

THE NATIONAL ASSEMBLY FOR WALES: COMMITTEE ON STANDARDS OF CONDUCT

*REPORT 01-2004 - Presented to the National Assembly for Wales  
on 20 October 2004 in accordance with Standing Order 16.7*

COMPLAINT AGAINST EDWINA HART AM

**Purpose and Scope of Report**

1. This is a report to the Assembly by the Committee on Standards of Conduct under Standing Order 16.7 about a complaint, which it has considered against Edwina Hart AM. The complaint, from Mr Charles Willie, alleged breaches by Mrs Hart of:
  - i. the Code of Standards for Assembly Members, adopted by the Assembly on 18 May 1999; and
  - ii. the Protocol for Relationships between Assembly Members and Assembly staff, approved by the Assembly on 19 May 2000.

**Standards Committee Terms of Reference**

2. Standing Order 16.1(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 or with the guidance for Ministers which the Assembly has approved in accordance with Standing Order 2.7 [the “Ministerial Code”] or the Code of Conduct under Standing Order 18.14.”*

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

**The Complaint**

4. The complaint was made to the Presiding Officer on 21 January 2004 and was dealt with in accordance with a procedure approved by the Standards Committee on 6 July 2000 following consultation with all Assembly Members. The complaint was referred to the Committee by the Presiding Officer acting on the advice of the Independent Adviser on Standards, Mr Richard Penn. Mr Penn subsequently withdrew from investigating the complaint due to a perceived conflict of interest and consideration of the complaint was re-started.
5. Mr Tom Frawley, the Northern Ireland Ombudsman, was appointed by the Assembly to act as Independent Adviser in relation to this complaint on 9 March 2004. The Independent Adviser advised the Presiding Officer that he was satisfied that the complaint met the criteria for referral to the Committee. Acting on Mr Frawley's advice the Presiding Officer referred the complaint to the Committee for investigation. He also asked the Independent Adviser to undertake a formal investigation to establish the facts of the case for the Committee.

6. Details of Mr Willie's allegations are set out in Mr Frawley's report to the Standards Committee at Annex A.

### **Summary of the Committee's Investigation**

7. The Independent Adviser reported to the Committee on 28 September 2004. A copy of his report was sent to Mrs Hart and to Members of the Committee. The Committee met on 7 October 2004 to consider the complaint. The Committee met in private in accordance with Standing Order 16.5. Mrs Hart made written representations but chose not to exercise her right to make oral representations to the Committee.

### **Committee's Conclusion**

8. The Committee has noted the Independent Adviser's report and the representations made by Mrs Hart. The Committee considered the two possible breaches of the Code of Standards complained of by Mr Willie. These were whether Mrs Hart had breached:
  - i. the Code of Standards for Assembly Members, adopted by the Assembly on 18 May 1999; and
  - ii. the Protocol for Relationships between Assembly Members and Assembly staff, approved by the Assembly on 19 May 2000.
9. In addition Mr Frawley concluded that he was satisfied "that the Ministerial Code is the relevant central document on which to base the Committee's consideration of the complaint" and that "the matters alleged in Mr Willie's complaint can be examined by the Committee." In the light of this the Committee also considered whether Mrs Hart had breached the Ministerial Code.
10. Having considered Mr Frawley's report, and having noted his conclusions, the Committee concluded that the evidence Mr Frawley had considered and provided to them did not support the complaints made by Mr Willie against Mrs Hart.
11. **The Committee unanimously dismissed the complaint against Mrs Hart on all counts.**

### **Anonymity**

12. The complaints procedure is intended to preserve as much anonymity as possible to protect all concerned. The Committee is considering the extent to which this should continue to be the case but under the current arrangements, when a complaint is dismissed, the Committee's report may be anonymised.
13. In this case, the Committee has decided that the report should be partially anonymised, to protect the position of witnesses and other persons mentioned incidentally in Mr Frawley's report. For the same reason, the Committee has also decided not to publish the notes of interviews and the other annexes referred to in Mr Frawley's report.

14. However, the Committee concluded that in the particular circumstances of this case, which had attracted wide publicity and where the complainant had himself made public his complaint, it would be fairer to make public the names of the complainant and the Member complained of alongside the Committee's findings.

## Other Issues

### Media Coverage

15. Mr Frawley expressed particular concern “at the level at which the issues within the complaint have been the subject of extensive and detailed media coverage and commentary”. He has expressed the view “that it is only consistent with the principles of natural justice for the issues to be submitted to the Standards Committee in confidence for examination.” These concerns are set out in full in section 13 of Mr Frawley’s report and have led him to recommend:

*“that the Committee consider whether its current procedures should be expanded to provide an opportunity to allow it to take account of the implications of matters such as breaches of confidentiality leading to extensive media coverage before asking its Independent Adviser to proceed to detailed investigation of a complaint.”*

16. The Committee has accepted this recommendation and will consider it more fully as part of its current review of the procedure for dealing with complaints against Assembly Members.

