

THE NATIONAL ASSEMBLY FOR WALES: COMMITTEE ON STANDARDS OF CONDUCT

REPORT 01-2003 - Presented to the National Assembly for Wales on 8 September 2003 in accordance with Standing Order 16.6

COMPLAINT AGAINST ALUN CAIRNS AM

Purpose and Scope of Report

1. This is a report to the Assembly by the Committee on Standards of Conduct under Standing Order 16.6 about a complaint, which it has considered against Alun Cairns AM. The complaint, from Councillor Jeff Jones, related to alleged breaches of the Code of Standards for Assembly Members, adopted by the Assembly on 18 May 1999, concerning the improper use of Assembly resources and misuse of the “office” of Assembly Member.

Standards Committee Terms of Reference

2. Standing Order 16(ii) provides for the Committee on Standards of Conduct to:

Investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Presiding Officer that a Member has not complied with any Assembly resolution relating to Members' standards of conduct.....

An extract from Standing Orders which sets out the Committee’s remit in full is at Annex C. A list of the Committee’s membership is at Annex B.

The Complaint

3. The complaint was referred to the Committee by the Presiding Officer acting on the advice of the Independent Adviser on Standards, Mr Richard Penn. The complaint included 4 specific allegations. Details of the allegations are set out in Mr Penn’s report to the Standards Committee at Annex A.

Summary of the Committee’s Investigation

4. The complaint was made to the Presiding Officer on 3 March 2003 and was dealt with in accordance with a procedure approved by the Standards Committee on 6 July 2000 following consultation with all Assembly Members.
5. The Presiding Officer invited the Independent Adviser on Standards to conduct a preliminary investigation to establish whether it should be considered by the Committee on Standards of Conduct. The Independent Adviser concluded that there was no evidence to support two of the allegations in the complaint and that they should be dismissed. However, he advised that the remaining allegations were matters that the Committee should consider to determine whether there had been breaches of the Code.
6. In the light of the report on the preliminary investigation, the Presiding Officer dismissed two allegations and referred the two remaining allegations to the Committee. He also asked the Independent Adviser to undertake a formal investigation to establish the facts of the case for the Committee.

7. The Independent Adviser reported to the Committee on 11 July 2003. A copy of his report was also sent to Mr Cairns. The Committee met on 1 September 2003 to consider the complaint. The Committee met in private in accordance with Standing Order 16.5. Mr Cairns made oral and written representations to the Committee and answered questions from members. The Committee wishes to record that Mr Cairns fully co-operated with the process throughout and expresses its thanks to him for his co-operation.

Committee's Conclusion

8. The Committee has noted the Independent Adviser's report and the representations made by Mr Cairns. The Committee considered two possible breaches of the Code of Standards:
 - i. whether Mr Cairns breached the administrative rules on the "Use of National Assembly for Wales Stationery and Resources" and in doing so breached paragraph 5 of the "Principles in Practice" part of the "Code of Standards for Members of the Assembly".
 - ii. whether, by his actions in pursuing a change of the registered postal address of his private residence, Mr Cairns has misused his "office" in a way which might be considered in breach of the Code's principle of "Selflessness" and of paragraph 1 of "the Principles in Practice".
 9. On the first possible breach, the Committee concluded that Assembly Members' homes are legitimate places of work. The Committee noted that Mr Cairns had experienced problems having mail delivered to his home on a number of occasions due to confusion over his address. The Committee concluded that, in seeking to clarify the address of what was effectively one of his places of work, it was entirely proper for Mr Cairns to use Assembly headed stationery.
- 10. The Committee unanimously dismissed the first possible breach.**
11. On the second possible breach, the Committee concluded that it was not an improper use of the "office" of Assembly Member by Mr Cairns to seek to change his address for legitimate, work-related, reasons.

12. The Committee unanimously dismissed the second possible breach.

Anonymity

13. The complaints procedure is intended to preserve as much anonymity as possible to protect all concerned. The Committee is considering, under the "Woodhouse" review of the Assembly's Standards of Conduct arrangements, whether this should continue to be the case but under the current arrangements, when a complaint is dismissed, it is usual for the Committee's report to be anonymised.
14. However, the Committee has decided that the report should not be anonymised, despite Mr Cairns not being in breach of the Code of Standards. The Committee concluded that in the particular circumstances of this case, which had attracted fairly wide publicity and where the complainant had

himself made public his complaint, it would be fairer to Mr Cairns to make public the Committee's findings.

