

National Assembly for Wales
Standards of Conduct Committee

**Report 01-14 to the Assembly on
the Registration and Declaration of
Members Interests**

October 2014



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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The Standards Committee was established on 22 June 2011. The Committee's role is to carry out the functions set out in Standing Order 22. These include: the investigation of complaints referred to it by the Standards Commissioner; consideration of any matters of principle relating to the conduct of Members; establishing procedures for the investigation of complaints, and arrangements for the Register of Members' interests and other relevant public records determined by Standing Orders.

Current Committee membership



Mick Antoniw (Chair)
Welsh Labour
Pontypridd



Llyr Huws Gruffydd
Plaid Cymru
North Wales



Mark Isherwood
Welsh Conservatives
North Wales



Eluned Parrott
Welsh Liberal Democrats
South Wales Central

The following Member was also a member of the Committee during this inquiry:



Kirsty Williams
Welsh Liberal Democrats
Brecon and Radnorshire

The Standards of Conduct Committee agreed this report on 23 September, prior to the election of Eluned Parrott AM in place of Kirsty Williams AM to the Committee on 30 September.

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The Committee's Recommendations

The Committee's recommendations are listed below, in the order that they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

Recommendation 1. The Committee recommends to Business Committee that Paragraph 5(ii) of the Annex to Standing Order 2 is amended to remove the requirement to register the remunerated employment of a dependent child. (Page 14)

Recommendation 2. The Committee recommends to Business Committee that Standing Orders are amended to require the registration of receipt of public funds (source only), where not captured elsewhere on the register. (Page 15)

Recommendation 3. If this recommendation is accepted the guidance will need to be revised to clarify what should be registered as public funds. (Page 15)

Recommendation 4. The Committee recommends to Business Committee that paragraph 5(v) of the Annex to Standing Order 2 is amended to require registration by Assembly Members of any remuneration or other material benefit received from any company or body which has or is tendering for a contract with the Assembly only where knowledge on the part of the Member exists. (Page 16)

Recommendation 5. The Committee recommends to the Registrar that guidance on the registration of interests is updated to reflect the value of a share option should be considered the same as the value of the actual share. (Page 17)

Recommendation 6. The Committee recommends to the Registrar that the guidance for registration requirements under Paragraph 9 of the Annex to Standing Order 2 is updated with the requirement for Members to register blind trusts. (Page 17)

Recommendation 7. The Committee recommends to the Registrar that the definition of Membership under Paragraph 5(x) of the Annex to Standing Order 2 should be more narrowly defined in the Guidance and include:

- any officeholder within an organisation, to include trustees and directors, patrons and vice presidents, as well as the more recognised officeholders such as Chairman;
- membership of the governing body or board;
- any paid position, be it executive or administrative. (Page 19)

Recommendation 8. The Committee recommends to Business Committee that Paragraph 5(x) of the Annex to Standing Order 2 should be amended to require the Member to register where they knew or ought to have known; about the provision of Assembly funding. (Page 20)

Recommendation 9. The Committee recommends that Business Committee consider deleting Standing Order 2.12 as any such agreements involving the provision of services in the Member’s capacity as a Member are captured under other registration requirements. (Page 20)

Recommendation 10. The Committee recommends that the guidance is updated to clarify that pension income is not categorised as registrable remuneration. (Page 21)

Recommendation 11. The Committee recommends that the Commissioner for Standards discuss the proposal for utilising the mechanism under the Electoral Administration Act 2006 to remove the ‘double registration’ requirement with the relevant bodies and report back to the Standards of Conduct Committee in due course. (Page 22)

Recommendation 12. The Committee recommends to Business Committee that Standing Order 2.7 is amended to reflect a requirement for declaration of any direct financial advantage “greater than that which might accrue to the electorate generally”. (Page 24)

Recommendation 13. The Committee recommends to Business Committee that a new provision is made in Standing Orders which requires Members to make an oral declaration of any relevant interest which the Member or a family member has or is expecting to have in any matter arising in Assembly proceedings. The Committee strongly recommends that this is separate to the requirements under Standing Order 2.6 and 2.7 and therefore not subject to criminal sanctions. (Page 24)

Recommendation 14. If the Business Committee agrees to these recommendations, the guidance on registering interests will need to be updated to reflect the test of relevance for making oral declarations in such instances as being whether the interest might reasonably be thought by others to influence the member's contribution to the debate or discussion. The Code of Conduct will also need to be updated to reflect the requirement to make oral declarations. (Page 24)

Recommendation 15. The Committee recommends that the Commissioner for Standards discuss the proposal for introducing an independent person to consider breaches of Standing Order 2 in the first instance with the relevant bodies and report back to the Standards of Conduct Committee in due course. (Page 27)

1. Introduction

1. The Standards of Conduct Committee (the Committee) agreed on 9 July 2013 that the Commissioner for Standards (the Commissioner) should undertake a piece of work on the Standing Orders, Code of Conduct and associated guidance dealing with Registrable Interests and make recommendations to the Committee in this area.¹
2. The Commissioner conducted a consultation with Assembly Members, the Presiding Officer, Assembly Commission Staff and the Electoral Commission and produced a report containing a number of proposed changes. This report was considered by the Committee on 1 July 2014. In addition to the Commissioner's proposals for more substantial changes to the register, Assembly Commission staff have proposed a number of drafting changes to the guidance for registering and declaring interests with the aim of increasing clarity for Members.
3. This report contains the Committee's findings and resulting recommendations on potential changes to the Register of Members' Interests.

¹ Standards of Conduct Committee, 9 July 2013

2. Background

4. Section 36 of the Government of Wales Act 2006 (the Act) requires the Assembly's Standing Orders to include provision for a register of Members' interests (the Register) and for that register to be published and made available to the public. The specific requirements for the Registration of Members' Interests are set out in the Assembly's Standing Orders 2, 3, 4 and 5. The Standing Order requirements are supplemented by the 'Guidance on the Registration and Declaration of Members' Financial and Other Interests' (the Guidance), which is approved by resolution of the Assembly in Plenary. Failure by an Assembly Member to correctly register Members' interest under Standing Order 2 is potentially a criminal offence under Section 36(7) of the Act.

5. In accordance with Standing Order 22.2, the Standards Committee must "supervise the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests and the form and content of the Register and the Records". Under this remit the Committee has responsibility for preparing and maintaining the Guidance.

6. In 2001, the Standards Committee commissioned an overarching review of the Standards regime of the National Assembly for Wales, which was undertaken by Professor Diana Woodhouse of Oxford Brookes University.² This review, and its recommendations, laid the foundation for the current Rules on Registration and Declaration, as well as the Code of Conduct and the Procedure for Dealing with Complaints Against Assembly Members. There have been no major updates to the registration rules since the agreement of Standing Order 5 in 2006.

7. Responsibility for providing advice to Members on the interpretation of the Rules lies with the designated Registrar of Members' Interests. This role is currently undertaken by the Head of Chamber and Committee Service, with the day to day advice provided on the Registrar's behalf by the Table Office.