### Mr Tom Frawley

17. The Committee would like to place on record its thanks to Mr Tom Frawley for agreeing to act as Independent Adviser for this complaint, for the extremely rigorous and professional manner in which he has conducted the investigation and for the clarity of his report.

Committee on Standards of Conduct  
20 October 2004

## **ANNEX A**

*Reference C036-04*

**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 Mr Charles Willie, in respect of Edwina Hart AM**

**REPORT**

**TO THE COMMITTEE ON STANDARDS OF  
CONDUCT**

**OF**

**THE NATIONAL ASSEMBLY FOR WALES**

**WITH REGARD TO A COMPLAINT**

**FROM**

**Mr CHARLES WILLIE**

**AGAINST**

**MRS EDWINA HART MBE AM**

September 2004

**Introduction**

1. This report is in respect of a complaint submitted by Mr Charles Willie, a former member of the Assembly staff. The complaint relates to the conduct and actions of Mrs Edwina Hart AM. During the period covered by the complaint Mrs Hart served as Chair of Committee on Equality of Opportunity of the Assembly and concurrently had Ministerial responsibility for the area of work in which Mr Willie was employed.

The form of words used by Mr Willie in making his complaint is as follows:

**“The documentary evidence presented shows a planned and concerted effort to remove me from my position as the Equality Adviser to the Assembly as Head of the Equality Policy Unit. It is my contention that although originally initiated by Mr B, this agenda to remove me was taken fully on board by Edwina Hart, and through bullying, harassment and an abuse of her power instructed and collaborated with senior civil servants to achieve this end.”**

Within the above statement of complaint and in the remainder of this report I have decided to refer anonymously to individuals who have been referred to but who I did not interview. Those who I did interview are aware of the contents of the notes in respect of their conversations with me and have had the opportunity to comment on the contents of those notes which are included as appendices to this Report.

## Background

2. On 21 January 2004 Mr Willie submitted an e-mail addressed to the Chair of the Standards Committee. In his e-mail Mr Willie alleged that there had been a breach of the Code of Standards for Members of the Assembly and also a breach of the Protocol for Relationships between Assembly Members and Assembly Staff. Specifically in his complaint he alleged that the actions and behaviour of Mrs Hart AM were a breach of Point 2 of the Principles in Practice of the Code of Standards for Members of the Assembly which states that “members shall 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 shall not ask any civil servant to act in any way which would compromise the impartiality of the civil service or conflict with the Civil Service Code.*” ( The sentence in italics is how Mr Willie presented it in his e-mail to the Chair of the Standards Committee.)
3. Mr Willie further alleged that Mrs Hart had breached Paragraph 2.1 of Principles Section of the Protocol for Relationships between Assembly Members and Assembly Staff which states “relationships between Assembly Members and Assembly Staff shall be professional and based on mutual respect.”
4. Mr Willie, in support of his complaint, submitted a chronology of events dating from December 1998 to November 2002. The chronology was amplified through a précis of notes, e-mails and correspondence. A Table

format in which this information was presented also contained a personal commentary on those events which detailed Mr Willie's perception of how the information supported his allegations. In addition, appended to the chronology in the Table was a narrative which Mr Willie explains in his e-mail is "a transcript of evidence in the Western Mail article of 13 January". This transcript builds on the commentary and conveys a perspective on the events which Mr Willie contends led to him being made redundant.

## **Preliminary Investigation**

5. Having conducted a Preliminary Investigation of the matters alleged and the documents submitted in support of the allegations I advised the Presiding Officer I considered that the potential complaint satisfied the levels of preliminary tests that are set out in Stage 4 (1) of the Procedure for dealing with Complaints against Assembly Members.

I also advised the Presiding Officer that I considered that the potential complaint was within the Committee's jurisdiction.

I further advised the Presiding Officer I considered that the information submitted within and in support of the potential complaint suggested a possible breach of Point 2 of the Principles in Practice of the Code of Standards for Members of the Assembly (18 May 1999). The information also suggested a possible breach of Point 2.1. of the Protocol of Relationships between Assembly Members and Assembly Staff.

While Mr Willie had not tied his complaint to a breach of the Ministerial Code, the information he has submitted clearly identified Mrs Hart AM in her Ministerial role. I advised the Presiding Officer that I considered the information suggested that a possible alleged breach of Paragraph 5.1 of the Ministerial Code may also have taken place.

6. Finally I advised the Presiding Officer that, having given careful consideration to the complaint and having tested it against the relevant Protocols, Codes and Procedures, I was satisfied that all tests detailed in the Complaint Procedure for dealing with Complaints against Assembly Members had been met and that therefore the complaint met the criteria for referral to the Committee on Standards of Conduct.

## **Jurisdictional Matters**

7. I have referred above, in paragraph 5, to the fact that I identified the Ministerial Code as being relevant. In light of all the information now available to me, I am satisfied that the Ministerial Code is the relevant central document on which to base the Committee's consideration of the complaint.

I have formed this opinion because I am now satisfied that the actions complained of were actions of the Minister that arose whilst fulfilling her role as a Minister and, furthermore, could not have arisen had Mrs Hart not been a Minister. It is therefore also appropriate to consider the actions against a

context that the role and responsibilities of a Minister differ significantly from the responsibilities attaching to those of a Member of the Assembly.