Committee on Standards of Conduct
8 September 2003

ANNEX A

Reference C029-03

Report to the Committee on Standards of Conduct of the National Assembly of Wales by the Independent Adviser on Standards following his Investigation of the potential complaint by Councillor Jeff Jones, Leader of Bridgend County Council, in respect of Alun Cairns AM

1. Background to the complaint

1.1 Councillor Jeff Jones, Leader of Bridgend County Council, wrote to the Presiding Officer on 3 March 2003 to:

“formally complain about the behaviour of Alun Cairns AM over a number of issues”.

1.2 His complaint comprised four specific allegations that Alun Cairns had :

Allegation (i) *“used his office to try to change his address”.*

Allegation (ii) *“claimed to be acting as an individual but (used) Assembly headed notepaper to pursue his case”.*

Allegation (iii) **Used Assembly headed notepaper to write to the Chief Executive of the Welsh Rugby Union about a planning application (for the National Academy for Welsh Rugby in Bridgend) without telling him that he lived close to the site and therefore had a “*personal vested interest in ensuring that the planning application should not proceed*”.**

Allegation (iv) *“deliberately misconstrued stolen documents in order to blacken my (Councillor Jones) name”.*

1.3 The complaint and the relevant documentation were sent to me by the Secretariat on 5 March 2003 and I was asked to undertake a Preliminary Investigation into this potential complaint.

1.4 I completed my Preliminary Investigation at the end of April 2003 and sent it to the Secretariat for onward transmission to the Presiding Officer. The Presiding Officer then referred the complaint to the Committee on Standards of Conduct and I was asked to undertake a full Investigation and report on my findings to the Committee. This Report sets out for consideration by the Committee the details of the complaints from Councillor Jones against Alun Cairns AM, my Investigation and my findings.

2. The complaint

2.1 Councillor Jones complained about a number of alleged actions by Alun Cairns:

Allegation (i) He alleged that Alun Cairns used his 'office' (i.e. his status as an Assembly Member) to try to have the address of his private residence changed. Alun Cairns' address was 'The Patch, Ewenny Road, Bridgend' and the allegation is that he tried to have 'Ewenny Road' removed from his address by inappropriately writing direct to the Royal Mail Address Management Centre at Shrewsbury rather than by contacting the local authority (in this case Bridgend County Council) for its 'support'. According to Councillor Jones the Royal Mail Address Management Centre agreed to change the address without any reference to the County Council. Councillor Jones claims that Alun Cairns then tried to change his address on the Electoral Roll and that he 'threatened' to report the female officers involved to the Local Government Ombudsman if they did not carry out his wishes.

Allegation (ii) He alleged that Alun Cairns claimed to be acting as a private individual in his pursuit of this matter but that he used Assembly headed notepaper, presumably in breach of the administrative rules on the use of Assembly resources.

Allegation (iii) He alleged that Alun Cairns wrote to the Chief Executive of the Welsh Rugby Union in an attempt to persuade him to drop the proposal for the National Academy for Welsh Rugby to be located in Bridgend. Councillor Jones alleged that Alun Cairns gave the impression that he would be able to help the WRU if it decided instead to go elsewhere and that (again presumably in breach of the rules on the use of Assembly Resources) his letter is written on Assembly headed notepaper. He also alleged that Alun Cairns did not tell the Chief Executive of the WRU that he lived close to the site and as a result had a personal vested interest in ensuring that the planning application for the site should not succeed.

Allegation (iv) He alleged that Alun Cairns, in comments that he made to the local newspaper (The Glamorgan Gazette), deliberately misconstrued the contents of documents that had been 'stolen' from the

Council's Planning Department. He says that Alun Cairns is quoted in an article as saying that:

"the documents appear to show that pressure has been brought about on the planning officers (in respect of the planning application for the National Academy for Welsh Rugby)

and that the documents show nothing of the sort. Councillor Jones described this as a deliberate attempt by Alun Cairns to:

"blacken my (ie Councillor Jones') name".

