

ANNUAL REPORT

April 2022 – March 2023

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REPUTATIONS



SAFEGUARDING
STANDARDS



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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 is my third annual report as Senedd Commissioner for Standards. The report outlines how I have performed the functions of that office during the year ended 31 March 2023.
- 2.** After setting out the relevant statutory provisions it gives information on the number and subject matter of complaints received and how they were processed. Information is also given on other work undertaken in 2022-23, the expenditure of the Commissioner's office and what is planned for 2023-24.

2. Functions and duties of the Commissioner

3. 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.

4. 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.

5. 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

Introduction

6. 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. The 71 complaints received had to be processed in accordance with Senedd Standing Orders and the rules relating to the consideration of complaints adopted by the Senedd. All complaints received after 17 July 2022 were dealt under the revised Procedure for Dealing with Complaints against Members of the Senedd⁴ ('the Procedure') that was approved on 6 July 2022. The revised Procedure made a number of significant changes relevant to the Commissioner's work including –

- Imposing on the Commissioner a duty to send a copy of any complaint received to the Member concerned: under the previous Procedure Members were not routinely informed of inadmissible complaints against them;
- Permitting the Commissioner, subject to certain restrictions, to continue the investigation of a complaint during an election period: under the previous Procedure all investigative work had to stop during an election period;
- Reducing the period within which a complaint must be made to six months but conferring a discretion on the Commissioner to investigate a complaint however old if satisfied that there was good cause for the delay in its submission: under the previous Procedure a complaint had to be submitted within one year but the Commissioner had no power to consider a complaint submitted even one day beyond that period whatever the reason for the delay in submitting it;
- Conferring on the Commissioner a power, in closely defined circumstances, to discontinue the investigation of an admissible complaint: under the previous Procedure the Commissioner had no such power and, for example, had to investigate and report on an admissible complaint even if it was about conduct which had already been investigated and reported on; and

⁴ **Complaints Procedure**

- Clarifying the circumstances in which the Commissioner may redact part of a report: under the previous Procedure although redaction of non-evidential material the publication of which would be likely to cause harm or distress did take place the authority for doing so was unclear.

7. During 2022-23 by far the greater part of my time was spent on dealing with complaints. A high proportion of that time was spent on the investigation of one complaint the report of which was submitted to the Standards of Conduct Committee ('the Committee') on 12 May 2023.

Complaints carried forward from 2021-22

8. At the start of the reporting year two complaints were awaiting a decision on admissibility. Early in the current year I decided that one of them was inadmissible. The report of my investigation of the other complaint was submitted to the Committee on 25 April 2022.⁵

New complaints

9. During the year 71 new complaints, including referrals by the Clerk, were received from the sources shown in Table 1.⁶ Two of these were either withdrawn or dismissed in accordance with paragraph 4.4 of the Procedure before a decision on their admissibility had been made.

Table 1: Complaints received, source and admissibility

	2018-19	2019 -20	2020-21	2021-22	2022-23
Received	43	106	216	44	71
% by Public	86	76.4	94	91	58
% by Member against Member	7	13.2	4.5%	0	0
% by Member against self	0	0	0.5%	0	7
% by Clerk of the Senedd	7	10.4	1	9	35
% not admissible	76.7	85.9	41	80	49
% admissibility not decided by year end	16.3	6.6	9	5	0

⁵ <https://senedd.wales/media/4sog3g14/cr-ld15154-r.pdf>

⁶ Section 9 of the Measure imposes a duty on the Clerk to refer certain matters to the Commissioner who must treat the referral as a complaint

10. The subject matter of the 71 complaints received is shown in Table 2.

Table 2: Complaints by subject matter

	2018-19	2019-20	2020-21	2021-22	2022-23
Conduct on social media	7	58	60	6	8
Misuse of resources	8	15	25	4	5
Standard of service	9	13	7	16	5
Failure to register/declare/update an interest	4	9	95	7	27
Outside remit (conduct in plenary or Ministerial conduct)	6	7	12	3	20
Other conduct	9	4	17	8	6
TOTAL	43	106	216	44	71

11. I found 34 of the remaining 69 complaints to be admissible.⁷ Four of these complaints were about matters which I had already considered in relation to another complaint. No useful purpose would have been served by re-investigating them and in accordance with paragraph 5.1(b) of the new Procedure I brought consideration of them to an end. I investigated the other 30 complaints. Twenty-five of these were about breaches of a minor nature such as failing to delete an entry in the Register of Interests within the four weeks allowed under Standing Orders. In each instance, as the Member concerned admitted the misconduct, corrected it where practicable and apologised for it, the Committee agreed my recommendation that I should not pursue my investigation.