The provisions set down by the Committee for the investigation of complaints against Members makes clear that alleged breaches of the Ministerial Code are within the remit of the Committee. Accordingly I am satisfied that the matters alleged in Mr Willie's complaint can be examined by the Committee.

## Investigation

8.1 My approach to this investigation was to study carefully a range of documentation which had been submitted by the complainant in support of his complaint and from that review to identify a number of people who I believed could help me gain a more complete understanding of the different elements that made up the complaint and also help me understand the context within which the events unfolded.

I met and interviewed:

- Mr. Charles Willie, the complainant.
- Mrs. Edwina Hart MBE AM, the Minister.
- Mr [U], a senior civil servant.
- Mr [V], Director of Group including EPU from September 1999 to September 2000
- Mr [W], Head of Division including EPU to October 2001
- Mr [X], Clerk to the Committee on Equality of Opportunity in April 2000
- Mr [Y], former Director of the Personnel Management and Business Services Group

I spoke by telephone with Mr [Z], former Senior Director.

Summary notes of those interviews are appended to this report as are transcripts of the notes of the meetings identified by Mr Willie as central in supporting his complaint.

*[The Committee has decided that the report should be partially anonymised, to protect the position of witnesses and other persons mentioned incidentally in Mr Frawley's report. For the same reason, the Committee has also decided not to publish the notes of interviews and the other annexes referred to above.]*

I also examined other papers and information which I requested, by way of background, from the Permanent Secretary. This information included:

- Mr Willie's employment history with the Assembly
- The National Assembly Organisation Chart dated 2.5.03, PEP Division 2000/01 and 2001/02
- Details of the job description, person specification and duties in respect of the Project Leader post

- Mr Willie's Annual Appraisal reports (98/99,99/00,00/01)
- Details of the spread of Appraisal markings 98/99 and 99/00

8.2 Mr Willie in his supporting papers and in his evidence to me drew my attention to the fact that he had been assessed consistently at Box B in his Annual Appraisal which was described as "performance significantly above normal requirements of the grade." I specifically requested details of the distribution of Box Markings within the then Appraisal System for Grade 7 officers. The Appraisal System has since been discontinued and figures detailing the spread of Box markings are not available after the 1999/00 year. In the year 1999/00 the details show that some 67% of staff in Mr Willie's grade band were assessed as Box B or higher.

8.3 I requested and received a description of Mr Willie's career history for the period he worked at the Assembly. My interest in obtaining this information was to enable me to have an understanding of the background to the papers which Mr Willie had submitted in support of his complaint to the Committee against Minister Hart.

I was informed that Mr Willie had commenced employment with the Welsh Office (this was prior to the Assembly coming into formal existence) in December 1998. He had been appointed on a two year fixed term to the post of Grade 7 Race Equality Project Leader. His initial role was to develop and implement Welsh Office and National Assembly for Wales policies and strategies on Race. His role was also to act as a liaison between ethnic minority communities in Wales and the Assembly; to provide advice and guidance both internally and externally on the development of race policies; to undertake research and analysis of race issues in the public sector and to improve monitoring of race issues.

When the Assembly came into being, the Equality Policy Unit (EPU), the unit in which Mr Willie worked, was one of three units which, together, made up the Public Administration, Equality and Public Appointments Division (PEP Division). Mr Willie at this point reported to the then Head of Division, Mr [W]. Within the first 12 months, Mr Willie's role evolved and expanded from Race Equality Project Leader to Head of Equality Policy Unit (EPU). Amongst a range of responsibilities for example, Mr Willie was asked to initiate a programme of 'benchmarking' to determine how to effectively mainstream equality into all aspects of policy development within the Assembly; he also reported on the progress of the Assembly Action Plan on Equality of Opportunity; and he facilitated the Assembly's response to the Immigration and Asylum Bill. As Head of EPU, Mr Willie had line management responsibility for eight Higher Executive Officers plus a number of support staff covering the three main equality areas (race, gender and disability) together with Human Rights, Equality Training and Equality Audits.

In October 2001, the Head of PEP Division (Mr [W]) moved to another post in the Assembly and, to reflect the additional responsibility created by not having a Head of Division, Mr Willie was awarded a 5% increase in his salary. This

increase was paid in the form of a Responsibility Allowance. At around this time, it was decided to restructure the Equality Policy Unit in order to establish a stand alone unit that would be headed by a Grade 5 Director, this post was to be filled by an open recruitment process. It was decided until such time as the new appointment was made, the Director of Personnel Management and Business Services Group, (Mr [Y], to whom Mr Harper reported before his transfer) would take responsibility for the EPU. Mr Willie continued to receive a Responsibility Allowance.

The recruitment exercise to fill the new Grade 5 post began in May 2002. In July 2002, an additional Grade 7 post was created within the EPU and it was decided that, as Mr Willie would temporarily assume line management responsibility for an officer who was the same substantive grade as himself, he would be temporarily promoted to Grade 6 to recognise this additional responsibility. Accordingly, Mr Willie's Responsibility Allowance was increased to 10% to reflect his acting Grade 6 status. This continued until the appointment process was completed and the new Grade 5 took up post in February 2003.