² The Report of the Woodhouse review is available on the Assembly's website: www.assemblywales.org/NAfW%20Documents/diana_woodhouse_report_final_version__2_.pdf%20-%2007112008/diana_woodhouse_report_final_version__2_-English.pdf

3. The Approach

8. The Commissioner issued a consultation letter in January 2014 to all Assembly Members, the Presiding Officer, the Chief Executive and Clerk of the National Assembly for Wales and the Electoral Commission. A copy of the letter can be found at Annex A.

9. In addition to inviting written responses to the consultation, the Commissioner held a number of drop-in sessions and one to one meetings with Members.

10. The information gathered through this consultation was used to inform the Commissioner's report in July 2014. A copy of the report can be found at Annex B.

11. The Committee met on 1 July 2014 to discuss the proposals made by the Commissioner, and agreed a number of recommendations to change the procedures for registering interests which are detailed in this report. Some of the recommendations propose changes to Standing Orders and therefore are for Business Committee to consider.

Next steps

12. The Committee considers that a number of its proposals would be best achieved through changes to Standing Orders. These recommendations will need to be considered by the Business Committee, who will then table any proposed amendments for agreement by the Assembly in Plenary. Associated changes to the Guidance and Assembly Member Code of Conduct will also need to be tabled by the Standards of Conduct Committee for agreement by Assembly resolution in Plenary.

13. Once the changes have been agreed by Plenary, the Commissioner for Standards and the Registrar will work with Party Groups to ensure the changes and new requirements on Members are clearly explained.

4. Proposed Changes to the Rules on Registration and Declaration of Members' Interest

14. The register of financial or other interests lists the following categories for registration:

- Category 1: Directorships
- Category 2: Remuneration Employment, Office, Profession, etc
- Category 3: The Names of Clients
- Category 4: Gifts, hospitality, material benefit or advantage
- Category 5: Remuneration or other material benefit
- Category 6: Financial sponsorships
- Category 7: Overseas visits
- Category 8: Land & Property
- Category 9: Shareholdings
- Category 10: Public bodies

15. The full detail of what is required in these categories is set out in the Annex to Standing Order 2 and in the guidance published alongside the Register.

16. On the whole, the Commissioner's consultation found a broad consensus for:

- "some updating of the rules to reflect the current legal and constitutional position of the National Assembly (as opposed to that which pertained in 2006)
- some specific changes, ... where experience dictates they are needed or will better suit current times
- clear and comprehensive guidance."³

17. During the Commissioner's consultation there were no significant concerns raised about the following five categories:

- Category 1: Directorships
- Category 3: The Names of Clients
- Category 4: Gifts, hospitality, material benefit or advantage

³ Standards Commissioner's paper, Annex B to this report

- Category 7: Overseas visits
- Category 8: Land & Property

18. Therefore the Committee recommends no substantive changes to these categories.

19. The Committee considered the Commissioner's proposals for the remaining categories of registration and other issues which emerged as part of the consultation process. The Committee's findings are set out below.

Employment of Dependent Children

20. Paragraph 5(ii) of the Annex to Standing Order 2 sets out the following registrable interest:

(ii) 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 over the age of sixteen, is remunerated, or in which the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member over the age of sixteen, has any pecuniary interest;⁴

21. The Commissioner proposed that the Committee consider whether to amend Standing Orders to delete the remunerated employment of a dependent child as a registrable interest. He also proposed that consideration was given to whether Standing Orders should require Members to declare any relevant financial interests held by a "family member" (as defined in Standing Order 3) in the circumstances envisaged by Standing Orders 2.6 and 2.7, which could include the remunerated employment of any dependent child.

22. The Commissioner argued in his paper that the requirement under Paragraph 5(ii) of the Annex to Standing Order 2 is particularly intrusive as:

"...the intrusion into personal and private life of a child by making public his or her position and/or income is one which

⁴ National Assembly for Wales Standing Orders

should be sparingly used and only when absolutely necessary and in the public interest.”⁵

23. Furthermore, he argued that there may be many circumstances where a “family” interest (wider than just dependent children) in a subject under debate or discussion may affect or be perceived to affect the response of a Member to that debate or any vote on the matter.

24. Given these points, and that the National Assembly is the only legislature in the UK which requires the registration of the employment of children of Members, the Commissioner suggested that a way forward could be to remove the requirement for the remunerated employment of a dependent child to be registered and to create a requirement for Members to declare, either in plenary or committee, a pecuniary or personal interest in any item of business in which a Member or family member (as defined in Standing Order 3.2) has a relevant interest.

25. The Commissioner outlined that this new category of declarations would not attract a criminal sanction if breached but that non-declaration of appropriate interests (those falling under Standing Order 2) would remain a criminal sanction under section 36 of the Government of Wales Act 2006.

26. This report considers the issue of wider oral declarations at paragraphs 66-73.

Committee view

27. The Committee considered the arguments put forward by the Commissioner and agreed that the need to register the remunerated employment of a dependent child should be removed as a registrable interest, and that a new requirement for a wider oral declaration around ‘family interests’ be added (see section on oral declarations). The Committee believe that this provides the correct balance between what is in the public interest to know and protecting against an unnecessary intrusion into private lives.

28. The Committee felt that the Commissioner’s suggestion provided clarification about what should be registered and removed what was considered an unnecessarily onerous requirement.

⁵ Standards Commissioners paper

The Committee recommends to Business Committee that Paragraph 5(ii) of the Annex to Standing Order 2 is amended to remove the requirement to register the remunerated employment of a dependent child.

Receipt of Public Funds by Members

29. Paragraph 5(ii) of the Annex to Standing Order 2 sets out the following registrable interest:

(ii) 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 over the age of sixteen, is remunerated, or in which the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member over the age of sixteen, has any pecuniary interest;⁶

30. The Commissioner received representations on whether there should be a separate registration category for 'the receipt of public funds'.

31. The majority view was that a separate registration created an unnecessary duplication, as this information was predominately captured in other categories namely the remuneration requirement.

32. The Commissioner agreed with the view put forward that duplication should be avoided where possible, and that therefore a separate category was not necessarily needed. He did, however, believe that it was important that where a single registration of remuneration was made any element of public funds is clearly identified within it.

Committee View

33. The Committee considered the registration of receipt of public funds to be an important area for clarification. The Committee agreed with the Commissioner's opinion that a separate category for public funds is likely to lead to duplication.

34. The Committee agreed that the receipt of public funds should be registered, but did not want it to be a stand-alone category, in order to

⁶ National Assembly for Wales Standing Orders

try and avoid duplication. It was agreed that the registration of the source of public funds was sufficient, rather than any further information such as the amount received.

35. The Committee clarified that this requirement would be aimed at capturing public funds such as grant allocations and not include more tenuous areas of public funding such as salary or income from a public post, such as a Teacher or a Health Professional, which are already captured within the requirement of the paragraph 5(ii) of the Annex to Standing Order 2.

36. The Committee agreed that this change would require guidance on the definition of public funds, and a degree of common sense with regards what to register.

The Committee recommends to Business Committee that Standing Orders are amended to require the registration of receipt of public funds (source only), where not captured elsewhere on the register.

If this recommendation is accepted the guidance will need to be revised to clarify what should be registered as public funds.

