

National Assembly for Wales
Commissioner for Standards

Report for the period 15 March 2005 to
31 December 2009



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.



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National Assembly for Wales
Commissioner for Standards

Report for the period 15 March 2005 to
31 December 2009



NATIONAL ASSEMBLY COMMISSIONER FOR STANDARDS

REPORT FOR THE PERIOD 15 MARCH 2005 TO 31 DECEMBER 2009

Introduction

1. This Report covers the period from the 15th March 2005 to the 31st December 2009. Traditionally, information in relation to my work has been included in the annual reports published by the Assembly's Committee on Standards of Conduct. This is the first comprehensive report that I have written and published to outline the work that I and my Office have undertaken since I was appointed as the Assembly's first Commissioner for Standards in 2005. However, with the passing of the National Assembly for Wales Commissioner for Standards Measure 2009, which will result in the appointment of a statutory Commissioner for Standards later this year, I felt it timely to produce this Report setting out some of the key information, trends and statistics relating to the work of my Office over the past 5 years.
2. I have held the office of initially the Independent Advisor on Standards and then the Commissioner for Standards since the inception of the National Assembly for Wales in 1999. In March 2005, the Assembly approved changes to its Standing Orders creating the post of Commissioner for Standards, bringing the Assembly more in line with arrangements in other legislatures. This reaffirmed my belief that Assembly Members are serious in their intent to embrace the highest ethical standards of conduct, an ethos that has been further demonstrated by the manner in which Members have co-operated with me over the past 10 years. Indeed I would like to take this opportunity to thank Members for their co-operation and support during that time. I would also like to thank all those who have assisted me in carrying out my role throughout the whole of my tenure.
3. The conduct of Members of all elected bodies has come under increased scrutiny, particularly over the past year, and it is essential that the public can have confidence and trust in those whom they elect. It has always been my principal aim to build upon existing ethical standards and to work with Members and other stakeholders to develop a robust standards culture in the Assembly. I hope therefore, that I and my Office have played a part in helping Members of the National Assembly to gain and maintain that public confidence and trust.

Role of the Commissioner

4. The Assembly's Standing Order 33 (Annex A) makes provision for the appointment and the duties of the Commissioner for Standards.
5. Since I was first appointed in 1999, I have been concerned to send a clear message about the role of the Commissioner for Standards. I have never wanted to be viewed as simply the vehicle for investigating complaints, although this aspect of my role has been, and will continue to be, crucial in terms of ensuring public confidence in the independence of my Office and the ethical conduct of Members. My objective of contributing towards the building of a standards culture in the National Assembly for Wales has been achieved through ongoing activity, and one which I have taken forward throughout my time as Commissioner. With this objective in mind I have:
 - established a presence in the Assembly, initially based in Tŷ Hywel but now in the Pierhead Building. I try to be a visible presence – I think it is vital that the Commissioner is seen to be a part of the Assembly and not only there when there is a complaint to answer;
 - engaged with Assembly Members, particularly those Members newly elected in May 2007, both face to face and in writing, setting out my role as Commissioner and ensuring that the requirements of the Code of Conduct are understood and that potential 'danger areas' are flagged up. The key message I have given is that I have an 'open door' policy, enabling Members to see me confidentially at any time, whether in relation to a complaint or standards issues more generally;
 - met formally with each of the four Party Leaders represented in the Assembly, the Chair (and former Chairs) of the Standards Committee and the Presiding Officer as well as the previous Permanent Secretary and the Clerk to the Assembly and the current Chief Executive and Clerk to the Assembly, in order to take forward a message about my role in general and my plans for further developing the standards culture. Some of the main points to emerge from these meetings have been that an understanding of the importance of maintaining high ethical standards already exists within the Assembly, as does the acceptance that all parties have a part to play in developing a robust standards culture and a willingness to co-operate in developing practices to streamline standards processes;
 - developed a web-site for my Office, providing core information on both my role and remit as Commissioner

and details on how to access the Office. There is also a dedicated e-mail address for the Commissioner (Commissioner@wales.gsi.gov.uk) enabling the public to contact me direct and allowing my Office to provide a swift response to queries received;

- written to all Members jointly with the Chair of the Standards Committee, sharing our concerns about the potential hazards relating to the inappropriate use of Members' 'Blogs'; and
- following my investigation of a number of complaints relating to the use of Assembly resources, all of which I dismissed after preliminary investigation, written to both the Clerk to the then House Committee and the Presiding Officer in his capacity as Chair of the Assembly Commission, setting out my concerns about the potential for confusion regarding Members' use of Assembly resources and a lack of clarity in the interpretation of associated guidance. This resulted in a review of the guidance by the Commission, in consultation with the Standards Committee and Members generally, and the subsequent production of revised and consolidated guidance.

