit alongside the procedure. This takes the form of a key steps document and a flowchart.

The Committee has also produced more technical guidance on the operation and application of the Procedure to help comprehension.

The Committee has removed the appeals provision in the Procedure by a majority decision. Each complaint is dealt with by the Commissioner and considered by the Committee, with the final report being debated in plenary. As the Member who has been complained about has the right to attend the relevant Committee meeting in person, we considered that there are enough stages for input and challenge. We also strengthened the oral hearing stage of the Procedure so that it is clearer that this is the opportunity of the Member to raise issues of factual dispute or procedural concern in relation to the Commissioner's investigation and report. The Committee is also able to refer matters raised at this point back to the Commissioner for further consideration.

In order to ensure that recollection of events is still fresh and evidence readily available, the Committee has set the timescale for admissibility of complaints at six months. However, I would like to provide reassurance that the Commissioner will consider complaints relating to incidents outside of this timescale where there is good cause for delay.

I would like to thank all of those who contributed to this inquiry for taking the time to provide us with valuable evidence, and ensure that we have been able to make the Procedure fit for purpose.

Vikki Howells MS

Chair, Standards of Conduct Committee

2. Conclusions

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3. Introduction

The report outlines comments on the Procedure as a whole, as well as specific technical comments, before going on to take each area of the Procedure in turn, as laid out in the consultation.

Each section lays out the responses to the consultation, the consideration of these by the Committee, and the Committee's conclusions. Where appropriate, additional oral evidence from the Independent Commissioner for Standards ("the Commissioner") and the Committee's response to this is included.

Background

- 1.** The Committee is responsible for considering matters relating to the behaviour of Members of the Senedd ("Members").
- 2.** The Committee's functions include recommending to the Senedd for approval a Code of Conduct for Members of the Senedd ("the Code") and the accompanying procedure for regulating the process of making, investigating and determining complaints against Members that they have breached the Code ("the Procedure").
- 3.** The Code sets out the standards of behaviour and conduct expected of Members. It has statutory authority under the legislation which established the independent Commissioner for Standards. Complaints that Members have breached the Code are made to the Commissioner who decides when and how to conduct an investigation and report the outcome, subject to any procedural rules laid down by the Senedd.
- 4.** The Procedure sets out how the Commissioner will receive and consider such complaints, and report to the Committee if a complaint is considered to be admissible and has breached the Code. The Procedure also sets out how the Committee will then deal with such complaints.
- 5.** During the Fifth Senedd a comprehensive review of the Code was undertaken and a new Code was approved to come in to force from the start of the Sixth Senedd. To complement this, the Committee agreed its first piece of work would be to review the Procedure as recommended in the legacy report of the Fifth Senedd Standards of Conduct Committee.

- 6.** The Committee issued a draft procedure for consultation. The consultation ran between 19 January and 21 February 2022. The Committee received 11 responses, which it considered at its meeting on 28 March 2022. The full list of respondents is at Annex B and the full set of consultation responses can be found on the Committee webpages.
- 7.** The Commissioner attended an oral evidence session on 26 April 2022. This session is noted at Annex A. The Commissioner gave his opinion on some issues that had been highlighted by the consultation responses, as well as highlighting some further issues.
- 8.** The Committee met again on 6 and 28 June, where it discussed a revised procedure in light of the decisions made.
- 9.** The final Procedure was laid on 6 July.

4. The revised procedure

10. The Committee produced the draft procedure for consultation based on the experiences of how the procedure operated in the fifth Senedd, which had an unprecedented volume of cases. The Committee also considered developments in other legislatures to identify areas of the procedure which may need to be changed.

General points on the Procedure

11. There were a number of general points made in response to the consultation:

12. The FDA Wales Union suggested the ‘Senedd must implement a...fully independent, process for dealing with complaints of bullying, harassment and sexual harassment.’

13. Plaid Cymru called for ‘... greater HR support and protection in place for staff members who work for members’ and that they would welcome further consideration from the Committee and the Senedd Commission as a whole on this matter.

14. The Public Services Ombudsman Wales suggested that the procedure could be strengthened if the Committee formulated and adopted some form of a public interest test to decide which complaints should be investigated by the Commissioner, and detailed a list of relevant factors.

Consideration by the Committee

15. The Committee considered these wider points. The Committee considered that the current process as it stood, with an independent Standards Commissioner and a Standards of Conduct Committee, was working well.

16. The Committee highlighted the concerns need for greater HR support for support staff with the Chief Executive who undertook to raise the concerns as part of the ongoing review of the Dignity and Respect policy.