I was also informed that Mr Willie had been a candidate for the Grade 5 post but had been unsuccessful. He was offered the opportunity to continue to work within the EPU at his substantive grade in a post which carried responsibility for race matters amongst a range of other responsibilities. His reporting line would have reverted from the Director of Personnel Management and Business Division to the Head of the Equality Policy Unit. It was recognised that the Grade 7 post offered to Mr Willie, though it had similarities to his former role, was clearly not the same and for that reason he was invited to consider whether he wished to work within the proposed arrangements. In the event he declined the post and was made redundant in February 2003.

## Commentary and Conclusions

### Key Papers identified by Mr Willie

9. The first paper to which Mr Willie referred me was the note of a meeting on 17 January 2000, between Mr [U] and Mr [Y], where reference is made to the Minister “pressing” to have Mr Willie moved to the Partnership Council of Wales. Mr Willie was not present at the meeting. Both Mr [U] and Mr [Y] have explained that the note was not an agreed formal record but was intended simply as an aide-memoire for each of them. It did not therefore represent a precisely worded formal record.

In providing their evidence Mr [U], the Minister, and Mr [Y] rejected the interpretation which Mr Willie puts on the note. Their consistent evidence is that the Partnership Council was a particularly important body for the Government, which was not making the impact that had been hoped for in respect of the Equality Agenda and it was believed that Mr Willie had a skill set that could have made a particular contribution to addressing this situation. The proposal of a transfer was never put to Mr Willie as Mr [Y] concluded that Mr Willie would not have been interested in a transfer to the Partnership Council because it would have involved him leaving the Assembly.

Mr [U], Mr [Y] and the Minister were uniform in the view that it was not inappropriate for a Minister to suggest a secondment as there was a commitment by the Assembly to facilitate inward and outward movement of staff particularly involving bodies and persons with an ethnic minority background in order that the Assembly could experience cultural diversity and staff could have the opportunity to work outside the Assembly. It was considered equally important that people from outside the Assembly would have the opportunity to bring their experience and expertise into the Assembly.

Mr [U] and Mr [Y] were both clear in their evidence that it would be improper for a Minister to press for an outcome in a staff matter against the Senior Civil Service Manager’s judgement and/or to the point where a member of staff was compelled to transfer to a post irrespective of their views on the proposal. They were equally clear that Mrs Hart did not attempt to exercise any such pressure in respect of Mr Willie.

In the event, Mr [Y] decided not to pursue the issue of a possible transfer with Mr Willie and it was never even discussed with him. Mr Willie only became aware of the matter when he received the copy note of the meeting after his Data Protection Act request in February 2003.

**I am satisfied that Mr Willie has misunderstood the meaning of the note and that it does not evidence improper conduct by Mrs Hart; indeed as the relevant Minister she had a responsibility to make known her concerns about the rate of progress in an aspect of the work of the Partnership Council where she had a particular interest and express views on a possible solution. Mrs Hart and Mr [Y] clearly believed Mr Willie had a skill set that would enable**

him to address the problems being experienced by the Partnership Council in the Equality aspect of its work. Again consistent with achieving both an outward and inward movement of staff between the Assembly and the wider public Service it was not inappropriate for her to suggest a possible inward secondee. There is no evidence that she pressed any of the staffing issues to a point which could be said to have challenged the judgement of Mr [U] or Mr [Y]. Indeed, importantly, when the line manager with responsibility, Mr [Y], on reflection decided that Mr Willie would not be interested in the proposal it was not even put to him.

10. The second note on which Mr Willie based his complaint was a record of a meeting held on 6 March 2002, between Mr [U] and Mr [Y]. Mr Willie indicated he only became aware of the content of the note following an application he made under the Data Protection legislation in February 2003. When I sought Mr [U]'s view on the content of the note he again reminded me it was not a minute that had been formally approved but an "aide memoir"; a means by which he stayed in touch with the whole range of his responsibilities.

Mr Willie clearly interprets the term "the EPU problem" in this note as referring to him and the suggestion of the transfer of a member of his staff to the Minister's office as part of a strategy to sideline him.

The evidence presented to me by the Minister and Senior Civil Servants sets out an entirely different perspective. In their evidence to me both the Minister and Mr [U] indicated that they had judged that the work of the EPU in support of the Assembly would be more effectively facilitated by the interim transfer of a member of the EPU staff to the Minister's office. This proposal, the Minister believed, would allow the EPU to stay closely involved with the work programme within Minister's Office and also, importantly, enable the Minister to stay in close touch with the work of the EPU. Mr [U] was aware of the proposal and was fully persuaded that the proposal "made sound business sense". Equally he was of the view that it would be inappropriate for Mr Willie, as head of the Unit, to move to the Minister's Office. Mr [Y]'s evidence also makes clear that he judged it appropriate to assign to the post an officer of a more junior grade than Mr Willie.