Contracts with the Assembly

37. Paragraph 5(v) of the Annex to Standing Order 2 sets out the following registrable interest:

(v) 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;⁷

38. A number of concerns were raised with the Commissioner that Members are required to register any remuneration or other material benefit received from any company or body which has or is tendering for a contract with the Assembly. It was suggested that this requirement could be considered illogical and unfair as this information may be outside the knowledge of the Member, but the requirement to register is absolute.

⁷ National Assembly for Wales Standing Orders

39. The Commissioner proposed that the Committee consider whether the Standing Order should be altered to require registration only where knowledge exists.

Committee View

40. The Committee agreed that the requirement as it stands was unfair and illogical as Members could not always know if companies they receive remuneration from are tendering for or hold contracts with the Assembly. The Committee agreed that Paragraph 5(v) of the Annex to Standing Order 2 should be amended therefore to reflect the need for registration only where knowledge exists.

The Committee recommends to Business Committee that paragraph 5(v) of the Annex to Standing Order 2 is amended to require registration by Assembly Members of any remuneration or other material benefit received from any company or body which has or is tendering for a contract with the Assembly only where knowledge on the part of the Member exists.

Shareholdings: Options and Blind Trusts

41. Paragraph 5(ix) of the Annex to Standing Order 2 sets out the following registrable interest:

(ix) 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 of the Member, a beneficial interest, or in which, to the Member's knowledge, the Member's partner or a dependent child of the Member has a beneficial interest, in shareholdings of a market 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;⁸

42. The Commissioner highlighted in his report, that although there had been no concerns with the requirements for registration of shareholdings as they stand, there had been concerns regarding the registering of share options and Blind Trusts.

⁸ National Assembly for Wales Standing Orders

Share options

43. There was a call for clarity on registering share options. The value of a share option can vary depending on the terms of the grant of the option and the state of the market in the shares. Given that a criminal sanction applies, the Commissioner argued that there was a need for clarity in this area. He suggested that share options should be included and that the value of an option for registration purposes could be considered to be the share value at the appropriate time.

Blind Trusts

44. The current rules are silent on Blind Trusts. Although it would be impossible for details of the individual share holdings in the trust to be declared, the Commissioner argued that it was in the public interest to know about the existence of any blind trusts held by Members. He argued that the public would endorse the sentiment of the Neill Committee's 1998 report to Parliament that blind trusts were "inconsistent with the principles of openness and accountability".⁹

Committee View

45. The Committee agreed that more clarity was needed in terms of the value of an option for shares and that the proposed approach of taking the market value of the shares was a sensible and appropriate way forward.

46. The Committee recognised that there was an inherent distrust in Blind Trusts. It agreed that it was in the public interest for Blind Trusts to be registered, and that it was appropriate to provide this clarity through guidance as opposed to amending Standing Orders.

The Committee recommends to the Registrar that guidance on the registration of interests is updated to reflect the value of a share option should be considered the same as the value of the actual share.

The Committee recommends to the Registrar that the guidance for registration requirements under Paragraph 9 of the Annex to Standing Order 2 is updated with the requirement for Members to register blind trusts.

⁹ Fifth Report of the Committee on Standards in Public Life: The Funding of **Political Parties** in the United Kingdom

Membership of a Body funded by the Assembly

47. Paragraph 5(x) of the Annex to Standing Order 2 sets out the following registrable interest:

(x) 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 out of funds provided by the Assembly.¹⁰

48. The Commissioner set out the need for greater clarity around the definition of membership. Due to the potential criminal sanctions for not registering membership, some Members have registered “mass” memberships such as the WRU or the National Trust. However, the Commissioner argued that these types of registration are unnecessary in terms of achieving transparency and should more rightly apply to situations where a Member may be able to use their position in an organisation to promote a particular cause.

49. The Commissioner suggested that membership be more tightly defined to include:

- any officeholder within an organisation, to include, beyond the obvious ones such as chairman, roles like trustees and directors, patrons and vice presidents;
- membership of the governing body or board;
- any paid position, be it executive or administrative.¹¹

50. There were some concerns raised about the registering of Vice Presidents/Patrons, as these are often not office holders but instead donors to the organisation. However, the Commissioner argued that, by virtue of giving such a title, the organisations may utilise a Member’s name to seek to exercise greater clout or pressure, and therefore these positions should also be registrable.

51. Paragraph 5(x) of the Annex to Standing Order 2 requires Members to know whether the organisation is in receipt of public funds from the Assembly. The Commissioner questioned in his paper, whether this should be registrable as an “absolute” requirement regardless of the state of knowledge of the Member. He suggests while

¹⁰ National Assembly for Wales Standing Orders

¹¹ Standards Commissioners paper

it is reasonable to be able to penalise a Member who had such knowledge, or who ought to have had such knowledge, there are cases where the Member would not have known, nor could have been expected to know and in such instances it appears unfair for a Member to potentially face a criminal sanction.

Committee View

52. The Committee agreed that there was a need to clarify the definition of membership under Paragraph 5(x) of the Annex to Standing Order 2 and noted that this should not have an impact on the definition of membership under Standing Order 5 (Recording Membership of Societies).¹²

53. The Committee agreed that although often not an office holding position, in the interest of transparency, roles such as vice presidents and patrons should be registrable as a Member's name could be used as a result of these titles.

54. The Committee considered the issue of whether a Member could always know whether an organisation they were a member of, was in receipt of public funds. The Committee agreed that there were instances where a Member may be unaware of the organisation's funding which needed to be reflected in the Standing Orders. However, Members felt it was important to ensure that instances where a Member ought to have known about funds remained a registrable interest. It was considered that in some circumstances the onus should be on the Member to enquire about the receipt of Assembly funds for registration purposes, rather than rely on a defence of not knowing – for example as a Chair of an organisation you should be aware of where the funding is coming from.

The Committee recommends to the Registrar that the definition of Membership under Paragraph 5(x) of the Annex to Standing Order 2 should be more narrowly defined in the Guidance and include:

- any officeholder within an organisation, to include trustees and directors, patrons and vice presidents, as well as the more recognised officeholders such as Chairman;**
- membership of the governing body or board;**
- any paid position, be it executive or administrative.**

¹² National Assembly for Wales Standing Orders

The Committee recommends to Business Committee that Paragraph 5(x) of the Annex to Standing Order 2 should be amended to require the Member to register where they knew or ought to have known; about the provision of Assembly funding.

Agreement for the Provision of Services

55. Standing Order 2.12 sets out the following registrable interest:

2.12 Any Member who has, or who proposes to enter into, an agreement involving the provision of services in the Member's capacity as a Member must ensure that the agreement:

- (i) is not in breach of Standing Order 2.8;
- (ii) is in writing;
- (iii) indicates the nature of the services to be provided; and
- (iv) specifies the payment or benefit to be received.¹³

56. To date, there have been no registrations made under this Standing Order. Furthermore, there have been no questions raised about the operation of the Standing Order. Submissions made to the Commissioner on this suggested that this was an unnecessary Standing Order, as any such agreement would be registrable under other headings. The Commissioner proposed that the Standing Order was deleted.

Committee View

57. The Committee considered the requirement for this Standing Order, and agreed that any such agreement would be captured under the registration requirements in Standing Order 2 annex 5(i)(ii)(iv)(v) and (vi), and as such the Standing Order should be deleted.