12. I undertook a formal investigation of the remaining five admissible complaints. My reports on three of these investigations were submitted to the Committee during the year. In one of these reports, I gave my opinion that the Member had breached a provision of the Code of Conduct: in the other two I gave my opinion that there was no evidence that the Code had

⁷ The admissibility criteria are set out in paragraph 3 of the Procedure for Dealing with Complaints against Members of the Senedd.

been breached. The Committee agreed my three opinions and reported the matters to the Senedd.^{8 9 10} The remaining two investigations were ongoing at the year end.¹¹

13. I decided that 35 of the complaints received were inadmissible for the reasons shown in Table 3. Paragraph 4.2 of the new Procedure which came into effect In July 2023 provided revised admissibility criteria. The Table shows the reasons for inadmissibility using these criteria for all complaints received during the year. The reasons for inadmissibility of complaints for the previous four years have, so far as possible, been classified according to these new criteria and included in the Table.¹²

Table 3: Reasons for inadmissibility.¹³

Reason number	Descriptor	2018-19	2019-20	2020-21	2021-22	2022-23
1	Not in writing (Procedure paragraph 4.2(a))	0	0	0	0	0
2	Complainant not named (Procedure paragraph 4.2(b))	1	3	0	0	0
3	Not about conduct of Member (Procedure paragraph 4.2(c))	1	5	2	2	0
4	Does not state act or omission complained of (Procedure paragraph 4.2(d))	40	82	86	33	1
5	Insufficient supporting evidence (Procedure paragraph 4.2 (e)(i))	-	-	-	-	3
6	Conduct, if proved, not a breach of relevant provision (Procedure paragraph 4.2(e)(ii))					

⁸ [cr-ld15463-e.pdf \(senedd.wales\)](#)

⁹ **Fifth report to the Sixth Senedd under Standing Order 22.9**

¹⁰ Seventh report to the Sixth Senedd under Standing Order 22.9

¹¹ My report on one of them was submitted to the Committee on 12 May 2023; consideration of the other was brought to an end in accordance with paragraph 5.1(g) of the Procedure

¹² For further details of them see paragraph 15 of my report for 2021-22

¹³ More detailed statistics on the reasons for non-admissibility were introduced for 2022-23. For previous years most complaints were classified as inadmissible under the descriptor "Insufficient substance to justify further investigation. The figures are shown against Reason 4.

Reason number	Descriptor	2018-19	2019-20	2020-21	2021-22	2022-23
	a. Conduct in plenary or Committee (Code paragraph 3)	-	-	-	-	13
	b. Ministerial Conduct (Code paragraph 7(ii))	-	-	-	-	7
	c. Standard of service (Code paragraph 7(iii))	-	-	-	-	4
	d. Other	-	-	-	-	7
7	Not within period allowed (Procedure paragraph 4.2(g))	0	2	1	0	0

14. The most common reason why complaints were found to be inadmissible was because the conduct took place during a plenary session of the Senedd. Paragraph 3 of the Code provides that the conduct of Members during plenary sessions the Senedd and in committees is normally dealt with by the Llywydd and the chairs of Committees through the application of Senedd Standing Orders. The Commissioner may investigate a complaint of such conduct only if it is referred for investigation by the Llywydd or committee chair.

15. The second most common reason why complaints were found to be inadmissible was because they were about the conduct of Welsh Government Ministers. Section 8 of the Measure and paragraph 7(ii) of the Code make clear that the Commissioner has no role in relation to complaints of alleged misconduct by Members when acting exclusively in their Ministerial capacity. The complainants who alleged ministerial misconduct were directed to the office of the First Minister.

16. I received four complaints about the standard of service provided by Members. 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 the Code does not apply to the standards of service and outcomes received from a Member. It was explained to the four complainants that the Commissioner had no power to deal with such matters and that the remedy for poor service from a Member was through the ballot box.

17. The six remaining complaints were about a wide range of alleged misconduct including bias by a Committee Chair, sexual misconduct and transphobic comments.

Complaints carried forward to 2023-24

18. On 31 March 2023 there were no complaints whereby the admissibility had yet to be decided. The investigation into two admissible complaints was ongoing. As noted at paragraph 12 work on both was completed early in 2023 -24.

Consideration

19. Last year I commented favourably on the absence of any complaints by Members against other Members. I am pleased to report that there have again been no such complaints in the current year. I believe this is due to a more mature understanding by Members that the complaints process is intended to safeguard the high standards of conduct to which they should all aspire and that the process should not be abused in an attempt to score party-political points.

20. Although the number of complaints rose from 44 to 71 it was still much less than the 106 complaints received in 2019-20 or the 216 in 2020-21. And although the number of admissible complaints rose from six in 2021-22 to 34 this year that was very largely due to an increased awareness by Members of the need keep their registered interests up to date and in particular to ensure that interests they no longer held were deleted timeously. I had to undertake a full investigation of only five of the 71 complaints received. Two of these were ongoing at the year end. In the other three the Committee agreed the opinions in my reports.

21. Whilst there is always room for improvement, I am satisfied that during 2022-23 the overall conduct of Members of the Senedd was of a high standard.