Complaints

6. Following the initial recommendations of Professor Diana Woodhouse and detailed consideration by the Standards Committee, the Assembly adopted a new Complaints Procedure in March 2005. In my view, the new Procedure offered a more open, transparent and robust basis for dealing with complaints against Assembly Members. However, at that time, I also gave a commitment to continually monitor the process to ensure that any lessons learned over time are built into the Procedure.
7. With this commitment in mind, following the consideration of the first complaint to go through the new Procedure in full, my Office conducted a comprehensive review of the process, taking into account the views of relevant stakeholders. This, together with the evaluation of 'lessons learned', has resulted in a number of changes to the Code of Conduct for Assembly Members (the Code – appended as Annex C) and the Complaints Procedure (the Procedure – appended as Annex D), including:
 - the revision of the Code to include a provision preventing a Member from misrepresenting the recommendation of the Committee for Standards of Conduct following its consideration of a complaint;
 - the revision of the Code to include the provision that 'no Member shall lobby a member of the Standards

Committee in a manner calculated or intended to influence their consideration of a complaint...’;

- changes to the Procedure amending the terminology when referring to complaints of a minor nature to ensure consistency throughout the Procedure and to address concerns raised that complaints of a relatively minor nature were not being given due respect.
8. Annex B shows a summary of the complaints received between 15 March 2005 and 31 December 2009. Of the 39 complaints referred to me during this period for preliminary investigation under Section 2 of the Procedure for Dealing with Complaints Against Assembly Members (the Procedure), 2 were still undergoing preliminary investigation at the end of 2009, 30 were ruled inadmissible, 1 was discontinued as no further evidence was provided by the complainant, 3 were dealt with under Section 10 of the Procedure (see paragraph 11) and 3 were referred to the Standards Committee following formal investigation (Section 4.2 of the Procedure). Of those 3 complaints referred, the Committee found 2 Members to be in breach of the Code of Conduct and 1 complaint was dismissed by the Committee.

Common Issues Arising

9. Throughout my time as the Commissioner and previously the Independent Adviser, there have been a number of common issues that have been subject to complaint. However, over the last few years, I have also seen a rise in complaints relating to the use of new technology (e.g. Blogs). I have listed below some of the common areas of complaint I have received during the period of this Report:
- **Use of Assembly Resources:** 11 of the 39 complaints received were in relation to potential breaches of the Guidance on the use of Assembly Resources. Following preliminary investigation, 9 were deemed to be inadmissible under the Procedure, 2 were found to be admissible and resolved under Section 10 of the Procedure (see paragraph 10 for further information).
 - **Integrity/bringing the Assembly into disrepute – Paragraph 4b of the Code:** 19 complaints, almost half of the total number received, were in relation to either instances where the integrity of Members in the course of their actions was called into question, or where complainants felt that Members may have brought the Assembly, or its Members generally into disrepute. Of these 19 complaints only 3 were deemed admissible. One was dismissed by the Standards Committee, 1 was found

to be in breach of the Code of Conduct and 1 was resolved under Section 10.

- **Use of Members' Websites and Blogs:** As stated in paragraph 5 above, a number of instances relating to Members' use of Blogs, including potential and actual breaches of the Code, caused me to write, jointly with the Chair of the Standards Committee, to all Members. These instances included the publication of one Blog entry which resulted in the receipt of 149 e-mails, of which 63 wished to make a formal complaint and the remainder wished to raise points of argument against the Blog entry but made no reference to making a formal complaint. The intention when writing to Members, was not to prohibit the use of Blogs in any way - indeed the use of technology by Members is increasing and Blogs can be a very effective way of using that technology to publicise the views and work of politicians - but to ensure that lessons learned from the complaints received were passed on to Members, raising awareness of the potential hazards of using the sites inappropriately to seek to avoid future breaches of the Code.

Section 10 Complaints

10. Section 10 of the Procedure provides for complaints of a minor nature, with the agreement of the Chair of the Standards Committee and where the facts are undisputed and the Member immediately rectifies or apologises for their conduct or actions, not to proceed to a formal investigation. Instead, the Commissioner will inform the Member and the complainant that although a breach has been found, no further action will be taken against the Member. In my view the introduction of Section 10 has been a very positive development and, on the three occasions I have used it since its introduction, has helped to streamline the process, allowing complaints of a minor nature to be dealt with expeditiously.