The Committee recommends that Business Committee consider deleting Standing Order 2.12 as any such agreements involving the provision of services in the Member's capacity as a Member are captured under other registration requirements.

¹³ National Assembly for Wales Standing Orders

Pensions

58. The Commissioner received a number of submissions about whether pension income should be registered under the remuneration category. The majority of views put forward to the Commissioner suggested that an inalienable pension does not affect the independence of a Member, and therefore pension income should not be registered. This is the position in all the other UK legislatures.

59. The Commissioner argued that pension income should not be registered, as a pension is paid without regard to the Member's views or votes, so cannot be considered or be perceived to be an influencing factor on Member's conduct. Furthermore, he suggested that the new proposed oral declaration (paragraph 66-73) would enable Members to declare a pension income if they had concerns about transparency.

Committee view

60. The Committee agreed that pension income should not be registrable. Members felt that there was a requirement to register any relationship with an organisation which may result in a Member being influenced such as shareholding, which was in the public interest and that there was little value in declaring pension income. The Committee felt that the guidance should be updated to clarify that pension income did not need to be registered.

The Committee recommends that the guidance is updated to clarify that pension income is not categorised as registrable remuneration.

Financial sponsorship

61. The Electoral Commission's regulations¹⁴ for the registration of donations and sponsorship results in duplication with the requirements under GOWA and Standing Orders. It was proposed that Wales follows the same route as Westminster and Scotland and eliminate the 'double registration' requirement.

62. There is a mechanism under the Political Parties, Elections and Referendums Act (PPERA) 2000 to remove the donation and loan controls on Members of a legislature by bringing the legislature's reporting requirements in line with PERA. This enables Members to

¹⁴ www.electoralcommission.org.uk/find-information-by-subject/political-parties-campaigning-and-donations

discharge all their donation reporting requirements (except as candidates) by reporting to the relevant legislature. The Electoral Commission retains a role in respect of impermissible donations.

63. This would require an amendment to the Assembly rules to cover the PPERA reporting requirements, and secondary legislation to remove the PPEPRA controls. This change would therefore not be as immediate as other changes proposed in this report.

64. The Commissioner also received a number of submissions which called for greater clarity in relation to what should be registered, which he suggests could be addressed as part of the process of agreeing a single registration procedure.

Committee view

65. The Committee considered the proposal put forward by the Commissioner and the Electoral Commission to remove the 'double registration' requirement, and agreed that this should be explored further with the Wales Office, the Electoral Commission and the Assembly Commission.

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

Oral declarations

66. Standing Order 2.6 and 2.7 set out the current requirements for oral declarations before taking part in any assembly proceedings:

2.6 In the circumstances specified in Standing Order 2, before taking part in any Assembly proceedings, a Member must make an oral declaration of any financial interest which he or she has, or may be expecting to have, or which, to the Member's knowledge, the Member's partner or any dependent child of the Member has, or may be expecting to have in any matter arising in those proceedings.

2.7 An oral declaration under Standing Order 2.6 must be made in relation to any interest which is specified in paragraph 5 of the Annex to Standing Order 2 if a particular decision in

those proceedings might result in a direct financial advantage to the Member, or, to the Member's knowledge, the Member's partner or any dependent child of the Member, greater than that which might accrue to persons affected by the decision generally.¹⁵

67. The Commissioner received a number of responses on this as part of his consultation and proposed two changes to the requirements for oral declarations.

68. Firstly, the Commissioner proposed that consideration should be given to whether there is a need for a wider regime of declarations. The Commissioner cites the example of Northern Ireland Assembly where Members must declare any relevant interest, financial or otherwise, or direct or indirect benefit of whatever nature, in debate or other proceedings. Their guidance sets out the test of relevance as being whether the interest "might reasonably be thought by others to influence the speech or representation". He argues that it would be in the public interest for a wider declaration to be instituted, which places the onus on Members to make a declaration where integrity requires it.

69. The Commissioner suggested that such a requirement for oral declarations should not be amenable to criminal sanctions, as it would be so wide ranging that it may not always be obvious or identifiable for Members. He did, however, highlight that these would be part of the Code of Conduct for Assembly Members, and therefore subject to the sanctions under this if appropriate.

70. Secondly, the Commissioner raised some concerns about whether the wording at the end of Standing Order 2.7, *greater than that which might accrue to persons affected by the decision generally* provides sufficient clarity and certainty. The Commissioner argued that this may be too limited and inadvertently deprive the public of knowledge of interests which should be disclosed. He suggests altering the wording to read "greater than that which may accrue to the electorate generally", as this then would capture instances where a Member is part of a minority group who would benefit from a certain piece of legislation e.g. a landlord discussing and voting on renting

¹⁵ National Assembly for Wales Standing Orders

regulations. These declarations would remain subject to criminal sanctions.

Committee view

71. The Committee considered the options put forward, and agreed that introducing a wider need for declaration would add more clarity than at present, and would be in the wider public interest.

72. The Committee felt that the wording at the end of Standing Order 2.7 would benefit from greater clarity, and was limited as it currently stood. The Committee agreed with the proposal put forward by the Commissioner to amend the wording to read ‘greater than that which may accrue to the electorate generally.’

73. The Committee discussed the test of relevance for making an oral declaration, and agreed that it would require the discretion of Members to decide when a declaration was appropriate. The Committee agreed with the proposal put forward by the Commissioner that the test of “relevance” should be whether the interest might reasonably be thought by others to influence the Member’s contribution to the debate or discussion.

The Committee recommends to Business Committee that Standing Order 2.7 is amended to reflect a requirement for declaration of any direct financial advantage “greater than that which might accrue to the electorate generally”.

The Committee recommends to Business Committee that a new provision is made in Standing Orders which requires Members to make an oral declaration of any relevant interest which the Member or a family member has or is expecting to have in any matter arising in Assembly proceedings. The Committee strongly recommends that this is separate to the requirements under Standing Order 2.6 and 2.7 and therefore not subject to criminal sanctions.

If the Business Committee agrees to these recommendations, the guidance on registering interests will need to be updated to reflect the test of relevance for making oral declarations in such instances as being whether the interest might reasonably be thought by others to influence the member’s contribution to the

debate or discussion. The Code of Conduct will also need to be updated to reflect the requirement to make oral declarations.

5. Notifying Breaches Under Standing Order 2

74. Section 36(7) of the Government of Wales Act makes it a criminal offence for a Member to take part in any proceedings without having registered, and within the prescribed time, the interests under Standing Order 2.¹⁶ The result of this provision is that an inadvertent delay or wilful non registration trigger the same response, and are both liable to criminal proceedings.

75. The Commissioner suggests in his paper that any requirement for Assembly Commission officials to notify the relevant authorities (usually the DPP) may cause tensions between officials and Members in the instances of reporting trivial cases. Furthermore, the Commissioner raises concerns that officials may assume an unscripted discretion by not reporting breaches, which may be an onerous and unfair burden.

76. The Commissioner suggested that it would be beneficial to add an additional filter into the system for dealing with Standing Order 2. He suggests that breaches of Standing Order 2 should be referred to an independent person, who would determine whether the matter should be referred onto the DPP. He argues that the benefit of this approach would be that the onus would be taken off officials, as all breaches would be referred to the independent person. Furthermore, this independent person would provide a public interest safeguard.