- 2.2 Councillor Jones summed up his complaint at the conclusion of his letter of 3 March 2003 to the Presiding Officer by saying:

"By his activities Mr. Cairns has clearly brought the Assembly into disrepute and there needs to be a full investigation".

- 2.3 On 21 March 2003 the Western Mail carried a full article on the allegations by Councillor Jones against Alun Cairns with the headline:

'AM investigated in 'upmarket address storm'

The article, accompanied by a colour photograph of the property in question, quoted extensively and verbatim from the letter of 3 March 2003 from Councillor Jones to the Presiding Officer and concluded with Alun Cairns saying that he dismissed the complaint as "nonsensical".

3. My investigation

- 3.1 I interviewed Alun Cairns AM on 1 April 2003 and again on 26 June 2003 and discussed with him on both occasions in great detail the allegations by Councillor Jones. He knew of the allegations through the article in the Western Mail and I had also sent him a copy of Councillor Jones' letter of 3 March 2003 to the Presiding Officer together with copies of relevant documentation. Alun Cairns had provided me with copies of additional documentation in advance of our meeting and also brought copies of further documentation with him. This included a plan of the area surrounding his property in Ewenny which is attached as an Annex to this report.
- 3.2 Alun Cairns responded to me on each of the allegations by Councillor Jones as follows:

Allegation (i) that he had "used his office to try to change his address"

and

Allegation (ii) *“claimed to be acting as an individual but (used) Assembly headed notepaper to pursue his case”.*

Alun Cairns said that he had received the Electoral Roll form from Bridgend County Council with an address that did not include his registered postal address of 'Ewenny'. He called the Electoral Registration (ER) Office to tell them of this inconsistency and that he wanted it corrected. He was told that he lived in Ewenny Road, not Ewenny. He called the Post Office to check his registered address and was told it was 'Ewenny'. A month or so later he called the ER Office again to see what progress had been made with his request to change his ER address to 'Ewenny' and was told that they were not able to speak with him directly (apparently there is some local ruling that Assembly Members have to be dealt with exclusively through the Leader of the Council). He told me that he explained that he was calling as a private citizen not as an Assembly Member but was told that the officer needed authority from the Cabinet of the Council to deal with him. Alun Cairns phoned again but was again told by the officer that she was not allowed to speak to him. Alun Cairns said that he then rang the Chief Executive's Office at Bridgend County Council and said he was intending to take the matter up with the Local Government Ombudsman but denied that he was either 'threatening' or 'aggressive' to the Council officer concerned.

He received a phone call from the Bridgend County Council ER Office within an hour to be told that the relevant legislation had been checked and that the correct procedure was to use the registered postal address on the Electoral Roll. He said that he was content with that and asked the officer to delete 'Ewenny Road' from his electoral register address. He was told that this could only be done by the Royal Mail Address Management Centre and was given the contact details for the Shrewsbury office by the Council officer.

A letter was then written from his office in Cardiff Bay to the Royal Mail Address Management Centre in Shrewsbury on 12 December 2002 on Assembly-headed notepaper. He told me at our first meeting on 1 April 2003 that he was well aware of the administrative rules about the use of Assembly resources which permit 'modest personal use' of such resources as headed notepaper and envelopes and that in his view his use of Assembly resources on this matter could not amount to anything other than 'modest'. He emphasised that he was clear in his letter that the matter was about his own residential property and that he was not claiming to be writing on behalf of a constituent. The Royal Mail had confirmed with the local sorting office that there had been problems with the delivery of mail to his home address.

