

ANNUAL REPORT

April 2021 – March 2022

UPHOLDING
REPUTATIONS



SAFEGUARDING
STANDARDS



ADDRESSING
CONCERNS



The Senedd Commissioner for Standards is an independent person appointed by the Welsh Parliament, to safeguard standards, to uphold reputations, and to address your concerns.



Douglas Bain CBE TD
Senedd Commissioner for Standards

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1. Introduction

- 1.** This, my second annual report as Senedd Commissioner for Standards, outlines how I have performed the functions of that office during the year ended 31 March 2022.
- 2.** Despite the disruption caused by the continuing Covid 19 pandemic much has been achieved during the year including –
 - A 79% reduction in the number of complaints received
 - An end to complaints made by Members against other Members in an attempt to score political points
 - A 33% reduction in the cost of my office
 - The coming into effect of a new Members Code of Conduct.
- 3.** Further information on these and of other matters are set out in this report which, for ease of reference, uses the same chapter headings as last year.

2. Functions and duties of the Commissioner

4. There were no changes to the function and duties of the Commissioner during the reporting year. The office of Senedd Commissioner for Standards was created by section 1(1) of the National Assembly for Wales Commissioner for Standards Measure 2009 ('the Measure').¹ Section 5 of the Measure provides for the independence of the Commissioner from the direction or control of the Senedd.

5. The functions of the Commissioner are set out in sections 6 and 7 of the Measure and may be summarised as being –

- To receive, investigate and report of any complaint that a Member has failed to comply with a requirement of the Code of Conduct² ('the Code') or other relevant provision;³
- To advise Members and members of the public on the process for making and investigating complaints;
- To give advice to the Senedd on any matter of general principle relating to the standards of conduct of Members, the procedure for investigating complaints or any other matter relating to promoting, encouraging and safeguarding high standards of conduct in the public office of Member of the Senedd.

6. Section 19 of the Measure requires the Commissioner, as soon as possible after the end of each financial year, to submit a report to the Senedd on how the functions of the Commissioner have been exercised during that year.

¹ <http://www.legislation.gov.uk/mwa/2009/4/contents;>
<http://www.legislation.gov.uk/mwa/2009/4/contents/enacted/welsh> .

The title of the post was changed from National Assembly for Wales Commissioner for Standards by the coming into effect of section 7 of the Senedd and Elections (Wales) Act on 6 May 2020.

² <https://www.assembly.wales/en/memhome/code-conduct-mem/Pages/default.aspx>

³ As defined in section 6(3) of the Measure

3. Complaints

7. The primary function of the Commissioner is the receipt, investigation and reporting on complaints that Members have broken the provisions of the Code and certain other provisions such as Senedd Standing Orders.

8. During 2021-22 by far the greater part of my time was spent on this function. Although section 11 of the Measure confers on the Commissioner power to call for witnesses and documents their use was largely unnecessary as complainants, Members and witnesses attended for interview and produced documents on a voluntary basis.

9. A significant change during the year was the coming into effect on 18 May 2021 of a new Code. The new Code contains 24 Rules of Conduct which Members are required to follow and eight Overarching Principles in accordance with which these Rules are to be interpreted. I am grateful to the Standards of Conduct Committee ('the Committee') for the careful consideration given to my recommendations and for incorporating most of them in the new Code. Although the new Code has been in place for less than a year it appears that both complainants and Members find it easier than its predecessor to understand.

10. Section 10(1) of the Measure requires the Commissioner to investigate and report on complaints in accordance with Standing Orders and any rules relating to the consideration of complaints adopted by the Assembly. The current rules are the Procedure for dealing with complaints against Members of the Senedd ('the Procedure'). Over the years that the Procedure has been in force a number of areas for improvement have been identified and will be addressed in the new Procedure which I anticipate being in place early in 2022-23.

Complaints carried forward from 2020-21

11. At the start of the reporting year 19 complaints were awaiting a decision on admissibility. Early in the current year I found 14 of these to be inadmissible whilst the other five were withdrawn or not pursued by the complainant. Nine complaints were under investigation at the start of the current year. In all instances the Committee agreed my recommendation that no breach of a relevant provision had been established.⁴

⁴ <https://senedd.wales/media/saweqdmg/cr-ld15057-e.pdf> ;
<https://senedd.wales/media/0slnjsvf/cr-ld14613-e.pdf>

New complaints

12. During the year 44 new complaints were received. Further information on them is given in the following Tables and paragraphs.