17. The Committee discussed the idea of a public interest test with the Commissioner when they took evidence from him. The Commissioner’s opinion was that the current criteria are very clear and factual, while a public interest test would require a subjective judgement. However, there is already a public interest test in the Procedure once the complaint has been held as admissible. The Committee agreed that this was the right place for a public interest test.

The design and content of the Procedure

The consultation proposed a separate explanatory guide to the complaints process, to go alongside the formal procedural rules.

The consultation also proposed an interpretation section to make the procedure more user friendly.

18. Respondents generally agreed with the concept of an explanatory guide to go alongside the procedure, and several emphasised the need for the guide to be in easily understood and accessible language. One respondent suggested that it was important to be clear about whether the guidance is indicative only or is rather intended to be definitive about how the procedure is to be understood.

19. There were a number of other responses to the consultation which the Committee considered including:

- explaining the term ‘confidentiality’ for the purposes of the Code of Conduct;
- section 8.19 which requires no breach reports to be anonymised unless the Member requests otherwise should be amended for all parties to agree to the report being anonymised;
- a report which finds no breach of the Code should not be published at all; and
- it is not appropriate for the Presiding Officer to be able to make complaints and then continue to have a role within the Procedure.

Consideration by the Committee

20. The Committee agreed that there should be an explanatory guide alongside the procedure, in easily understood and accessible language which would take the form of a key steps document and a flowchart showing the procedure.

21. The Committee also agreed to publish more technical guidance on some parts of the Procedure, in line with the provision which allows the Committee to issue guidance on the operation and application of the Procedure from time to time. This guidance does not form part of the Procedure but is issued to assist the understanding of it.

22. The Committee has added the following definition of ‘confidential’:

"confidential" means not sharing or discussing matters relating to a complaint with other people without express permission from either the Commissioner or the Committee

23. The Committee considered the issues around no-breach reports, in particular whether they should be anonymised and whether they should be published. The Committee decided that a Member should have the right to ask for their name to be included in such a report, but that otherwise it should be anonymised. The Committee also concluded that reports which find no breach of the Code should be published, in the interest of transparency and maintaining a public record of decisions. Natasha Asghar asked that it be noted that she had some concerns around no-breach reports being published.

24. In addition to the points considered above, the Commissioner provided further technical points in his oral evidence, which were generally accepted by the Committee. These included points of clarification around who is able to make a complaint; the addition of a provision that the new Procedure applies from a certain date; inclusion of the phrase 'personal data' rather than 'confidential information' and reference to the Commissioner's privacy notice; defining 'election period' and removal of any references that are self-evident.

25. The Committee also agreed to add a right of reply for any individuals who are mentioned in representations to the Committee, in response to the issue being raised by the Commissioner in oral evidence.

Conclusion 1. A short guide has been written to go alongside the procedure and further guidance has been produced to explain aspects of the procedure such as what constitutes 'good cause' in terms of making a complaint outside of the six month time limit.

Conclusion 2. No-breach reports will continue to be published.

Conclusion 3. Various definitions and technical points raised in the consultation are added to the Procedure.

Conclusion 4. A right of reply is added for any individuals mentioned in representations made to the Committee.

The admissibility criteria for complaints

The consultation asked for views on the inclusion of the following criteria which need to be fulfilled in order for a complaint to be considered by the Commissioner:

- be in writing;
- identify the person complaining;
- be about the conduct of an identified Member;
- be made within a specified period from the date when the complainant became aware of the conduct; and
- have enough substance to justify further investigation (i.e. there is enough evidence to suggest that the conduct complained about may have taken place, and if proved might amount to a breach of any of the matters encompassed within Standing Order 22.2(i)).

26. There were no specific comments on this area.

The timescale for complaints admissibility

The consultation asked the following questions of respondents on the timeframe for complaints:

What time limit, if any, do you think would be fair and appropriate to safeguard both the rights of the complainant and the Member complained of?

If a time limit is retained, do you have any views on the guidance included above to help explain what might constitute a good cause for the delay for complaints being made outside of the specified time?

27. The majority of respondents agreed that there should be a time limit for complaints.

28. Five respondents specified that this should be 6 months, one specified 12 months and one specified until the Member complained against ceased to be a Member of the Senedd. One respondent did not specify a time limit (but agreed that there should be one) and one respondent did not think that there should be any kind of limit.

29. Respondents suggested further additions to the list of reasons for delay in submitting a complaint, as follows:

- caring duties;
- maternity leave;
- extended parental leave; and
- a career break.