77. The Commissioner suggested that this is a function that this could be undertaken by the Commissioner for Standards, as it is an independent statutory role, and that they would be in a position to determine whether the breach should be:

- Referred to the DPP;
- Subject to proceedings under the Code of Conduct; or
- Dealt with informally.

78. The Committee considered the proposal and agreed that it was a sensible approach, which would bring proportionality to the system. The Committee requested that the Commissioner for Standards and relevant Assembly Officials work with the DPP's office on the feasibility of this suggestion.

¹⁶ www.legislation.gov.uk/ukpga/2006/32/section/36

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

6. Guidance for Registering Interests

79. The Rules on Registration and Declaration of Interests have not been reviewed or revised for a number of years. There is a need to update the Rules to reflect correct and current terminology. For example, in a number of categories the Rules refer to ‘the Assembly’ where it would be more appropriate to now refer to the Welsh Government and/or the Assembly Commission (in practice, the rules are interpreted to refer to the Welsh Government/Commission but changes should be made formally to Standing Orders and Guidance).

80. The Committee agreed that the Registrar should be able to make administrative changes to the guidance as and when necessary. This addresses an anomaly in the system and should help to avoid the current situation where the guidance remains out of date from changes made in 2006. Such changes would be agreed by the Chair of the Standards of Conduct Committee, to ensure that they do not substantively alter the registration requirements.

81. Following consideration of the recommendations in this report, the guidance will be updated to reflect the agreed changes. This will then be tabled for agreement by Assembly resolution in plenary.

Annex A

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



By email

6 January 2014

Dear Member,

As you may be aware, the Standards of Conduct Committee is undertaking a review of the Code of Conduct and is currently focussing on issues relating to the Registration and Declaration of Interests as set out in the existing Code and Associated Guidance.

The Committee has asked me to consult on these topics with Assembly Members and any other interested parties, to coordinate responses and report back. I hope to be in a position to do this by the early Spring

Thus it is that I seek your views on the fitness for purpose of the existing rules and would welcome suggestions as to the ways in which the Code or the Guidance could be improved or amended. I append a note of some of the areas which the Standards Committee has informally discussed and would welcome comments as to the direction which should be taken in relation to any of these issues. However I should stress that I am open to receive comment or suggestions in relation to any aspect of Registration and/or Declaration of Interests which any Member may wish to raise.

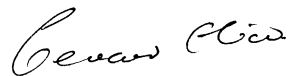
I am happy to discuss these matters individually or in Groups and, as well as being pleased to meet with you at any time by appointment, I intend to be available in Dining Room 3 in Tŷ Hywel for you to drop in to talk with me without appointment at any time between **10:30-12:30 on Wednesday 15 January and Tuesday 4 February 2014.**

In addition, I would also be very pleased to receive in writing any observations you may have on the subject, either from individuals or groups. I aim to have concluded this informal consultation period by mid February and would ask, therefore that the deadline for all appointments and the submission of written views by close of play on **Friday 7th February 2014.**

To set up a convenient time to see me about these matters, or with any other query relating to this letter, please do get in touch via my PA, Jonathan Thomas on 20898948 or email - jonathan.thomas@wales.gov.uk

May I take this opportunity to wish you the very best of health and happiness for the New Year.

Yours ever,



Gerard Elias QC
Y Comisiynydd Safonau
Commissioner for Standards

Note on Registration and Declaration of Interests

In giving consideration to these topics it is perhaps worth keeping in mind the principle behind Registration and Declaration, namely (as the Greco Report 2013 puts it):

“The main purpose of the Register is to give public notification on a continuous basis of those financial interests/material benefits held by Members which might be thought to influence their parliamentary conduct or actions.”

The following matters, in no particular order of importance, have been informally raised in discussion by the Committee:

1. Sources of “remuneration” fall to be declared under current Code. Should pension income, which is probably not “remuneration”, be specifically included?
2. In relation to the existence of a “contract with the Assembly”, should this be “Member’s knowledge” or an absolute liability to declare and register any such contract?
Should there be any threshold as to the remuneration or benefit derived which requires registration (e.g. same as gift declaration - over £270); there is currently no minimum?

3. Financial sponsorship for election candidates- How are “contributions” to be considered – to the member, the party, etc etc..?
Is not the aim, transparency, to catch the significant individual or corporate donors, however it is dressed up?
4. Blind trusts – what is the purpose of registration of these?
Share options – is not the value of an option at any given time, the buy or sell value of the exercised option? If so, should this not be explicitly stated in the Rules?
5. “paid or unpaid membership or chairmanship” of any body funded in whole or part by the Assembly – what does “Membership” mean? need for clarity of definition? If so, what?
6. Registration of Interests of Dependent Children – National Assembly is only UK parliament to require this. If still appropriate
 - Age limit?
 - Private life versus need for openness re any remuneration received as a result of a Member’s influence/ activities etc.?
7. Receipt of public money by members or partners – should this be registered separately, irrespective of whether they are already to be found e.g. in employment already registered?
8. Standing Order 2.12
This would appear to apply to those e.g writing a newspaper column as an AM but it is thought to have never been used – is it being breached/ is it necessary?
9. Standing Order 2.6 – oral declarations
“if a particular decision in those proceedings might result in a direct financial advantage to the Member greater than that which might accrue to persons affected by the decision generally”
Is this wording fit for purpose in 2013?

General

10. I would respectfully highlight the need for AMs to clearly understand their personal responsibility in this area, whatever advice they may or may not have taken. If in doubt, Register!
Is this agreed and does it need to be underlined further?

Greco Report March 2013

Para 41 – “Greco recommends that consideration be given to lowering the thresholds for reporting financial holdings”.

- Note this was directed principally at London, albeit with invitation to Wales, Scotland & NI to consider action:
- Currently - Commons £66k/Lords £50k/NAW £27k/NI £21.5k/Scotland ££29k

Para 46 – “consideration be given to lowering the current thresholds for registering accepted gifts”

- Again directed principally at Commons £660/ Lords £500 and Scotland £575. Report notes that Wales and NI are markedly lower (£270 & £215) but compares this with limit of UK Ministers £140.

Annex B

Review of the Rules on Registration and Declaration of Members' Interests:

Report on the Consultation Process carried out by the Commissioner for Standards on behalf of the National Assembly's Standards of Conduct Committee

To: Standards of Conduct Committee

From: Gerard Elias QC, Commissioner for Standards

Background

1. The current Rules on the Registration and Declaration of Members' Interests were approved by the National Assembly on 10 May 2006.
2. As part of its ongoing review of the Code of Conduct for Assembly Members, in Autumn 2013 the Committee resolved to deal with that part of the Code which requires the Registration and Declaration of Members' Interests and invited the Commissioner to carry out consultations on its fitness for purpose and any suggestions for alteration, and report accordingly.
3. With the benefit of experience, it is said that some aspects of the Rules and/or the Guidance which accompanies them, are outdated, impractical or no longer fit for purpose.

Consultation Process

4. In the latter part of 2013 and early part of this year, I consulted with Assembly Members, individually and collectively, the Presiding Officer, the Assembly's Chief Executive and members of her staff, as well as with the Electoral Commission for Wales and I invited and received written submissions from a variety of sources. The names of those who responded to the consultation process are shown at Appendix A and the written submissions of all respondents are annexed at Appendix B.