**I am satisfied from the evidence I have considered that Mr Willie has misunderstood the wording of the note. The Minister's Private Office is the nerve centre of a Department. In the context of a Devolved Administration it is typically staffed at a relatively junior level and is a small office somewhat detached from Departmental line management. There were difficulties in respect of the timeliness of communication both between the EPU and the Minister's Office and vice versa which had been identified by the Minister and Mr [U]. In my opinion the solution devised was a reasonable managerial response to that problem. I have seen no evidence which could be construed as indicating an 'abuse of power' by the Minister in this matter, indeed the Minister pointed out to me that there is some uncertainty as to whether the proposal was initiated by herself or by Mr [U].**

## Other Issues raised by Mr Willie

11. In his evidence to me Mr Willie also expressed his clearly held belief that he had been sidelined from giving advice and was effectively disregarded by the Minister. He cited in particular:
- A hostile attitude towards him adopted by the Minister at a meeting in April 2000 to discuss the business of the Committee on Equality of Opportunity,
  - Meetings with his Line Managers, including Mr [U], between August and September 2000 at which he complained about the Minister's attitude towards him and in which he believed they indicated they shared his views about the Minister's managerial style and in particular her attitude to staff,
  - an attempt by the Minister to have him excluded from membership of the McKenzie Implementation Working Group,
  - the Minister's nomination of a colleague of Mr Willie to attend a meeting with the Audit Commission,
  - the fact that he rarely had meetings with Minister Hart and that this was in sharp contrast to his experience of her predecessor.

### Meeting in April 2000

- 11.1 The meeting in April 2000 was attended by Mr [X], the then Clerk to the Committee on Equality of Opportunity. In his evidence to me Mr [X] recalled that the Minister had adopted a robust approach at the meeting in which she was testing the advice and opinions being put to her by both Mr Willie and himself. Mr [X] was clear that her approach, whilst challenging, had not been in a manner that could have been construed as harassment. Further, his evidence indicated that the approach adopted by the Minister was not unique to Mr Willie as he had witnessed the same approach adopted by Mrs Hart to other colleagues. He recognised however that it did differ from the style and approach of her predecessor as Chair of the Committee.

**I would conclude from the evidence I have considered that Mr Willie is accurate in his description of a robust approach being adopted by the Minister in the meeting but the evidence indicates that the approach was not unique to him nor was it perceived in the same negative light by his colleague whose views and advice were also being challenged by Minister Hart.**

### Meetings Between August and September 2000

- 11.2 In his evidence Mr Willie was clear that he had a number of conversations with his Line Manager and senior colleagues in which he raised his concerns. Indeed the record shows that he subsequently sought and was granted a meeting with the First Minister. However, none of those interviewed recalled

in particular the meetings in August/September 2000 cited by Mr Willie. It would appear that there are no written records of those meetings. The general consensus expressed in the evidence was that the period in question was one of change with all staff having to adapt to the style and ways of working of a new Minister. Minister Hart was perceived as having a robust, direct and assertive style which differed from her predecessor but everyone I spoke to accepted that the reality was that civil servants had to adjust to the style presented by the Minister to whom they were required to report.

**None of those providing evidence to me, other than Mr Willie, presented any specific personal criticisms about Minister Hart's approach however they indicated they could appreciate that others, particularly those who did not have a Senior Civil Service background, could have perceived the Minister's style in a more negative view. Mr Willie clearly took such a view.**

## The McKenzie Working Group

**11.3** Mr Willie submitted a copy of a note of a telephone conversation of the 5 April 2001 between Mr [U] and Mr [Y] which reflects that the Minister was of the view that Mr Willie should not serve on the Working Group. The Working Group was charged with implementing a report prepared by Mr McKenzie which had presented a short, medium and long-term strategy for change across the whole spectrum of equality issues in the Assembly. Mr Willie also provided a copy of a paper which showed his name deleted by the Minister from the list of Proposed Membership of the Working Group. The documentary evidence records that Mr [Y] had differed from Mr Willie and his immediate Line Manager in his perspective in respect of the membership of the Working Group. He considered the Group's membership should be on a more operational basis. He had therefore revised the proposal, listing Mr Willie with a number of others who he believed should be considered; included in this revised list were some Heads of Divisions. The amendments made by the Minister removed four names (including that of Mr Willie) and substituted two, including that of Mr Willie's immediate Line Manager.

In her evidence to me the Minister explained her actions. She regarded Mr McKenzie as "an additional resource" for the Assembly. She considered the EPU to be under pressure and that Mr Willie should concentrate his effort on the challenging agenda faced by the Unit. In the event following further discussion it was decided to include Mr Willie in the membership of what came to be known as the McKenzie Working Group.

In my reading of the papers and considering the evidence it is clear there was uncertainty about the appropriate membership of the McKenzie Group because of a lack of clarity as to what the exact focus of the Group should be. In my experience that is not an uncommon situation where a Report is of strategic importance. In an area where the Minister had particular responsibility it was wholly appropriate for her to be involved in the determination of the final membership. In the event Mr Willie did serve on the

Group and it is therefore clear that the Minister's contention that she was contributing to the discussion around the final membership of the Group is not unreasonable. Given that a particular strand of the Group's work was to deal with Racial issues I can understand why Mr Willie should consider he had a contribution to make, however he had responsibilities for the full range of the EPU work and it was equally appropriate for the Minister to express a view based on her concerns around that wider context.