30. That a timescale should not apply to continuing acts, such as bullying and harassment, was also raised by two respondents.

31. One respondent also suggested that when the procedure is first introduced there should a window of opportunity for members of staff to bring historic complaints to be investigated, and that the timescale should only involve raising the complaint, not the determination of the complaint.

Consideration by the Committee

32. The Committee agreed that there should be a six month limit on complaints, unless the Commissioner is satisfied there is good cause for the delay. The Committee agreed that this general clause would be more helpful than a list of specific reasons which may not be comprehensive. The Committee also agreed that it would be useful to set out in guidance further information on what might be encompassed by good cause, while being clear that each instance would be based on the circumstances at the time.

33. The procedure has a transition arrangement drafted into it which extends the time limit by six months for the first six months of the procedure coming into force – to ensure equity in the process.

Conclusion 5. There will be a six month limit on complaints, unless the Commissioner is satisfied there is a good cause for the delay.

The information contained within a complaint

The Committee proposed that the complainant be required to state how the conduct complained of is thought to breach the Code.

34. Two respondents agreed that encouraging complainants to make reference as to what section of the Code a Member has broken as part of their complaint to the Commissioner was desirable.

35. Two respondents were concerned that requiring the complainant to state how the conduct complained of was thought to breach the Code may make the complaints process less accessible, and one of these suggested that efforts should also be made by the Commissioner to contact complainants who do not correctly refer to the Code, to ensure this is explained and any necessary help should be provided.

Consideration by the Committee

36. The Committee agreed broadly that the complainant should be required to state how the conduct complained of is thought to breach the Code, but were keen that this did not make the process less accessible.

37. The Committee agreed the guidance accompanying the procedure should make clear that the Commissioner would offer assistance in this area, and that it was not a provision to trip complainants up but aimed at increasing understanding of complaints.

Conclusion 6. The complainant should be required to state how the conduct complained of is thought to breach the Code.

The Complainant

The consultation asked respondents whether they agreed with the following potential milestones where a complainant may want to be informed:

- when the Committee receives the report, and an indication of the next steps;
- when the Committee has completed its proceedings; and
- prior to report publication and the plenary debate.

38. The majority of respondents agreed with the proposal to keep the complainant informed of the progress of the complaint after the Commissioner's report has been submitted to the Committee. One respondent suggests that the same information should be given to the Member who is the subject of the complaint. The majority of respondents also agreed with the proposed milestones.

Consideration by the Committee

39. The Committee agreed with the proposed milestones, and that the Member complained of should have the same information.

Conclusion 7. A set of milestones for informing complainants will form part of the Procedure and the Member complained will be given the same information.

Identification of a lead complainant

The consultation asked respondents for their opinion on the Commissioner dealing with complaints on the same matter on a group basis, with a 'lead' complaint taken forward and all other similar complaints being effectively suspended, with the complainants kept informed of the progress if they so request.

40. There was general agreement about the proposals relating to group complaints, although the following were noted:

- care must be taken to ensure that any "lead complaint" properly addresses all of the concerns raised by other complainants in the "group"; and
- careful consideration should be given as to how this is communicated most effectively and clearly at the outset.

41. One respondent thought that complainants should be kept informed on an individual basis, so as to avoid potential miscommunication or misrepresentation. One respondent wanted more information on the framework and criteria for selecting 'lead' cases and establishing whether and how the complaints/allegations and circumstances of 'lead' cases are on all fours with other 'group' cases.

Response from the Committee

42. The Committee were concerned that any lead complaint must address all the concerns raised by other members of the group, and agreed to raise this with the Commissioner.

43. In his evidence, the Commissioner stated that complaints from multiple people are usually co-ordinated in an obvious way, and if not he would make a judgement as to whether to group them.

Conclusion 8. The Commissioner is able to deal with complaints on the same matter on a group basis, with a 'lead' complaint taken forward and all other similar complaints being effectively suspended, with the complainants kept informed of the progress if they so request.

Bringing a complaint to the end and the right to request a review

The consultation asked whether the Commissioner should have the discretion to dismiss a complaint before reaching a final conclusion.

The consultation also asked whether the Committee should have a right of review were the Commissioner to dismiss a complaint on any of these grounds.

44. Most respondents agreed that the Commissioner should have the discretion to dismiss a complaint before reaching a final conclusion, and that the Committee should have a right of review. One respondent also suggested that an explanation of the grounds on which this decision was made should be shared with the Member concerned, if they have been made aware by this stage.