13. I found only six of these 44 complaints to be admissible⁵. All of them were all about breaches of a minor nature. In each instance, as the Member concerned admitted the misconduct and apologised for it, the Committee agreed my recommendation that I should not pursue my investigation.

14. I decided that 35 of the complaints received were inadmissible for the reasons shown in Table 2. The remaining complaint was withdrawn before I had decided its admissibility. At the year-end I had not decided the admissibility of two recently received complaints.⁶

Table 1: Complaints received, source and admissibility

	2017-18	2018-19	2019 -20	2020-21	2021-22
Received	26	43	106	216	44
% by Public	73.1	86	76.4	94	91
% by Member	11.5	7	13.2	5	0
% by Clerk of the Senedd	15.4	7	10.4	1	9
% not admissible	80.8	76.7	85.9	41	80
% admissibility not decided by year end	11.5	16.3	6.6	9	5

15. Where the Clerk of the Senedd has reasonable grounds for suspecting that a Member has failed to comply with any of the relevant provisions and that the conduct is relevant to her role as the Principal Accounting Officer she must report the matter to the Commissioner who must, except in the case of alleged failure to register or declare an interest, treat it in the same way as any other complaint.⁷ During the year the Clerk referred four matters to me. I found all of them to be admissible. In all instances due to the minor nature of the misconduct and the Member's admission and apology the Committee agreed that my investigation should not be pursued.

⁵ The admissibility criteria are set out in paragraph 3 of the Procedure for dealing with complaints against Members of the Senedd

⁶ Early in 2022-23 one was found admissible and the other one was withdrawn by the complainant

⁷ Section 9 of the Measure

Table 2: Reasons for inadmissibility⁸

	2017-18	2018-19	2019-20	2020-21	2021-22
Not in writing⁹ (Criterion i)	-	-	-	0	0
Not about conduct of identified Member (Criteria ii & iv)	1	1	5	2	2
Anonymous complaint or complainant not sufficiently identified (Criterion iii)	0	1	3	0	0
Not within time allowed (Criterion v)	0	0	2	1	0
Insufficient substance to justify further investigation (Criterion vi)	21	40	82	86	33

Table 3: Further explanation of complaints found inadmissible due to insufficient substance to justify further investigation (Criterion vi)

	2017-18	2018-19	2019-20	2020-21	2021-22
Expression of opinion	0	8	53	39	1
Insufficient evidence	6	8	10	27	16
Standard of service	5	9	8	3	12
Below registration threshold	0	0	3	1	0
About Ministerial conduct	2	2	3	10	2
About conduct in Siambr	3	1	0	0	1
Other	5	12	5	6	1

16. Lack of sufficient evidence to satisfy me that the conduct complained of may have taken place, and that if proved might amount to a breach of the Code or another relevant provision was the most common ground on which I held complaints to be inadmissible. Before holding a complaint to be inadmissible on that basis it was my practice to afford the complainant an opportunity to provide further information. Few availed of that opportunity.

17. The second most common reason why complaints were found to be inadmissible was because they were about the standards of service provided by a Member. Examples included complaints that Members had not replied to correspondence or had not taken on matters that were raised with them. Paragraph 7 (iii) of the Code provides that it does not apply to the

⁸ The admissibility criteria are at paragraph 3.1 of the Procedure

⁹ This information was not recorded prior to 2020-21

standards of service and outcomes received from a Member. These are not matters of conduct and the remedy for poor service from a Member is through the ballot box not by way of complaint to the Commissioner.

18. Members, like everyone else, enjoy a right to freedom of expression and it is recognised that whilst that right is not absolute in the political sphere things can be said that would not be acceptable elsewhere. Although there has been a significant decline in complaints relating to the use of social media I would again remind Members of the need to take care before ‘liking’ or ‘re-tweeting’ posts made by another person.

19. Section 8 of the Measure and paragraph 7(ii) of the new Code make clear that the Commissioner has no role in relation to complaints of alleged misconduct by a Member when acting exclusively in their Ministerial capacity. The two complainants who alleged ministerial misconduct were directed to the office of the First Minister.