He told me at our second meeting that he has written previously to the Royal Mail about problems for a constituent but asked me in his case who else could represent his interests as a 'constituent'. I suggested that another Assembly Member could have been asked to write on his behalf but he said that was not feasible. He also told me that his reason

for using Assembly-headed notepaper for his letter of 12 December 2002 to the Royal Mail Address Management Centre in Shrewsbury was purely for convenience – it was one of a number of letters on a tape that his Office dealt with that day in the rush before the end of the session before Christmas. He said that there was no intention on his part to use his status as an Assembly Member to bolster his case for the change of residential address. Finally, he pointed out that as Assembly Members get a lot of mail from the Assembly and others sent to their home address about Assembly business *de facto* this results in the residential addresses of Assembly Members being ‘business addresses’. He considered that this justified his action in writing as an Assembly Member to rectify the problems with the delivery of mail to his home/business address because this was causing unnecessary and unacceptable problems for his constituents.

The reply from the Royal Mail Address Management Centre dated 23 December 2002 went to his home address (with no reference to his position as an AM) and told him that it had been accepted that his registered address would be appropriately amended but that there would be a consequential change in his postcode.

Alun Cairns sent a copy of the letter from the Royal Mail Address Management Centre to the ER Office in Bridgend on 28 December 2002 to advise of the change in his registered address. He received a reply from the ER Officer on 7 January 2003, which said that his request would be ‘*expedited*’ (sic) in due course’. Councillor Jones then wrote to the Royal Mail Address Management Centre on 4 February 2003 asking for an explanation of its decision to amend the address of Alun Cairns’ property. The reply of 6 February 2003 explained the basis of the change but also apologised for not appropriately contacting the local authority to confirm certain facts in the case.

So far as Alun Cairns was concerned that was the end of the matter until he became aware of the complaint by Councillor Jones. He emphasised that he was aware of the administrative rules about the use of Assembly resources. He strongly refuted any suggestion that he had used his ‘office’ in any way to achieve his objective and does not consider that he has breached the rules on the use of Assembly resources in view of their ‘*de minimis*’ provisions. He also denies ‘threatening’ the ER staff at Bridgend and produced a copy of the file note made by the Electoral Services Assistant at the time of his telephone conversation with her which states:

“He was polite but persistent in his pursuit of clarification of his query. He stated that if the matter was not addressed he would have to contact the Ombudsman”

Finally he made the point to me that, as the local ‘rules of engagement’ between Assembly Members and Bridgend County Council require all contact (even when acting in a private capacity) to be routed through

the Leader of Bridgend County Council's Office, this makes simple matters like this over-complicated and lengthy.

Allegation (iii) Used Assembly headed notepaper to write to the Chief Executive of the Welsh Rugby Union about a planning application (for the National Academy for Welsh Rugby in Bridgend) without telling him that he lived close to the site and therefore had a “*personal vested interest in ensuring that the planning application should not proceed*”.

Alun Cairns explained to me the background to the proposed development at Island Farm in Bridgend and of his personal opposition to the development from the outset. He conceded that he has a personal interest in the matter as his property is indirectly affected by the proposed development but also claimed that he in fact has always highlighted his personal interest deliberately so that no one could be in any doubt about his position on the matter. He also said that his interest is declared and on the record on every occasion that the Assembly has discussed the matter. I have checked this and believe it to be the case

He went through the background to the planning applications, both original and revised, and told me of the 'all-party' opposition from Assembly Members to the revised application submitted by the developers in Autumn 2003 which included a proposal for 30 acres of the 120- acre site to be used for the WRU Academy of Rugby. Following the rejection of this planning application by the Development Control Committee of Bridgend County Council the Leader of the County Council announced that in future all planning applications should be determined by the full Council. Alun Cairns decided to write to the Chief Executive of the WRU to seek a meeting to discuss the matter. He did so on 20 January 2003 and wrote 'officially' on Assembly headed notepaper as an Assembly Member not as a private individual. He did not receive a reply to that letter and wrote again on the same basis on 28 February 2003 to repeat his request for a meeting. He has not received a reply to either letter.

Alun Cairns told me that he is known throughout South Wales, including by the WRU, as a leading opponent of the proposals for the development of this site including the proposal to establish the WRU Academy of Rugby there. He also told me that he has always declared his personal interest in the matter but did not think it necessary to include this in his letters to David Moffett, not least as he claims that Mr.Moffett is well aware of his personal interest. He strongly resists any allegation that he has breached the Code of Standards for Assembly Members on this issue.