Potential Complaints

11. Although I have conducted preliminary investigations on 39 complaints, my Office regularly provides information and advice on my behalf about the complaints procedure, and on my role and remit, prior to the submission of complaints. In doing this, my Office would not attempt to discourage anyone from submitting a complaint to me, but would aim to provide the best advice possible to potential complainants based on the information available from the complainant.
12. Although efforts have been made to publicise the role and particularly the remit of the Commissioner, my Office still receives numerous queries where the matter is unequivocally

outside of my remit. When appropriate, my Office provides potential complainants with contact information about other bodies that may be more relevant to deal with their complaint, such as the Public Services Ombudsman for Wales. They would also provide specific contact details where a complaint is about the conduct of a Member of Parliament or a Welsh Minister.

13. I also receive complaints, and my Office receives a considerable number of queries, that relate to the level and quality of service provided by Assembly Members. In general, I consider that it is not appropriate for me as Commissioner for Standards to judge the 'performance' of Members. It can be argued that the level of service provided by elected Members is a matter for the democratic electoral process – a view that has been shared by my counterparts in other legislatures. I do, of course, consider each complaint based on its own merits and I will continue to do so.

Other Activities

14. As I have previously stated, my objective has always been to contribute to building a robust standards culture in the Assembly. I also believe that it is important for those involved in this area of work to share their experience and develop best practice. With this in mind, some of the other activities I have undertaken since 2005 include:
- participating in two Complaints Conferences, aimed at sharing best practice amongst complaints 'practitioners' from across the public sector in Wales – as a panel member the first year and as Chair in 2009;
 - contributing to the work of Teeside University on comparing standards frameworks;
 - contributing to two Seminars in the Senedd on the roles of 'Assembly Officers';
 - meeting with colleague Commissioners and the UK Parliament Commissioner on his appointment;
 - liaising with the Auditor General and the Public Services Ombudsman
 - attending meetings of the Committee on Standards of Conduct when appropriate;
 - providing written and oral evidence to the Independent Review Panel on AMs 'Pay and Allowances
 - provided written and oral evidence to the Legislation Committee dealing with the Remuneration Measure; and
 - providing written and oral advice to the Standards Committee regarding the Proposed Commissioner for Standards Measure.

Expenditure

15. My Office is not directly allocated a formal budget. I am funded on the basis of an annual retainer and a per diem rate paid from the Assembly Commission's budget. My actual costs for each calendar year since March 2005 are provided in the Table below. I am supported by staff from the Assembly Commission. However, this is not dedicated support; rather it is provided within the responsibilities of several staff members. I have not therefore included any specific costs in relation to their time, however on average it has been calculated that staff costs equate to £10,250 per annum.

	2005 ¹	2006	2007	2008	2009
Annual Expenditure²	£12,908.0 0	£18,236.4 0	£20,726.8 0	£21,040.8 0	£19,494.8 0

The Future

16. As I stated in my opening paragraph, the passing of the National Assembly for Wales Commissioner for Standards Measure 2009 will result in the appointment of a statutory Commissioner for Standards later this year, at which time my position as non-statutory Commissioner will come to an end. Placing the role on a statutory basis will put future Commissioners in Wales on the same legislative footing as Commissioners in other Parliaments.
17. As non-statutory Commissioner, the independence of my role has never been questioned and I have always received a great deal of support and co-operation from all those involved in developing a robust standards regime in the Assembly. However enshrining the powers and independence of the Standards Commissioner in statute can only help to ensure that the Commissioner is, and is seen to be, totally independent of the Assembly and therefore able to act with complete objectivity and impartiality.
18. The passing of the Measure provides the mechanism for some key changes to the role of the Commissioner. The importance placed in the Measure of stating the principal aim of the Commissioner as being 'to promote, encourage and safeguard high standards of conduct in the public office of Assembly Member' in my view sets out the stall for the Assembly in terms of its future commitment in relation to standards of conduct matters, and will allow the Commissioner to act in a much more proactive way in meeting that aim.

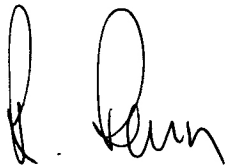
¹ Figure is for March –December 05

² Annual expenditure includes the annual retainer, travel and other expenses paid in accordance with National Assembly staff rates and remuneration for hours expended in accordance with the per diem rate.

19. In more practical terms, the Measure provides the Commissioner with additional functions in a number of areas, including provision to allow the Commissioner to require, subject to giving written notice, any person whom he or she believes may have information relevant to an investigation to attend before the Commissioner. It also requires the Commissioner to report annually to the Assembly and allows the Commissioner to employ staff or purchase services in consultation with the Chief Executive and Clerk to the Assembly because of their role as principal accounting officer for the Commission. All of which, I believe, will strengthen the role of the Commissioner.