Broad Thrust of Responses

5. It is important to underline that no one has suggested that any major failings or flaws exist in the current Rules or Guidance. It is

noteworthy that in relation to five categories of registerable interests, namely:

- Directorships (Category 1)
- Names of Clients (Category 3)
- Gifts, hospitality etc (Category 4)
- Overseas Visits (Category 7) and
- Land and Property (Category 8)

no issues have been raised either before or during the consultation process, save for a muted response in relation to “thresholds” for Category 4..

6. Rather, the consultation process has thrown up a broad consensus for:

- some updating of the rules to reflect the current legal and constitutional position of the National Assembly (as opposed to that which pertained in 2006)
- some specific changes, detailed below, where experience dictates they are needed or will better suit current times
- clear and comprehensive guidance.

7. The essential purpose of this report is to seek the Committee’s definitive guidance on the way forward. It is not intended at this stage that the Committee should be concerned with the precise terms of any new Standing Order or of the Guidance. The Committee is invited to propose any changes to the Business Committee who will then recommend specific changes to Standing Orders to the Assembly. The Committee will then be invited to approve the updated and redrafted Guidance to Members, hopefully in the Autumn of this year. Accordingly, this report sets out issues for the Committee’s determination.

Specific Issues

Employment of Dependent Children

8. The National Assembly is the only legislature in the UK which requires the registration of the employment of children of Members – a “child” for these purposes being between 16 and 19 years. The majority view in consultation was that this requirement, set out in Standing Order 2 Annex 5(ii), should no longer be retained. On balance, I respectfully agree that the intrusion into personal and private life of a child by making public his or her position and/or income is one which should be sparingly used and only when absolutely necessary and in the public interest.
9. The Welsh Liberal Democrat Group response, however, raised an important issue, namely, what is the difference, in the context of the public’s need to know, between the interest of a dependent child and the interest of another, perhaps adult member, of the family? There may be many circumstances in which a “family” interest in a subject under debate or discussion may affect, or *be perceived to affect*, the response of a Member to that debate or vote.
10. Again, I respectfully agree with this submission – the public is entitled to know that such a relationship exists which might affect the way a Member responds to an issue. However, to require registration of all such interests in advance, even were it possible, would be both an administrative nightmare for a Member and a potential invasion of privacy of those family members who in theory could be affected. Accordingly, I come down strongly against a requirement to register.
11. Therefore, taking these two positions into account, I believe the way forward, which satisfies the need to know and protects unnecessary intrusion into private life, is to remove the requirement to register the earnings of a child but to create a requirement for a Member, either in plenary or committee, to ***declare*** a pecuniary or personal interest in any item of business in which a Member or family member (as defined in Standing Order 3.2) has a relevant (for the test of which, see Determination B (iii)) interest.

Determination A

The Committee is therefore invited to recommend that

- (i) Standing Orders be amended to delete the remunerated employment of a dependent child as a registerable interest, and**
- (ii) Standing Orders require Members to declare any financial interest in the circumstances envisaged by Standing Orders 2.6 & 2.7, which interests shall include the remunerated employment of any dependent child.**

12. Thus non declaration or non registration of appropriate interests, that is, those which fall under Standing Order 2, would remain subject to the criminal sanction of s36 of the Government of Wales Act 2006.

13. However, very obviously, these recommendations alone do not take account of those submissions which have called for a wider and, for example, family declaration of interest and I thus turn next to this topic.

Oral Declarations

14. These are currently specifically covered by Standing Order 2.6 and 2.7 which provide:

“2.6 In the circumstances specified in Standing Order 2, before taking part in any Assembly proceedings, a Member must make an oral declaration of any financial interest which he or she has, or may be expecting to have, or which, to the Member’s knowledge, the Member’s partner or any dependent child of the Member has, or may be expecting to have in any matter arising in those proceedings.”

“2.7 An oral declaration under Standing Order 2.6 must be made in relation to any interest which is specified in paragraph 5 of the Annex to Standing Order 2 if a particular decision in those proceedings might result in a direct financial advantage to the Member, or, to the Member’s knowledge, the Member’s partner or any

dependent child of the Member, greater than that which might accrue to persons affected by the decision generally”.

15. Consultations have raised two point:

Firstly, whether (in addition to the point raised at paragraph 9 above) there is not a need for a more general and wider regime of declarations. In particular, it is said, any relevant personal or family interest in a matter under debate - as opposed to debate leading to “*a particular decision*” (SO 2.7) - should be declared and members of Local Authorities should be under a specific duty to declare their membership where the interests of their Authority is under debate or discussion.

16. The Northern Ireland Assembly requires that members declare any relevant interest, financial or otherwise, or direct or indirect benefit of whatever nature, in debate or other proceedings (i.e. not therefore only when some *direct financial advantage* might result as per S.O. 2.7). The Guidance sets the test of relevance as being whether the interest “might reasonably be thought by others to influence the speech or representation”.

17. If the Committee has taken the decision to accept declaration of the relevant employment of dependent children, it will require the integrity of Members to come forward and make the necessary declaration. That same integrity, of course, is required where registration of interests takes place. There is no reason not to entrust Members with a discretion to make a declaration and I believe there is a good case in the public interest for a wider test for declaration to be instituted which would place upon the member an onus of responsibility to make a declaration where integrity requires it.

18. I believe that it should be the case that such a wider requirement to declare an interest is NOT amenable to criminal sanction, that is, it will not fall under the requirements of Standing Order 2.6 & 2.7. In essence this is because the duty will be a wide ranging one which will not necessarily always be obvious and/or identifiable, as it could apply to wider family relationships. However, it is important to note that it would be a part of the Code of Conduct and as such

amenable to sanction for breach by the Assembly, which could include suspension, where appropriate.

19. The second point raised is whether the wording at the end of 2.7 (“greater than that which might accrue etc”) provides clarity and certainty. I take the view that the current wording may be too limited and thereby inadvertently have the effect of depriving the public of knowledge of interests which should be disclosed. Why is it thought that an interest “*greater than that which might accrue to persons affected by the decision generally*” (SO 2.7) should be declarable whereas one that brings a benefit to the member “greater than that to the electorate generally” may not? For example, if a member is going to benefit because he is one of a minority group affected by the legislation, why should not the electorate as a whole know this?

Determination B

Accordingly I invite the Committee to recommend that

- (i) Standing Order 2.7 be amended to reflect a requirement for declaration of any direct financial advantage “greater than that which might accrue to the electorate generally”***
- (ii) As a new (but no criminal sanction) provision, require a member to make an oral declaration of any relevant interest which the member or a family member (as defined in Standing Order 3.2) has or is expecting to have in any matter arising in those proceedings.***
- (iii) the test of “relevance” for these purposes being whether the interest might reasonably be thought by others to influence the member’s contribution to the debate or discussion.***

Receipt of Public Funds by Members

20. I understand that in the past Members have from time to time queried whether the receipt of public funds either by themselves or partners needed to be registered separately, if it were included in a registration already made – the most common example being in relation to farming subsidies.