**I conclude therefore that this incident does not evidence a sidelining of Mr Willie by the Minister because she agreed, following discussion with senior officials, to his inclusion in the Working Group.**

### **Nomination to meet the Audit Commission**

11.4 Mr. Willie provided a copy paper which showed that the Minister had substituted a colleague as the Assembly nominee for a meeting with the Audit Commission in relation to Equality matters. Mr Willie acknowledged that ultimately it was for the Minister to determine who should represent the Assembly at the meeting but he considered that as the EPU dealt with issues of Equality it would have been appropriate for him, as head of the Unit, to attend the meeting.

In her evidence to me, as set out in the relevant Appendix, the Minister set out the reasons for her choice of nominee. The Minister said she had nominated the particular officer precisely because that individual was leaving the Assembly to work in Local Government. The Audit Commission she said had a direct and specific role in Local Government and therefore the meeting could offer a potential basis for an ongoing working relationship between Local Government in Wales and the Audit Commission. The Minister said that she had been satisfied that the officer nominated had a sufficient knowledge of the Assembly's Equality Agenda, policies and procedures to represent its position at the meeting.

Again I can understand why Mr Willie should have seen himself as the appropriate person to represent the Assembly at the meeting however I consider that the Minister has offered a reasonable explanation for her decision, having taken into account the wider organisational and strategic issues.

**In light of the evidence I have considered on this aspect of the complaint I cannot conclude that the incident evidences a sidelining of Mr Willie by the Minister as she was entitled to take account of wider and longer term issues in reaching her decision.**

### **Infrequent Meetings with Minister Hart**

11.5 In presenting evidence to me Mr Willie stressed that there had been a marked change in the extent to which he was called to meetings with Minister Hart when compared with his experience of her predecessor, Minister Hutt. It was

clear to me that Mr Willie felt strongly that in his role as head of the EPU he ought to have been consulted by the Minister on a regular basis in respect of the issues for which he had a responsibility.

It is clear from the evidence that I have considered that Mr Willie was not consulted directly by Minister Hart neither was he invited to regularly attend meetings with the Minister. The Minister in her evidence made clear that she does not regularly engage in meetings with civil servants other than the senior civil servant within whose area of responsibility the subject matter falls. She expects the detail of civil service advice to be provided in writing through the established “jacket system”. She told me that, in common with advice from other civil servants, she had on occasions disagreed with the advice offered by Mr Willie but considered it was her right and indeed her responsibility to challenge advice offered to her. She emphasised to me that such differences had not constituted serious dissatisfaction with Mr Willie’s advice or support. She also accepted that she regularly met with sources of advice outside the Assembly and in particular those bodies and their officials which the Assembly had appointed as advisers to the Committee on Equality of Opportunity. She recognised that her approach might well differ from Ministerial colleagues but considered she was entitled to source advice in whatever manner she judged appropriate. She also recognised that Mr Willie may have interpreted her approach in a negative way particularly if it differed substantially from that of her predecessor.

The evidence of other parties indicates that senior civil servants recognised the Minister as having particular experience in, and a depth of knowledge of, the detail of Equality issues. She had already developed a wide ranging network of sources of advice outside the civil service and they did not consider it unreasonable for her to seek comment or advice from those sources.

**It is clear that Mrs Hart did not seek regular oral briefings from Mr Willie. However, in my view, the critical issue at the heart of this element of Mr Willie’s complaint is that a Minister should have in place mechanisms through which timely, adequate and wide ranging advice will be obtained. The approach taken has to be of the Minister’s choice and be consistent with the Minister’s preferred method of working. It is therefore for civil servants – not the Minister- to adjust should the Minister’s preferred approach differ from that of a predecessor.**

**I do not therefore accept that Minister’s Hart’s decisions on how she obtained her advice was particular to Mr Willie or had as its objective the exclusion of Mr Willie as a source of advice.**

## General Commentary

- 12.1** In conducting this investigation I have become conscious of the impact and effect of the changes created by the dynamic of the developing relationships between civil servants and elected Members within a new Devolved Administration. This change is also evidenced by the evolving responsibilities

of Ministers who used their authority to develop models and sources of advice. Critical aspects in the development of Devolution are the extent to which politicians become familiar with and ultimately address the challenges presented by being in government. Civil servants must have the ability to adapt to a changing and developing scenario which results from the politicians gaining clarity and certainty about their role. I have sought to examine carefully the allegations made by Mr Willie within the challenges presented by that dynamic and changing context.

- 12.2** Having been recruited as a person with particular expertise in racial equality, Mr Willie had clearly found it very satisfying to be professionally and personally engaged in briefing Mrs Hart's predecessor. However, due to the fact that devolution was in its very early stages and therefore systems and relationships were only evolving, Mr Willie had, as a Grade 7 officer, an initial reach and level of direct involvement that would inevitably change as the Assembly bedded down. His role then developed into that of the Head of the EPU which gave him responsibility for a much wider range of issues than race, including gender, sexual orientation and disability.