Conclusion

20. Over the past 5 years, I have considered on average 8 complaints per year about the conduct of Assembly Members under the Complaints Procedure, 9 of which in total over the period I deemed to be 'admissible'. I have not referred a complaint for consideration by the Standards Committee since March 2007. This is, for me, a clear indicator of the importance placed on high ethical standards by Assembly Members generally and the work of all those involved in promoting and maintaining a robust standards framework in the National Assembly for Wales.
21. This does not mean that there is any room for complacency and the appointment of a statutory Commissioner for Standards will, in my view, build on the work already undertaken and strengthen public confidence in the ethical standards of Assembly Members.



Richard Penn
National Assembly for Wales Commissioner for Standards

Annex A
STANDING ORDER 33 – Commissioner for Standards

33.1 The Assembly must appoint a person who is not a Member, a member of the staff of the Assembly, or a member of the staff of the government to act as the Commissioner for Standards. The duties of the Commissioner shall be:

- (i) to investigate factual matters arising out of any complaint against a Member;
- (ii) to advise the Committee on Standards of Conduct on any matters of general principle relating to the standards of conduct of Members;
- (iii) to advise the Committee on Standards of Conduct on any matters of general principle relating to the Registration of Members' Interests and the Recording of Membership of Societies; and
- (iv) otherwise to render such assistance on matters relating to the standards of conduct of Members as the Assembly may from time to time decide.

33.2 Where the Commissioner for Standards is unable, for whatever reason, to investigate a complaint, the chair of the Committee on Standards of Conduct (or if he or she is unable to act, another member of the Committee acting on his or her behalf) must table a motion proposing the temporary appointment of a person who is not a Member, a member of the staff of the Assembly, or a member of the staff of the government, to investigate the complaint.

33.3 Time must be made available as soon as possible for such a motion to be debated; and in any event such a debate must take place within five working days of the motion having been tabled.

33.4 No amendment may be tabled to a motion under Standing Order 33.2.

Annex B

Report of the Commissioner for Standards: Summary of Complaints against Assembly Members: March 2005-Dec 2009

	From Mar 2005	2006	2007	2008	2009	Total
Complaints referred to Standards Commissioner	7	10	5	7	10 ³	39
Complaints Ruled Inadmissible by Standards Commissioner	6	6	3	7	8	30
Complaint Withdrawn or Discontinued	0	1	0	0	0	1
Complaint Dealt with Under Section 10 of the Procedure	0	2	1	0	0	3
Referred to Standards Committee	1	1	1	0	0	3
Dismissed by Committee	1	0	0	0	0	1

³ 2 complaints remained under consideration at preliminary investigation stage as at 31 December 09

Annex C

NATIONAL ASSEMBLY FOR WALES: CODE OF CONDUCT FOR ASSEMBLY MEMBERS

Purpose of the Code

1. The purpose of this Code of Conduct is:

(a) to provide guidance for all Members of the National Assembly on the standards of conduct expected of them in the discharge of their Assembly and public duties;

(b) to provide the openness and accountability necessary to reinforce public confidence in the way in which Members of the National Assembly perform their Assembly and public duties.

2. This Code applies to all Members of the National Assembly who have not taken leave of absence.

General Standards of Conduct

Personal conduct

3. Members of the Assembly:

(a) must comply with the Code of Conduct for Assembly Members;

(b) should act always on their personal honour;

(c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence;

(d) must not vote on any Order or motion, or ask any question in plenary or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).

4. Members of the Assembly should observe the seven general principles of conduct identified by the Committee on Standards in Public Life. The seven principles are:

(a) **Selflessness:** Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

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

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

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

(c) **Objectivity:** In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

(d) **Accountability:** Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

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

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

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

(f) **Honesty:** Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

(g) **Leadership:** Holders of public office should promote and support these principles by leadership and example.

Specific Standards of Conduct

Registration of Interests

5. Members of the Assembly must register in the Register of Members' Interests all relevant interests defined in the Annex to Standing Order 31, in order to make clear what are the interests that might reasonably be thought to influence their actions.

6. The categories of registrable interests (as set out in the Annex to Standing Order 31) are as follows:

◆ Directorships held by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, in public and private companies, including those which are individually unremunerated but where remuneration is paid through another company in the same group.

◆ Employment, office, trade, profession or vocation (apart from membership of the Assembly) for which the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, is remunerated or in which the Member has any pecuniary interest.