21. The preponderance of views from those responding on this topic was that separate registration created an unnecessary duplication

and that in this area, as in others, duplication was not in the interests of anyone. There was also a clear call for definitive guidance on this topic.

22. I accept that duplication is to be avoided where possible and on balance I am persuaded that a separate category of “receipt of public funds” may not be necessary where the receipt is already registered as part of general remuneration as set out in Standing Order 2 Annex. However, this is subject to my view that, in the public interest, transparency requires that where a single registration is made of overall remuneration it should be a requirement that any element of public funds is identified within it.

Determination C

The Committee is therefore invited to recommend that

- (i) The receipt of public funds should be identified as an element of remuneration where it is such,***

and to indicate

- (ii) The scope of the registration required – i.e. amount? .***

Contracts with the Assembly

23. Members are currently required to register any remuneration or other material benefit received by her/himself or partner or dependent children from any company or body ***which has, or is tendering for, a contract with the Assembly.*** The full text of Standing Order 2 Annex 5 (V) is as follows;

“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; “

24. On the face of the Standing Order the liability to register is absolute if a tender or contract is in existence, whatever the Member’s state of knowledge about it.

25. Submissions received focus on the illogicality, not to say unfairness, of this position in the requirement to register that which may be outside the knowledge of the Member. I have sympathy with this criticism.

26. Accordingly I believe the public interest- as well as that of Members - is served by requiring registration only where knowledge exists.

Determination D

The Committee is therefore invited to recommend that

- (i) The relevant Standing Order should be amended so as to import the requirement of knowledge on the part of the Member.***

Pensions

27. There appears to be a lack of clarity as to whether pension income falls under the heading of “remuneration”. Should pension income be registered? The strong preponderance of view, made by individuals and groups on consultation, falls against registration since, it is argued, an inalienable pension does not affect the independence of a Member. It is further pointed out that in all other UK legislatures inalienable pensions are not registerable.

28. The counter minority argument is that pension income is indicative of an association with a particular company and transparency requires declaration.

29. The balance between some right to privacy in matters financial and the need to declare where a financial interest may be perceived to affect a member’s opinion or vote may sometimes be a fine one. In this case I believe it tips clearly in favour of non registration as the purpose of registration is to disclose factors which may inform the public about interests which affect a Member’s conduct or may be perceived so to do. A pension which has no strings and is paid without regard to the member’s views or votes cannot be said to fall into that category. Furthermore, the proposed catch all “declaration” (Determination B (ii) above) would provide a Member in doubt with the opportunity to declare a relevant interest if he or she were concerned about transparency.

Determination E

The Committee is therefore invited to recommend that

- (i) Pension income be not categorised as remuneration to be registered or**

And to determine whether

- (ii) pension income should be specifically excluded as being a matter to be registered in SO and/or Guidance.**

Shareholdings: Options & Blind trusts

30. The category of Shareholdings under Standing Order 2 Annex 5(ix) below;

“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 of the Member, a beneficial interest, or in which, to the Member's knowledge, the Member's partner or a dependent child of the Member has a beneficial interest, in shareholdings of a market 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”

has I understand, caused no problem in itself in relation to Members' registration of interests. However, two matters relating to shareholdings have arisen, namely

- Options, and how they are to be valued
- Blind trusts and whether they should be registered.

31. **Options** Self evidently, options may be exercisable in many and varied circumstances and each option may have a value equivalent to the share price, or greater or less than the share price, depending upon the terms of the grant of the option and the state of the market in the shares. In these circumstances, the need for certainty for Members, particularly where a criminal sanction applies, is clear. A submission on this point rightly points out that the option value can rise and fall, as indeed can the shares.

32. When shares fall in value the requirement for registration may be removed but the Member will have already registered. This is a fact of life which all Members have to live with. The same is true of options. To provide clarity and certainty – on a par with shareholding registration – the value of an option for registration purposes could be deemed to be the share value at any given time. Although this is a rough and ready calculation, it has the advantage of certainty for the Member and is rarely going to be an undervaluation since an option will not often be worth more than the share.
33. **Blind Trusts** The current Rules are silent on Blind Trusts. In a true blind trust the beneficiary has no knowledge of the investments which make up the trust capital. Declaration of individual share holdings would therefore be impossible. Blind trusts have been used in the past to invest the assets of public office holders in such a way that there is perceived to be no conflict of interest between their duties and their share holdings. However, such trusts, rightly or wrongly, have aroused public suspicion.
34. The question arises, therefore, as to whether such trusts should be registered, even if the individual share holdings cannot be. On balance I believe that the public interest is best served by knowledge of the existence of the trust being provided through registration. The Welsh Liberal Democrat Group response refers to the Neill Committee's 1998 report to the Westminster Parliament that blind trusts were "inconsistent with the principles of openness and accountability" and I believe that the public would rightly endorse that sentiment.

Determination F

The Committee is therefore invited to recommend that

Options

- (i) For Registration purposes, greater certainty needs to be given to the value of an option for shares, and***
- (ii) The value of an option for these purposes should be deemed to be the value of the share, the subject of the option***

- (iii) *Such certainty is to be provided by amending Standing Orders or in Guidance*

Blind Trusts

- (i) **Standing Orders should provide that a beneficiary of a Blind Trusts must register it.**

Agreement for the Provision of Services

35. SO 2.12 requires a Member to deposit with the Presiding Officer any agreement entered into for the provision of services in the capacity as an Assembly Member.

“ Agreements for the Provision of Services

2.12 Any Member who has, or who proposes to enter into, an agreement involving the provision of services in the Member’s capacity as a Member must ensure that the agreement:

- (i) *is not in breach of Standing Order 2.8;*
- (ii) *is in writing;*
- (iii) *indicates the nature of the services to be provided; and*
- (iv) *specifies the payment or benefit to be received.”*

36. This provision appears never to have been used and no queries have been raised in respect of its operation.

37. Such submission as I have received on this topic suggest that this provision is unnecessary since any remuneration obtained through such an agreement would be registerable in any event under other headings.

Determination G

The Committee is therefore invited to recommend that

- (i) ***Standing Order 2.12 serves no useful purpose and may be deleted.***

Membership of a Body funded by the Assembly –

SO 2 Annex 5 (x) provides:

“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 out of funds provided by the Assembly”.

38. The two areas of concern here are:

- What is meant by “membership”
- Since it may not always be easy to ascertain whether the body in question is in receipt of Assembly funds, should this be registerable as an “absolute” requirement, that is, whatever the state of knowledge of the Member or is it fair to import the requirement of knowledge of the position, that is, the receipt of public funds, on the part of the Member?
Submissions point out that funding may be indirect as well as direct from the Assembly and so the position is often far from clear.

39. These are not academic points because any failure to register such membership carries the criminal sanctions of Section 36 of the Government of Wales Act. This provision has generated much debate. Thus the National Assembly Labour Party Group and the Welsh Liberal Democrat Group submission question what is meant by “membership”. Is it intended to embrace mass membership organisations? Both Groups submit that unless “membership” has a tighter meaning and includes only those memberships which involve an influence in the running and/or decision making of the organisation, the position will remain unclear. The Welsh Liberal Democrat Group submit that “membership” should be defined as *“membership of a board or governing body of the organisation”* in question.