4. Other work

22. At the start of the year, I continued to work with the Committee on the revision of the Procedure. The new version came into effect in July 2022 and has already proved to be an improvement. Most Members have welcomed the new provision under which they are told of all complaints against them: under the old Procedure they were not normally told of those that were inadmissible. The new provision which allows the Commissioner, if satisfied that there was good reason for the delay, to consider a complaint submitted outside the six month time limit enabled me to hold admissible and investigate a complaint of serious misconduct which would have been time barred under the previous Procedure. Use has also been made of the new provision in paragraph 5 of the Procedure which permits the Commissioner, in very limited circumstances, to bring to an end consideration of an admissible complaint.

23. Further areas in which the Measure 2009 could be improved were identified and reported. I renew my recommendation for a Bill to update the Measure and to confer on the Commissioner the power to initiate an investigation into the conduct of a Member without the need for a complaint.

24. I provided training sessions on complaints issues for the Members of all the parties represented in the Senedd. The sessions were well attended. The aim was to remind Members of the areas that most commonly gave rise to complaints and to tell them how those could be avoided. One recommendation was for Members to regularly check that their registered interests were up to date. Ironically this resulted in a number of Members referring themselves to me for investigation for failing to notify a change to their registered interests within the prescribed period of four weeks.

25. In the course of an investigation, it became apparent that there was a need to be able to offer an independent support service to vulnerable witnesses. That service was quickly procured for that investigation and consideration of how it should be provided in the future is ongoing.

26. In March I participated in the Standards Network which was very successfully hosted by the Senedd Commission. At it I had the opportunity to discuss with representatives from the House of Lords, the House of Commons, the Scottish Parliament and the Northern Ireland Assembly their approach to standards of conduct issues and to learn of new developments in their jurisdictions.

- 27.** With extensive legal assistance a new Privacy Notice for the Office of the Senedd Commissioner for Standards was prepared and published.
- 28.** As noted in my last Annual Report the Memorandums of Understanding with Dyfed Powys Police and Gwent Police were conclude in April 2022.
- 29.** A Memorandum of Understanding was agreed between the Standards Commissioner, the Senedd Commission and the Clerk of the Senedd covering a range of matters including communications between these three parties and the provision of staff and services to the Commissioner.
- 30.** My staff and I again responded to more than 20 enquiries many of which were nothing to do with my functions as Commissioner. Some were from regular 'customers'. In all cases they were dealt with sympathetically and signposted to the appropriate organisation.

5. Expenditure

31. 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.

32. The expenditure by the Commissioner's office for the year ended 31 March 2023 is shown in Table 4.

Table 4 – Expenditure of Commissioner’s office

	2018-19	2019 - 20	2020-21	2021-22	2022-23
	£	£	£	£	£
Commissioner employment costs (Note 1)	26,105	17,446	0	30,538	34,692
Commissioner T & S		376	0	1,014	4,264
Commissioner other costs			0	0	0
Acting Commissioner employment costs (Note 1)	4,786	10,188	42,517	0	0
Acting Commissioner T & S	695	2,655	105	0	0
Acting Commissioner other costs			0	0	0
Total Commissioner and Acting Commissioner expenditure	31,586	30,665	42,622	31,552	38,955
Employment costs (Note 2)	44,798	123,630	92,834	70,874	71,115
Staff T & S	0	511	0	0	0
Staff other costs	0	0	0	0	0
Total Staff costs	44,798	124,141	92,834	70,874	71,115
Other liabilities incurred	0	1,528	25,259	4,957	9,524
TOTAL COMMISSIONER OFFICE EXPENDITURE	76,384	156,334	160,715	107,383	119,595

Note 1 - Commissioner remuneration + employer NIC

Note 2 - Staff salary = employer NIC + employer pension contribution

33. The 11.3% increase in the cost of running the Commissioner’s office was almost exclusively to the cost of investigating one complaint. Despite that increase the total cost remains well below the figures for 2019-20 and 2020-21.

34. The expenditure of £9,524 on ‘Other liabilities incurred’ covered a range of matters including legal fees, the cost of transcribing witness interviews and the cost of the support service provided for vulnerable witnesses.

6. The year ahead

35. In addition to dealing with complaints, I shall during 2023-24 continue to work closely with the Committee and its staff to make the complaints process more effective and efficient by identifying anything in the Measure, the Code and the Procedure that could be improved.

36. I shall deliver further refresher training to Members.

37. The Commissioner's website will be revised and modernised to facilitate public access to information on all aspects of the complaints process. I shall consider other ways of informing the public of that process.

38. I shall consider how best to provide independent support for vulnerable complaints and witnesses. I will review of the investigation in which the need for that support was identified with a view to identifying improvements that could be made in any similar complaint investigation.

7. Acknowledgements

39. Jonathan Thomas, my Investigations and Complaints Manager, once again provided wise and thoughtful advice on the myriad of new issues that arose during the year. He also maintained the comprehensive and accurate records of complaints received and how they were processed. I am most grateful to him and to the many Senedd Commission staff who helped me to discharge my duties.

A handwritten signature in black ink, enclosed in a rounded rectangular box. The signature is stylized and appears to read 'D. Bain'.

Douglas Bain CBE TD

Senedd Commissioner for Standards

07 July 2023