20. One complaint was received about the conduct of a Member in the Siambr. Paragraph 7(i) of the new Code provides that it does not apply to such conduct which, accordingly, is not within my jurisdiction.¹⁰

Table 4: Complaints by subject matter

	2017-18	2018-19	2019-20	2020-21	2021-22
Conduct on social media	0	7	58	60	6
Misuse of resources	4	8	15	25	4
Standard of service	5	9	13	7	16
Failure to register/declare an interest	3	4	9	95	7
Outside remit	7	6	7	12	3
Other conduct	7	9	4	17	8
TOTAL	26	43	106	216	44

¹⁰ Paragraph 7(1) enshrines in the Code the practice under a long-standing protocol between the Llywydd and the Commissioner

Complaints carried forward to 2021-22

21. On 31 March 2022 I had still to determine the admissibility of 2 complaints received shortly before that date.¹¹

Significant developments

22. By far the most significant development in 2021-22 was the reduction in the number of complaints received from 214 in 2020-21 to 44 in the following year. Although the figure for 2020-21 was skewed by the conduct of former Member, Neil McEvoy¹² the 79% reduction in the number of complaints received is very welcome.

23. Another very welcome development was the total absence of complaints by Members against other Members. In the past almost all such complaints were made in an attempt to score party political points and not because there was genuine concern that the Code had been broken. The halving of the percentage of complaints about use of social media and the absence of any admissible complaint, other than the six of a minor nature, is also to be welcomed.

24. It is too early to say with any certainty whether these developments represent trends or to identify the reasons for them but it seems likely that the following contributed to them –

- The absence of Mr McEvoy and a number of other Members who were the subject of, or made, numerous complaints
- A better understanding of the risks of Members ‘liking’ or ‘re-tweeting’ social media comments made by others
- The induction training provided for Members
- The new, clearer, Code of Conduct
- The lead given by Party and Group Leaders on engaging with the complaints process.

¹¹ Early in 2022-23 one was found admissible and the other was withdrawn by the complainant

¹² 91 complaints were received about his conduct and he made six complaints against other Members

4. Other work

25. In Chapter 6 of my report for 2020-21 I outlined the work I hoped to carry out during the following year provided life returned to normal. Unfortunately the Covid 19 Pandemic and the restrictions associated with it continued for much of 2021-22 so that some of the planned work had to be postponed.

26. The Standards Conference for Commissioners and standards staff from across the British Isles that was to have been hosted in Cardiff by the Committee was again postponed. Whilst preliminary work was undertaken on an event to promote high ethical standards in the Senedd and elsewhere in public life in Wales this too had to be put on hold due to the pandemic.

27. During the year I continued to work closely with the Committee on the revision of the Procedure for dealing with complaints against Members of the Senedd which it is hoped will be in place early in 2022-23. I have agreed with the Committee that new joint guidance covering the whole of the complaints process will be published and I look forward to working with the Committee on it.

28. Throughout the year my staff and I gave advice on the complaints process to both members of the public and Members. My office received correspondence on a wide range of matters in relation to complaints. These ranged from complaints about Welsh Government services to concerns about an alleged Welsh Water issue and flooding. Where the matter about which an individual wished to complain was outside my remit they were referred to the appropriate authority.

29. Following the Senedd elections in May 2021 I took part in the induction training on ethical standards and the complaints process that was provided for all Members.

30. The Memorandum of Understanding with South Wales Police on the disclosure of information was signed in September 2021 and by the year end work was well advanced on similar memoranda with Dyfed-Powys Police¹³ Gwent Police¹⁴ and North Wales Police.

31. The Measure has now been in place for some 13 years during which the nature and number of complaints about the conduct of Members has changed. Many of these changes have already been addressed in the new Code or will be addressed in the forthcoming revision

¹³ Dyfed Powys MOU signed on 1 April 2022

¹⁴ Gwent Police MOU signed on 4 April 2022

of the Procedure. However, during the year I identified a number of areas in which the Measure itself would benefit from amendment. Chief amongst these was the absence of any power enabling the Commissioner to initiate an investigation into the conduct of a Member unless a complaint is made. Both the Parliamentary Commissioner for Standards and the Northern Ireland Assembly Commissioner for Standards have such a power. I hope that when time permits consideration will be given to bringing forward a Bill to update and strengthen the Measure.