Allegation (iv) *“deliberately misconstrued stolen documents in order to blacken my (Councillor Jones’) name.*

This allegation concerns an article in the Glamorgan Gazette, the local Bridgend paper, on 20 February 2003 about the Island Farm development. The article reported that the Island Farm Action Group was alleging that the Council Leader, Councillor Jones, might have broken the Council’s Code of Conduct by putting pressure on council officers to recommend the Island Farm development. Alun Cairns is quoted in the article as follows:

“The documents appear to show that pressure has been brought about on the planning officers”.

The ‘documents’ referred to were an internal confidential memorandum of 21 November 2002 from the Council’s Director of Environment and Planning to his two Assistant Directors (for Planning and for Transportation/Engineering) in which he said:

“I was...reminded (by the Leader) of the need to view this project as having the potential to bring considerable prestige to the County Borough if it succeeds in addressing all the planning/highway considerations. There is a general expectancy that officers from both spheres of interest will attempt to secure solutions to issues that are prevalent at present”

and a letter from the Assistant Director (Planning) of the same date to the Consultants for the developers of the Island Farm site which said:

“I had intended to report this application to the Development Control Committee... but with an unfavourable recommendation”.

This letter allegedly had **‘not sent’** written on it.

Both documents have allegedly been ‘stolen’ from the County Council by representatives of the Island Farm Action Group in the sense that the documents were photographed without permission in the Council offices. The police are investigating this allegation.

Alun Cairns categorically denied any involvement with the Action Group or with its actions in this matter (although he was sent a copy of the documents by the Action Group) and said that he was asked by the paper to comment as an ‘interested party’ – and did so.

4. Summary

- 4.1 I have fully investigated the complaint by Councillor Jeff Jones that Alun Cairns AM has:

“By his activities clearly brought the Assembly into disrepute and there needs to be a full investigation”.

4.2 I can find no evidence that Alun Cairns has brought the Assembly into disrepute generally nor is there any evidence that his behaviour towards the Electoral Registration staff at Bridgend County Council was in any way inappropriate.

4.3 However, it may be that Alun Cairns has breached the administrative rules on the use of National Assembly for Wales Stationery and Resources and in doing so may have breached Paragraph 5 of the ‘Principles into Practice’ of that Code which states that:

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

4.4 The fact is that on at least 3 occasions (one of which he himself brought to my attention) Alun Cairns used Assembly-headed notepaper in correspondence with Bridgend County Council and the Royal Mail Address Management Centre in Shrewsbury to pursue his objective of changing the registered address of his private residence in Bridgend. He is right that the provisions in Annex A of the rules on the Use of National Assembly for Wales Stationery and Resources do allow for the use of Assembly headed stationery for personal correspondence in ‘modest quantities’ and that this caveat legitimised his use of headed stationery for his personal use in pursuing his objective. I asked Alun Cairns in the course of my discussions with him to consider whether, in view of previous complaints involving the use of Assembly resources by Assembly Members, it would have been sensible to have adopted an even more careful approach to his use of Assembly resources. He was adamant that he had in no way breached the Code of Standards for Assembly Members.

4.5 The judgement whether the use of such resources on three separate occasions can be regarded as ‘modest’ is one that should properly be considered by the Committee on Standards of Conduct.

4.6 The Standards Committee must also consider whether this use of Assembly headed stationery by Alan Cairns on this matter may amount to an inappropriate use of his ‘office’ as an Assembly Member to add extra weight to his case for changing his registered postal address. It is significant that whilst he told me that he always made it clear that he was pursuing this matter as a private individual both the County Council and the Royal Mail Address Management Centre refer to him as ‘AM’ or ‘Assembly Member’ in some of their letters.

4.7 However, this is not clear cut and, for example, the Royal Mail Address Management Centre does not refer to him as an Assembly

Member in its letter to him of 23 December 2003 which was sent to his home address.