◆ The names of clients, when the interests referred to above include services by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, which arise out of, or are related in any matter to his or her membership of the Assembly.

◆ Gifts, hospitality, material benefits or advantage above a value specified in any resolution of the Assembly received by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, from any company, organisation or person and relating to or arising out of membership of the Assembly.

◆ Any remuneration or other material benefit which a Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, receives from any public or private company or other body which has tendered for, is tendering for, or has, a contract with the Assembly.

◆ Financial sponsorship (i) as a candidate for election to the Assembly, where to the knowledge of the Member the sponsorship in any case exceeds 25 per cent of the candidate's election expenses, or (ii) as a Member of the Assembly by any person or organisation, stating

whether any such sponsorship includes any payment to the Member or any material benefit or advantage.

- ◆ Subject to any resolution of the Assembly, overseas visits made by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, relating to or arising out of membership of the Assembly where the cost of any such visit has not been wholly borne by the Member or by public funds.
- ◆ Any land and property, of the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, which has a substantial value as specified in any resolution of the Assembly or from which a substantial income is derived other than any home used for the personal residential purposes of the Member or the Member's partner or any dependent child of the Member.
- ◆ The names of companies or other bodies in which the Member has, either alone or with or on behalf of the Member's partner or any dependent child, a beneficial interest or in which, to the Member's knowledge, the Member's partner or a dependent child has a beneficial interest in shareholdings of a nominal value greater than one per cent of the issued share capital, or less than one per cent but more than an amount specified in any resolution of the Assembly.
- ◆ Paid or unpaid membership or chairmanship by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, of any body funded in whole or in part by the Assembly.

Declaration of Registrable Interests

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

Prohibition of Voting in Relation to Registrable Interests

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

Use of Assembly Resources

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

Public Access to Information

10. The principles under which the National Assembly for Wales provides information are detailed in the *Code of Practice on Public Access to Information* which has been approved by the Assembly Commission. Assembly Members seeking information are required to comply with the Code by making a request in writing to the Access to Information Advisor, Corporate Unit, National Assembly for Wales. The Code is published on the NAFW website at [HTUhttp://www.assemblywales.org/abthome/abt-foi/abt-foi-cop-pub.htm](http://www.assemblywales.org/abthome/abt-foi/abt-foi-cop-pub.htm)UTH

Relationships between Assembly Members and Assembly Staff

11. All staff of the National Assembly for Wales (Assembly Commission staff) are bound by Staff Code of Conduct, whilst Welsh Assembly Government Staff continue to be bound by the Civil Service Code. Members should at all times, in their dealings with the staff of these bodies, respect the principles of both Codes. Relationships between Members and staff should be professional and based on mutual respect, and Members should have regard to the duty of staff to remain politically impartial when carrying out their duties.

Members' Salaries and Allowances

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

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

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

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

15. No Member shall lobby a member of the Committee on Standards of Conduct in a manner calculated or intended to influence their

consideration of a complaint of a breach of any matter encompassed under Standing Orders 16.1(i).

16. No Member shall misrepresent any recommendation made by the Committee on Standards of Conduct in relation to any complaint it has considered under the *National Assembly for Wales' Procedure for Dealing with Complaints against Assembly Members*.

Enforcement of the Code of Conduct

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

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

NATIONAL ASSEMBLY FOR WALES

PROCEDURE FOR DEALING

WITH COMPLAINTS AGAINST

ASSEMBLY MEMBERS

**Approved by the Committee on Standards of Conduct
on 3 June 2008**

**Enquiries: Sulafa Halstead, Clerk to the Committee on Standards of
Conduct**

1. GENERAL PROVISIONS

Administrative Arrangements

- 1.1 Complaints should be made to the Commissioner for Standards. The Commissioners Office will log the correspondence and send a letter to acknowledge receipt to the complainant. The letter will explain that this does not necessarily mean that the complaint is admissible and that the case will only proceed if the complainant is prepared for the details to be released to the Committee and the Member complained of.

Investigations

- 1.2 Investigations under this procedure shall be conducted by the Commissioner for Standards (the Commissioner) appointed by the Assembly under Standing Order 33.1.
- 1.3 In the event of the Commissioner being unable, for whatever reason, to carry out an investigation, the Chair to the Standards Committee shall seek the agreement of the Committee on Standards of Conduct to invite the Parliamentary Commissioner for Standards, the Scottish Parliamentary Commissioner for Standards or the Northern Ireland Assembly Ombudsman to conduct the investigation.
- 1.4 In the event that none of the above is able to conduct an investigation, the Committee Chair shall, after consulting Members of the Committee and Party Leaders, propose to the Assembly that a temporary Independent Adviser be appointed to conduct an investigation. Any such proposal will take precedence over other Plenary Business and will not be subject to debate.