40. If the purpose of registration of such interests is to provide transparency in a situation where a Member may use her/his position in an organisation, and/or the “clout” of the organisation, to promote a particular cause or objective, then the registration of “mass” membership organisations (such as WRU or Glamorgan Cricket, for example) would appear to be unnecessary.

41. Would the purpose of SO2 Annex 5(x) be met, as well as providing greater clarity as to the meaning of “membership” for these purposes, by requiring the registration of membership of an organisation where the Member exercises, or is in a position to exercise, or influence executive decisions and/or the policy of the

organisation or is paid by the organisation? Thus, for the avoidance of doubt, the following would be registerable:

- any officeholder within an organisation, to include beyond the obvious ones of chairman etc, trustees and directors, patrons and vice presidents
- membership of the governing body or board
- any paid position, be it executive or administrative.

42. Submissions have referred to the position of lapsed members and, for example, vice presidents or patrons who have no powers but are often donors to the organisation. To be registerable, the membership would have to be current in fact, whatever, for example, the records of the organisation disclosed. VPs and Patrons abound in many organisations and although they may have little or no influence, organisations do sometimes attract “names” as VPs or Patrons, precisely in order to use the names to seek to exercise greater clout or pressure. On balance, therefore, I would suggest that these should be regarded as office holders and as such would be a registerable interest in the organisation.

43. As to the second area of concern, “knowledge”. I would respectfully suggest that it is reasonable to penalise the member who knows that the organisation receives public money and yet does not register the interest. Equally, the Member who ought to have known but was “wilfully ignorant” because, for example, s/he made no inquiry. However, the member who did not know of the Assembly funding and who could not reasonably have been expected to know – should s/he carry the prospect of criminal sanction for non registration of an interest? (There are obvious parallels with the issues raised in paragraph 23 - 26 above). I do not believe the public interest requires such a potentially draconian rule.

Determination H

The Committee is therefore invited to recommend that

- (i) The term “membership” should be more narrowly defined for the purpose of SO 2 annex 5(x);***
- (ii) The definition should include the following:***

- *any officeholder, for example, Chairman, Treasurer or President of the organisation, but also includes trustees and directors, patrons and vice presidents.*
 - *membership of the governing body or board of the organisation,*
 - *any remunerated position, be it executive or administrative within or relating to the organisation.*
- (iii) *The definition should be included in SO and/or Guidance*
- (iv) *the knowledge of the Member of the provision to the organisation of Assembly funding should be incorporated into Standing Order 2 annex 5 (x) and*
- (v) *that this should include the concept “knew or ought to have known”.*

SO 2 - Proportionality of Current Sanctions

44. In short, section 36(7) of the Government of Wales Act makes it a criminal offence punishable with a level 5 fine for a Member to take part in any Assembly proceedings without having registered, and in the prescribed time, any interest caught by Standing Order 2. Thus, inadvertent delay or wilful non registration trigger the same response and are liable to be met by criminal proceedings.

45. Whilst acknowledging that any particular non- declaration may be of the utmost seriousness and may fully justify criminal sanction, there may be circumstances where a member stands to be criminalised for mere inadvertence. There does already exist the requirement for the DPP to take any prosecution forward, but at present the duty of the Assembly Official is to notify the DPP when SO2 is breached, regardless of the seriousness – or comparative triviality - of the breach. Needless to say, this mechanism could cause tensions in trivial cases which may undermine the generally good relationship which exists between Members and officials. Additionally, officials may assume an unscripted discretion if they do not report breaches – a burden which may be onerous and unfair.

46. It is suggested that it would be in the interests of the system, the Members and officials, as well as the public, if a further “filter” were introduced such that any breach of Standing Order 2 would be referred to an independent person who would determine whether the matter should be referred to the DPP. This would take the onus away from the official, for s/he would in every case of breach pass the matter onto the independent person. Further, the public interest safeguard would be provided by the independent person.
47. Were the independent person to be the Commissioner for Standards, he/she would be in a position to determine whether the breach should be
- Referred to the DPP
 - The subject of proceedings under the Code of Conduct or
 - To be dealt with by an informal meeting.

Determination 1

If the Committee sees fit at this stage, it is invited to request the Standards Commissioner and Officials to take soundings on this matter with the DPP’s office and report back.

48. I invite the Committee to note in passing that Standing Order 5, the Recording of membership of private societies or clubs, does not carry the criminal sanction. This Standing Order requires membership or position of control or management of a private organisation to be notified to the Presiding Officer. Any dilution or tighter interpretation of the term “membership” here, along the lines envisaged above for the purposes of Standing Order 2, would appear to negate the objective of Standing Order 5 and thus, I make no recommendation.

Financial Sponsorship : The Electoral Commission

49. The main thrust of submissions made in this area focus on the duplication of registration of donations and sponsorship by virtue of the requirements of the Electoral Commission’s regulations.
50. The very helpful response of the Electoral Commission during the consultation process is annexed hereto. In a nutshell, there is a proposal put forward which, by dint of s59 of the Electoral Administration Act 2006, would enable Wales to follow the route

down which both Westminster and Scotland have gone to eliminate the “double” registration of the same information. However, before such steps can be taken there are a number of arrangements which would need to be entered into which involve both the Electoral Commission and the Wales Office.

51. Submissions have also raised the lack of clarity in relation to that which should be registered. I respectfully suggest that this can be addressed if and when a single registration procedure is agreed on all sides.

52. If the Committee accepts that in principle a single registration system **at the National Assembly** is desirable,

Determination J

The Committee is invited to request the Standards Commissioner and Officials to take soundings on this matter from the Wales Office, the Electoral Commission and the Commission of the Assembly and report back.

For the sake of clarity, I should record that this process may be a longer one than applies to other Determinations in this Report.

53. Miscellaneous Further Issues The following additional matters were raised in the course of consultation which I invite the Committee to note and, if thought appropriate, provide guidance – I do not have a view to offer in relation to them:

- Declaration of remunerated position within the National Assembly e.g committee chairs;
- In response to Greco and gifts – there was little enthusiasm for lowering the threshold of registration of gifts but further guidance was asked for to prevent the registering of gifts of minor value. The Welsh Liberal Democrat Group, however, suggest that the threshold for gifts and hospitality be reduced to £150. The current threshold is of course set at 0.5% of the gross annual salary of an Assembly Member.

Time Tabling & the Way forward

54. It is hoped that the Committee will be in a position to make its determinations in the areas indicated before the Summer recess. During the recess and in the early weeks of next term it is

envisaged that the Committee's report on the proposed changes and amended Guidance can be drafted. This would allow the Committee to propose any changes to the Business Committee who would then recommend specific changes to Standing Orders to the Assembly later in the Autumn term.

55. This should allow the new rules and Guidance to be considered by the Assembly members in plenary soon after, so that the new regime in respect of Registration and Declaration of Interests could be implemented by January 2015 latest.

56. As a final but important word, I would invite the Committee permit the Registrar, from time to time, to make minor amendments to the Guidance so that we do not fall into the same situation where, for example, out dated Standing Order references or expired terminology still pertain in guidance long after changes have been made elsewhere. I would envisage that such "administrative" change could be effected by signed agreement with the Chair of the Standards Committee as and when necessary.

Gerard Elias QC
Commissioner for Standards

June 2014