45. One respondent did not agree that the committee should have a right of review, and thought that the Commissioner should make the final decision.

46. The Commissioner for Ethical Standards in Public Life in Scotland made more detailed comments on the reasons themselves.

Response from the Committee

47. The Committee agreed to include the right of review in relation to the Commissioner deciding not to proceed with an admissible complaint in the procedure, and agreed that a public interest test should be applied at this stage.

Conclusion 9. The Commissioner has the discretion to dismiss a complaint before reaching a final conclusion.

Conclusion 10. The Standards of Conduct Committee has a right of review were the Commissioner to dismiss a complaint on any of these grounds.

The early rectification procedure

The consultation proposed restating the early rectification procedure more clearly, enabling Members to make an apology, which will be published on the Committee's webpages and resolve a complaint at an early stage of the process.

48. Most respondents agreed with the proposal for more clarity on the early rectification process. The following points were noted:

- early rectification should be exceptional;
- it should be subject to the same public interest test that is being applied to the withdrawal of complaints;
- it is important that complainants are clear about who the subject of the complaint will be apologising to—whether it is the Committee or the complainant or both;
- it should not apply to issues linked to Dignity at Work or Bullying and Harassment policies; and
- should it lead to early resolution, the complainant should be in agreement.

Response from the Committee

49. The Committee agreed with the early rectification process being more clearly stated.

Conclusion 11. The early rectification process wording has been changed to make it clearer.

The appeal process

The consultation asked respondents whether the present appeal process should be removed, and if not what form an appeal process should take.

The consultation also asked respondents if the rules for the oral hearing stage should include a provision for a reference back to the Commissioner.

50. Five respondents agreed that the present appeals process should be removed, and one did not comment except to say that there was no appeals process in Scotland. One of the respondents who agreed asked that this should be kept under review by the Committee as to its effectiveness.

51. Three respondents did not agree that the appeals process should be removed altogether, and made the following additional comments;

- the current appeals process was too long, but that any member subject to investigation should be provided one final opportunity to present any additional information or evidence that is relevant to their case; and
- the current process is confusing and opaque, and should be replaced with an Independent Expert Panel.

52. Those who responded to it agreed that the rules for the oral hearing stage should include a provision for a reference back to the Commissioner.

Response from the Committee

53. The Committee agreed to remove the appeals process by a majority decision. The Conservative Member at the time, Andrew RT Davies, did not agree that the appeals process should be removed.

Conclusion 12. The Procedure no longer contains an appeals process.

Redacting the Commissioner's report

The consultation asked whether respondents agreed that the Committee should have discretion to redact or summarise the reports of the Commissioner for safeguarding or confidentiality reasons.

54. Almost all respondents agreed with or passed no comment on the proposal to allow the Committee discretion to redact or summarise the reports of the Commissioner for safeguarding or confidentiality reasons. One respondent asked for specific criteria under which safeguarding or confidentiality reasons would apply to publish redacted or summary reports.

55. One respondent suggested that if a Member has been publicly accused and is subsequently vindicated, then their name should be published to avoid their reputation being damaged by the media.

Response from the Committee

56. The Committee agreed that it should have discretion to redact or summarise the reports of the Commissioner, and also that Member should be able to choose whether or not their names are redacted in a no-breach report, but that this applies solely to the Members name and not other information in the report.

Conclusion 13. The Committee has discretion to redact or summarise the reports of the Commissioner.

Conclusion 14. The Member concerned is able to choose whether or not their name is redacted in a no-breach report.

5. Annex A: List of oral evidence sessions.

The following witness provided oral evidence to the committee on the date noted below.

| Date | Name and Organisation |
|----------------------|--|
| 26 April 2022 | Douglas Bain, Wales Commissioner for Standards |

6. Annex B: List of written evidence

The following people and organisations provided written evidence to the Committee. All Consultation responses and additional written information can be viewed on the Committee’s website.

| Reference | Organisation |
|---------------|--|
| SOC 01 | Natasha Asghar MS |
| SOC 02 | The Commissioner for Standards (Wales) |
| SOC 03 | The Welsh Labour Group |
| SOC 04 | FDA Wales |
| SOC 05 | The Chair of the Committee on Standards in Public Life |
| SOC 06 | The Acting Ethical Standards Commissioner (Scotland) |
| SOC 07 | The Public Services Ombudsman for Wales |
| SOC 08 | The Northern Ireland Assembly Commissioner for Standards |
| SOC 09 | Public Affairs Cymru |
| SOC 10 | The Welsh Conservative Group |
| SOC 11 | The Plaid Cymru Group |