Stages

- 1.5 There are two possible stages to any investigation by the Commissioner into a complaint:

Preliminary Investigation Stage which consists of investigating and determining whether a complaint is admissible; and

if the complaint is admissible, **Formal Investigation stage** which consists of further investigating the complaint and reporting upon it to the Committee on Standards of Conduct.

Conduct of Investigations

- 1.6 Subject to the provisions of the procedure, it is for the Commissioner to decide when and how to carry out any investigation at each stage.

1.7 Each stage of an investigation into a complaint shall be conducted in private. However the Commissioner may at any time make a report to the Committee as to the progress of an investigation into a complaint.

2. PRELIMINARY INVESTIGATION STAGE

2.1 At this stage, the Commissioner shall investigate and determine whether a complaint is admissible within the terms of paragraph 3 below. The Commissioner may contact the complainant to elicit more details and to ascertain whether or not he or she is willing for his or her name to be released to the Member complained of and the Committee. The Commissioner may also, at his/her discretion, contact the Member complained of.

2.2 If the Commissioner considers that the complaint is admissible, the Commissioner shall proceed to a Formal Investigation into the complaint and shall make a report to the Committee on Standards of Conduct informing it of the fact and setting out the main factors identified by the Commissioner in coming to that conclusion. The Commissioner shall also:

- i. notify the Member concerned that a complaint has been made and of its nature; and
- ii. except where the Commissioner considers that it would be inappropriate to do so, inform the Member of the name of the complainant.

2.3 If the Commissioner considers that the complaint is inadmissible, the Commissioner shall dismiss the complaint and shall inform the complainant and the Member concerned accordingly, together with the reasons for that view.

3. ADMISSIBILITY OF COMPLAINTS

3.1 A complaint is admissible under this procedure if:

- i. it is in writing*;
- ii. it is about the conduct of an Assembly Member;
- iii. it is not anonymous and clearly identifies the complainant in a way which provides for further communication with him/her;
- iv. it clearly identifies the Assembly Member complained of;

* Where the complainant is unable to make a complaint in writing, facilities will be made available through the Secretariat so that he or she can agree the terms of a written statement.

- v. it is made within one year from the date when the complainant could reasonably have become aware of the conduct complained about; and
- vi. it appears that there is enough substance to justify further investigation (i.e. there is enough evidence to suggest that the conduct complained about may have taken place, and if proved might amount to a breach of any of the matters encompassed within Standing Orders 16.1(i).

4. FORMAL INVESTIGATION STAGE

- 4.1 At this stage, the Commissioner shall investigate an admissible complaint with a view to:
 - i. establishing the facts in relation to whether the Member concerned has committed the conduct complained about; and
 - ii. reaching a conclusion as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i).
- 4.2 When a formal investigation into a complaint has been completed, the Commissioner shall make a report to the Committee on Standards of Conduct. The report shall include:
 - i. details of the complaint;
 - ii. details of the investigation carried out by the Commissioner;
 - iii. the facts found by the Commissioner in relation to whether the Member concerned has committed the conduct complained about;
 - iv. the conclusion reached by the Commissioner as to whether that Member has, as a result of that conduct, breached one of the matters encompassed within Standing Order 16.1(i); but
 - v. shall not express any view upon what sanction would be appropriate for any breach.
- 4.3 No report, concluding that a Member has breached one of the matters within Standing Order 16.1(i) shall be made to the Committee unless the Member and the complainant have been given a copy of the draft report and an opportunity to comment on factual accuracy. If the Commissioner does not accept any of these comments, the report to the Committee shall include details of these disputed facts.
- 4.4 Copies of the Commissioner's final report to the Committee of a formal investigation shall be made available to the complainant and the Member complained of at the same time that it is provided to the Committee.

- 4.5 The Member complained of will be informed that they have the right to:
- i. make written representations to the Committee within a specified time; and
 - ii. to make oral representations at an oral hearing of the Committee.
- 4.6 The Commissioner's report should remain confidential until the Committee has concluded its consideration of the complaint. Those sent copies of the report will be asked to respect this confidentiality.
- 4.7 If the Commissioner has not completed a formal investigation within six months of finding that the complaint is admissible, the Commissioner shall report to the Committee on the progress of the investigation.