In my view a change of Minister brought three different factors into play.

- Firstly, the new Minister had a background in and a knowledge of issues within the broader Equality field detailed above which were not necessarily in Mr Willie's special area of expertise; she also had a developed network of contacts across the Equality field.
- Secondly, the Government was developing external sources of advice and expertise; for example in respect of the Equality Agenda through the designation of the Commission for Racial Equality, the Disability Rights Commission and the Equality Commission as "permanent advisers" to the Assembly's Committee on Equality of Opportunity.
- The third factor was a matter of style and approach; Minister Hart clearly did not normally engage in briefing meetings with staff other than the relevant Senior Civil Servant. She received much of her Civil Service advice by email and written submission and having read it, would quickly query any aspect with which she disagreed often using email to respond rather than the more common 'red box' approach.

Therefore within the overall context I have described, and in particular the increasing provision of advice from external bodies, I can appreciate that Mr Willie, having been recruited as a specialist with a particular remit and originally having been extensively engaged in direct briefing of his Minister, may well have felt adversely affected by the changes in his personal role and that of the Unit which he had come to head. However the reality was that it fell to him, as with all his colleagues, to adapt to the circumstances which evolved as the Assembly emerged from the initial post-Devolutionary period.

A point which must be recognised and accepted is that a Minister, as the person having ultimate responsibility and accountability within a Department for the formulation of policy, must be free to seek and receive information and

advice from a range of parties only one, albeit an important one, of which will be the Civil Service. The Minister has in turn the ultimate authority to accept or reject the advice that is offered and decide the direction and content of policy for which he or she is accountable.

**12.3** Part of the background to Mr Willie's complaint is that one of the external parties to whom the Minister looked for advice and comment played a part in the initiation of a complaint against him. The evidence that I have considered demonstrates that Mr Willie was exonerated by the investigation that followed. The Minister has explained why it was appropriate for her to continue to accept advice from that body and I accept the Minister's view on the matter. However it is also understandable why Mr Willie might have had real difficulty with a circumstance where his perception was that a party who had initiated a complaint against him - from which he was exonerated from any blame - could continue to have significant access to the Minister and, he assumed, would influence her attitude towards him. I have not found any evidence that that was in fact the case.

**12.4** An element of the complaint and the related evidence in this case has been about the perceived demeanour of the Minister. Paragraph 2.1 of the Principles Section of the Protocol for Relationships between Assembly Members and Assembly Staff which states "relationships between Assembly Members and Assembly Staff shall be professional and based on mutual respect" is of particular relevance in this context. I am satisfied that the principles are pertinent to the position of Members whether acting as ordinary Members or as Ministers.

It has been indicated by witnesses, and accepted by the Minister herself, that she has a forthright and robust style and she accepts that she adopts a challenging approach in her examination of advice offered to her by civil servants and other advisers.

The Minister contended that her approach is in fact consistent with a commitment to supporting an open and frank approach to politics; however she also acknowledged that not everyone is comfortable with her style. I believe that there is a responsibility on Ministers to be conscious of how their demeanour can have an unsettling effect on staff and thus may actually inhibit them from giving of their best. A Minister should also bear in mind an important point made by Mr Willie in this case ie "that the line between assertiveness and bullying is a very narrow one". Where a Minister succeeds a colleague with a markedly different style it is important, for the purposes of founding the working relationships on mutual respect, that steps are taken to ensure that information about their differing styles of working is shared with staff who will be working to them and who will be providing advice and briefings for their consideration.

Within the context of this particular complaint there is however an unusual additional dimension. Mr Willie told me that in September 2000, after he felt he had unsuccessfully raised his concerns with senior colleagues about what he perceived as the Minister's marginalisation of him, he, on his own initiative, asked for a meeting with the First Minister and having been granted a meeting he raised his concerns about Minister Hart with the First Minister.

Mr Willie's view is that his relationship with Minister Hart deteriorated further following his meeting with the First Minister.

I feel it is important that I indicate my concern that an official should feel it appropriate, without offering any notice to his Line Manager or the Permanent Secretary, to take a complaint about a Minister directly to the First Minister by requesting a personal meeting with him. I have the greatest difficulty in understanding how Mr Willie considered that such an approach to the situation would actually bring about what he would have regarded as an improved working relationship with the Minister. Indeed his action could well have been perceived as a breach of his line management accountability and by seeking a meeting he demonstrated a lack of understanding of the essential separation of Ministers from staffing matters. Ironically it is such a breach of the Protocol for Relationships between Assembly Members and staff which Mr Willie specifically alleges in his complaint against Minister Hart.

In considering this aspect of the case I have nevertheless considered if there is evidence that the Minister allowed the incident to affect her approach to Mr Willie. Mr Willie told me he had been called to a meeting with the Minister as a result of his complaint to the First Minister and been given a commitment that he would have further meetings but these did not materialise.