5. Conclusion

5.1 My conclusion is that on the basis of my Investigation of the complaint by Councillor Jones against Alun Cairns AM that there is no evidence to support two of the four allegations made by Councillor Jones:

allegation iii. - that Alun Cairns used Assembly headed notepaper to write to the Chief Executive of the Welsh Rugby Union about a planning application for the National Academy for Welsh Rugby in Bridgend without telling him that he lived close to the site and therefore had a "*personal vested interest in ensuring that the planning application should not proceed*"

and

allegation iv. –that he "*deliberately misconstrued stolen documents in order to blacken my (Councillor Jones') name*"

- 5.2 However, I do also conclude that there may have been breaches of the Code of Standards for Assembly Members by Alun Cairns AM as a result of his use of his 'office' generally (**allegation i.**) and by his use of Assembly-headed stationery specifically (**allegation ii.**) in pursuing his objective of changing the registered postal address of his private residence.
- 5.3 These are matters that should be considered by the Committee on Standards of Conduct for it to determine whether there have been breaches of the Code of Conduct for Assembly Members by Alun Cairns AM.

Richard Penn
Independent Adviser on Standards

11 July 2003

ANNEX B

MEMBERSHIP OF THE COMMITTEE ON STANDARDS OF CONDUCT

Kirsty Williams (Chair)	Brecon & Radnorshire	Liberal Democrats
Jeff Cuthbert	Caerffili	Labour
David Davies	Monmouth	Conservative
Jocelyn Davies	South Wales East	Plaid Cymru/Party of Wales
Tamsin Dunwoody-Kneafsey	Preseli Pembrokeshire	Labour
Sandy Mewies	Delyn	Labour
Lynne Neagle	Torfaen	Labour
Owen John Thomas	South Wales Central	Plaid Cymru/Party of Wales
Gwenda Thomas	Neath	Labour
Brynle Williams	North Wales	Conservative
Clerk	Andrew George	
Deputy Clerk	Steve George	
Independent Adviser on Standards	Richard Penn	
Legal Adviser to the Presiding Office	Peter Jones	

ANNEX C

STANDING ORDER 16 - Committee on Standards of Conduct

Title and Terms of Reference

- 16.1 There shall be a Committee on Standards of Conduct, which shall:
- (i) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Presiding Officer that a Member has not complied with standing order 4 or any Assembly resolution relating to the financial or other interests of Members, or that an Assembly Secretary has not complied with the requirements of paragraph 2.8;
 - (ii) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Presiding Officer that a Member has not complied with any Assembly resolution relating to Members' standards of conduct or with the guidance for Assembly Secretaries which the Assembly has approved in accordance with paragraph 2.7;
 - (iii) consider any matters of principle relating to the conduct of Members generally;
 - (iv) supervise the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests, and the form and content of the Register; and
 - (v) present an annual report to the Assembly on the complaints made to the Presiding Officer under (i) and (ii) and the action taken, and on its conclusions in respect of ethical standards in the conduct of the Assembly's business.

Membership

16.2 The Assembly shall elect a Member to chair the Committee, together with other Members elected so far as practicable to reflect the balance of political groups in the Assembly. The Presiding Officer shall not be a member of the Committee, but shall be entitled to attend any meeting of the Committee, or submit papers to it, for the purpose of drawing to its attention such considerations as he or she considers appropriate.

Independent Adviser

16.3 The Assembly shall appoint a person who is not an Assembly Member or a member of its staff to provide advice and assistance to the Presiding Officer on any matter relating to the conduct of Members; and the Committee may, in addition to the appointment as appropriate of its own advisor under paragraph 8.14, invite the Assembly's appointee to investigate factual matters arising out of any matter before it.

Meetings

16.4 The Committee shall meet as soon as may be after a complaint has been laid before it by the Presiding Officer; and at other times as convened by the chair.

16.5 The Committee may meet in public or in private, but when considering a complaint, the Committee shall meet in private unless it resolves otherwise. Any Member who is or may be the subject of an investigation by the Committee shall at his or her request be permitted to make oral or written representations to it and may be accompanied at oral hearings by another person (who may participate in the proceedings with the permission of the chair).

Reports

16.6 If the Committee has investigated a complaint laid before it by the Presiding Officer, it shall report to the Assembly as soon as may be after completion of the investigation. The Committee may report to the Assembly on other matters within its remit from time to time.