5. CO-OPERATION OF MEMBERS

- 5.1 This procedure is based on the principle that Assembly Members will co-operate fully with any investigation into a complaint. Members are expected at all times to respond in person to any request from the Commissioner. If at any stage in the consideration of a complaint the Commissioner has reason to believe that any Member is not co-operating, the Commissioner may, having first given notice of the intention to do so to the Member complained of, report this view to the Committee on Standards of Conduct who may arrange for the report to be published and laid before the Assembly as soon as may be.
- 5.2 The making of such a report shall not prevent the Commissioner or the Committee from continuing to consider the complaint in line with this procedure.

6. CRIMINAL OFFENCES

- 6.1 If at any stage in the consideration of a complaint evidence arises of conduct which could involve a breach of section 36(7) of the Government of Wales Act 2006 the Commissioner shall inform the Clerk to the Standards Committee immediately. The Clerk to the Committee shall refer the papers concerned to the Police in accordance with the protocol agreed with the Police and Crown Prosecution Service.
- 6.2 In such circumstances all consideration of the complaint under this procedure will be suspended until such time as consideration of the complaint by the Police, Crown Prosecution Service or the Courts has fully concluded.
- 6.3 The Committee, the Member concerned and the Complainant will be notified of any decision to refer a complaint to the Police.

- 6.4 As soon as may be after consideration of a complaint by the Police, Crown Prosecution Service or the Courts has concluded, the Commissioner shall prepare a report for the Committee setting out:
- i. the details of the complaint;
 - ii. details of any investigation carried out by the Commissioner up to the point where the complaint was referred to the Police;
 - iii. any facts found by the Commissioner or provided by the Police, Crown Prosecution Service or the Courts;
 - iv. any conclusions that the Commissioner has been able to reach, on the evidence available at that time, as to whether the Member has breached one of the matters encompassed within Standing Order 16.1(i); and
 - v. whether, in the Commissioner's view, the complaint raises any issues of general principle.
- 6.5 The Committee shall meet in private to consider the Commissioner's report under paragraph 6.4 above. At this meeting the Committee may decide:
- i. to dismiss the complaint;
 - ii. to dismiss the complaint but consider any general principles that arise from it; or
 - iii. to continue consideration of the complaint.
- 6.6 Where the Committee dismisses a complaint it shall, as soon as may be following its decision, publish a report of its considerations and lay it before the Assembly along with the Commissioner's report to the Committee under paragraph 6.4 of this procedure.
- 6.7 Where the Committee decides to continue consideration of a complaint:
- i. it shall not express any view upon whether the Member is in breach; and
 - ii. the complaint shall be considered from the point in this procedure that had been reached prior to the complaint being referred to the Police and shall be dealt with thereafter under the arrangements set out in this procedure.

7. CONSIDERATION BY THE STANDARDS COMMITTEE

Initial Consideration

- 7.1 The Committee will meet first in private to consider the details of the complaint, **but will make no findings of substance on the complaint at**

this stage. The purpose of the private meeting will be to consider whether, in the light of the Commissioner's report, and any other written evidence that it considers appropriate:

- (a) any witnesses should be invited to give evidence to the Committee at an oral hearing; and
- (b) the Committee should consider the complaint in public or private.

- 7.2 The Committee may also consider how it proposes that the Member or witnesses should be questioned.
- 7.3 The Commissioner for Standards shall not attend this initial private meeting unless invited by the Committee.-
- 7.4 In accordance with Standing Order 16.4, where a Committee Member is subject to a complaint he or she shall take no part in any consideration of the complaint by the Committee. In such circumstances, another Member from the same political group may replace that member in accordance with the arrangements set out in Standing Orders.

Oral Hearing

- 7.5 The Committee will meet in private - unless it has decided, having taking into consideration the circumstances of the case and any advice received from the Commissioner for Standards or Counsel to the Assembly Parliamentary Service, that it should meet in public - to consider:
 - i. any oral or written representations that the Member complained of wishes to make; and
 - ii. any oral or written evidence from witnesses.
- 7.6 At any oral hearing, the Member complained of, or any witnesses who choose to give evidence, may be accompanied by an adviser.
- 7.7 A verbatim transcript of the proceedings of any oral hearing will be provided. The general presumption is that the Committee will only ask questions of the Member or witnesses to clarify matters of fact. The Member or any witnesses would have the right to ask and have answered factual questions about procedural or technical matters; they do not have the right to question the Commissioner or the Committee about matters of argument.
- 7.8 If the Member or witnesses are accompanied, the chair may give permission for that person to make oral representations and the same rules would apply.