Taking account of the fact that Mr Willie's concerns about the Minister's approach predated the meeting with the First Minister, it clearly could not be said that the incident initiated an inappropriate attitude by the Minister towards Mr Willie. However the subsequent continuing lack of contact with the Minister Mr Willie believes resulted in his continued marginalisation. This view has to be set against the evidence that regular contact with officers of Mr Willie's grade was not the Minister's preferred method of working. It is unfortunate that this point was not made clear to Mr Willie.

I would also suggest Mr Willie's action could have resulted in a total loss of trust in him on the part of the Minister and a demand to the Permanent Secretary that Mr Willie be immediately removed from her area of responsibility within the Assembly.

- 12.5** The Minister told me that whilst she may well disagree with proposals or advice offered to her, and reflect her disagreement in a robust manner, that response did not constitute an expression of considered dissatisfaction on her part with the person who had prepared the briefing or advice. Similarly, she explained that in meeting with outside parties she may frequently hear criticism of aspects of Government policy or the work of a particular branch but, unless a specific considered complaint is made, she regards such comment as simple expressions of disagreement - the stuff of day to day politics.

Whilst the Minister stated that she regarded the EPU as under significant pressure in meeting its deadlines and its related policy contribution to the work of the Assembly, she did not make nor had she made any specific complaint about the work of EPU or Mr Willie in particular.

A different view was offered by Mr [U], Mr [Y] and Mr [W] who each regarded the Minister as having expressed clear dissatisfaction with the quality and timeliness of work produced by Mr Willie and the Unit for which he was responsible.

**I have had difficulty in seeking to reconcile these conflicting perspectives. I read the evidence as indicating that there were indeed weaknesses in the quality of service being provided by the EPU for which Mr Willie, as head of the Unit, carried responsibility. I have also concluded, on balance, from all the evidence I have considered that the Minister expressed her dissatisfaction with the level of service and had an expectation that management would take action to correct that position. I consider that as the person carrying political accountability for the delivery of Government Policy in the area she had a clear right to do so. I am also satisfied from the evidence presented that the Minister did not exceed her authority in the context of expressing her concerns and seeking an improvement.**

- 12.6 In presenting his evidence to me Mr Willie pointed out that during his some three years employment in the Assembly he had consistently been assessed as a Box B in his Annual Appraisals. This led him to believe that he had been performing significantly above the requirements for his grade. This understanding on his part led him to believe that any dissatisfaction about him expressed by the Minister must have been generated by reasons other than the quality of his work.

It is not part of my remit to review the management decisions affecting Mr Willie's employment however I considered it appropriate to make enquiries about these matters as Mr Willie strongly expressed the view that the formal record in his Appraisal Reports supported his perceptions of Minister Hart's actions.

In their evidence to me Mr Willie's Line Managers explained why they had dealt with the concerns which they had about his performance by informal means rather than placing them on the formal record. The problem for management however remains that while a range of issues and concerns were shared with me in evidence, there is no record of these difficulties – apart from comment about Mr Willie's need to strengthen his written communication skills, in the formal appraisal documentation. It is therefore not unreasonable for Mr Willie, focussing primarily on the written record, to contend that he was performing at least significantly above the requirements for his grade.

**I am satisfied however that Mr Willie's Appraisal Report Box markings must be viewed in the context of the overall pattern of Box markings. For example, in the final year of the scheme some 67% of his colleagues were assessed as Box B or higher. I cannot therefore accept that these markings in fact substantiate a claim that Mr Willie's performance was in reality significantly above the normal requirements for his grade.**

## Other Issues

13. In this section I wish to record a matter which, whilst outwith the precise terms of the investigation, I judge to be of importance and of potential concern particularly in relation to future enquiries in which the Committee may be involved.

I have been surprised at the level at which the issues within the complaint have been the subject of extensive and detailed media coverage and commentary. In a complaint which involves particularly grave allegations against a public representative I believe that it is only consistent with the principles of natural justice for the issues to be submitted to the Standards Committee in confidence for examination. Thus detailed media comment or speculation is inappropriate until the completion of the Committee's consideration and a conclusion reached. Failure to respect confidentiality has the risk of bringing the Assembly into disrepute by undermining the confidence of members and staff that they will be involved in fair process. In turn, the continuing coverage and exchange in the media may also have a detrimental effect on public confidence in the Assembly

**I recommend that the Committee consider whether its current procedures should be expanded to provide an opportunity to allow it to take account of the implications of matters such as breaches of confidentiality leading to extensive media coverage before asking its Independent Adviser to proceed to detailed investigation of a complaint.**

T Frawley

ANNEX B

MEMBERSHIP OF THE COMMITTEE ON STANDARDS OF CONDUCT

Kirsty Williams (Chair) <sup>1</sup>	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	Dianne Bevan (Acting)
Deputy Clerk	Steve George
Independent Adviser on Standards	Tom Frawley (Acting)
Legal Adviser to the Assembly	Peter Jones
Parliamentary Service	

<sup>1</sup> Mr Mick Bates AM Chaired the Committee from 12 May to 5 October 2004.

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.