32. During the year I met, usually remotely, with numerous individuals and organisation to discuss matters of mutual interest. These included the Public Service Ombudsman for Wales, the Education Workforce Council, Social Care Wales, the Chair of the Senedd Remuneration Board, the Northern Ireland Assembly Commissioner for Standards, the Chief Executive and Clerk of the Senedd and numerous members of staff of the Senedd Commission.

5. Expenditure

33. Under section 3 and paragraph 5 of the Schedule to the Measure, the Senedd Commission must pay to the Commissioner the salary and allowances agreed in the terms and conditions of appointment. The Commission must also pay all reasonable expenses lawfully incurred by the Commissioner in employing staff, securing the provision of goods or services, and paying allowances or expenses to witnesses.

34. The expenditure by the Commissioner's office for the year ended 31 March 2022 is shown in Table 5.

Table 5 – Expenditure of Commissioner's office

	2017-18 £	2018-19 £	2019-20 £	2020-21 £	2021-22 £
Commissioner employment costs (Note 1)	19,535	26,105	17,446	0	30,538
Commissioner T & S	180	0	376	0	1,014
Commissioner other costs	0	0	0	0	0
Acting Commissioner employment costs (Note 1)	0	4,786	10,188	42,517	0
Acting Commissioner T & S	0	695	2,655	105	0
Acting Commissioner other costs	0	0	0	0	0
Total Commissioner and Acting Commissioner expenditure	19,715	31,586	30,665	42,622	31,552
Employment costs (note 2)	5,756	44,798	123,630	92,834	70,874
Staff T & S	0	0	511	0	0
Staff other costs	0	0	0	0	0
Total Staff costs	5,756	44,798	124,141	92,834	70,874
Other liabilities incurred	0	0	1,528	25,259	5,137
TOTAL COMMISSIONER OFFICE EXPENDITURE	25,471	76,384	156,334	160,715	107,563

Note 1 - Commissioner remuneration + employer NIC | Note 2 - Staff salary = employer NIC + employer pension contribution

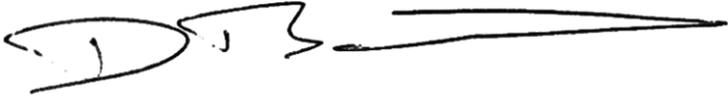
35. The cost of running the Commissioner's office was reduced by 33% compared with 2020 - 21. This was due to the lower number of complaints received which reduced the hours worked by the Commissioner and enabled the staff to be reduced to one full-time member.

6. The year ahead

- 36.** During 2022-23 I shall, in addition to dealing with complaints, continue to work closely with the Committee and its staff on the review of the Dignity and Respect Policy, the proposed new complaints Procedure and on the guidance covering the whole complaints process. When that work has been completed I will consider other ways of making the public more aware of their rights under the complaints process.
- 37.** I shall continue the practice of publishing on my website information about the number and nature of complaints received. When appropriate I will draw to the attention of all Members any types of conduct complained about that appear to be increasing.
- 38.** The number of complaints about inappropriate comments by Members on social media has reduced significantly. However when the data becomes available I shall consider whether to recommend that bespoke training on the use of social media, similar to that provided in Belfast for Members of the Legislative Assembly, should be provided for Members of the Senedd.
- 39.** I shall, I hope, participate in the long postponed Standards Conference to learn from the experience of my opposite numbers throughout the British Isles. I shall continue to liaise with them and others on matters of mutual interest.
- 40.** Once the work on the guidance on the new Procedure has been completed I shall review my website and consider how it might be improved.

7. Acknowledgements

41. I am again indebted to Jonathan Thomas, my Investigator and Project Officer, for the sage advice and unstinting support he provided throughout the year. Thanks are also due to the many Commission staff, from all disciplines and grades for the way in which they engaged with my office and assisted me in my work.

A handwritten signature in black ink, appearing to read 'Douglas Bain', is centered within a light gray rectangular box. The signature is stylized and fluid.

Douglas Bain CBE TD

Senedd Commissioner for Standards

16 May 2022

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