Committee's Consideration of its Decision

- 7.9 Following any oral hearing, the Committee will meet in private to consider whether the Member is in breach of one of the matters encompassed within

Standing Order 16.1(i) and what action if any it should advise the Assembly to take if a breach is found.

7.10 In order for the committee to take a decision to make a recommendation, as detailed at 7.11, a clear majority must exist in favour of the recommendation.

Committee's Recommendations

7.11 The Committee may take a decision to recommend any of the following:

- i. that no breach has been found and that the complaint is dismissed;
- ii. that a breach has been found but that it is a failure of a minor nature and the complaint should be dismissed;
- iii. that a breach has been found and that no further action should be taken;
- iv. that a breach has been found and that the Member should be "censured" under Standing Order 16.9; or
- v. that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time.

7.12 As soon as may be following its decision, but not sooner than 10 working days after providing the Member complained of with a copy of the Committee's report, the Committee will publish the report of its considerations and lay it before the Assembly along with the Commissioner's report to the Committee. In those cases where the Commissioner has recommended that a report should be considered in private, and where there is no breach or the case is dismissed, the Committee may decide that the report should be anonymised.

7.13 Where the Presiding Officer informs the Committee that an appeal has been made under section 8 below, the Committee shall not publish its report or lay it before the Assembly until consideration of the appeal has concluded.

8. APPEAL PROCEDURE

8.1 Where a Member has been found in breach by the Committee, and the Committee does not recommend that the complaint be dismissed, the Member complained of may, within 10 working days of being sent the Committee's report, appeal to the Presiding Officer.

Establishment and Composition of Appeals panel

8.2 The Presiding Officer shall on each occasion establish a panel to consider the appeal according to arrangements that he shall agree from time to time

with the Standards Committee. The panel shall comprise four Assembly Members and an independent legally qualified person who shall not be an Assembly Member or a member of the Assembly's staff. Each of the Assembly Members shall be drawn, as far as possible, from different political groups represented in the Assembly.

- 8.3 Members of the Standards of Conduct Committee, the Presiding Officer and Deputy Presiding Officer, the First Minister and the leaders of political groups, a complainant or witness shall not serve as Members of an appeal panel.

Consideration of Appeals

- 8.4 Appeals will only be considered on the following grounds:

- i. that the Committee's conclusions are based on significant factual inaccuracies which, had they been known, might have led to the Committee finding differently;
- ii. that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.

- 8.5 The appeal panel will consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant. It will not conduct oral hearings nor will it consider representations from any other source.

- 8.6 The appeal panel shall either:

- i. uphold the appeal and dismiss the complaint. In such cases it shall lay a report before the Assembly explaining its decision. Any such report shall include the reports of the Commissioner and the Standards of Conduct Committee; or
- ii. dismiss the appeal. In such cases it shall take no action other than to present a report to the Standards of Conduct Committee explaining its decision.

9. CONSIDERATION BY THE ASSEMBLY

Where there is no appeal or an appeal is unsuccessful.

- 9.1 Where an appeal is unsuccessful or where no appeal is made to the Presiding Officer and where the Committee does not recommend dismissal, the Chair of the Standards Committee shall table a motion calling on the Assembly to endorse the Committee's recommendations. Such motions will not be subject to amendment. Time to debate the motion shall be made available as soon as may be.

Where a successful appeal has been made.

9.2 When an appeal has been upheld by the appeal panel and their report laid before the Assembly, the case is dismissed and all further consideration of the complaint ends.

10. WHERE BREACH RECTIFIED OR COMPLAINT DISMISSED

10.1 Where, during preliminary investigation, the facts are not disputed and the Member immediately rectifies or apologises for a failure of a minor nature the Commissioner may recommend to the Chair of the Standards Committee that a formal investigation should not be pursued. If the Chair agrees, the Commissioner shall inform the Member and the complainant that although a breach has been found no further action will be taken against the Member.

10.2 If the Chair is the subject of such a complaint, the Commissioner may make the recommendation to a member of the Committee on Standards of Conduct who has been nominated by the Committee to act in this respect. The Clerk to the Committee will ensure that a Committee member is so nominated.

10.3 In these circumstances, the Commissioner need not report to the Standards Committee except to recommend any action that may be needed to clarify or interpret rules for future reference. Where the Commissioner does choose to report in this way, the name of the Member and complainant need not be identified.

11. ANNUAL REPORT

11.1 The Commissioner shall prepare an annual report, for inclusion in the Committee's annual report, setting out the total number of cases dismissed at the preliminary stage together with such other information and general conclusions, which the Commissioner considers appropriate or the Committee may from time to time require.

**Committee on Standards of Conduct
3 June 2008**