

NATIONAL ASSEMBLY FOR WALES

PROCEDURE FOR DEALING

WITH COMPLAINTS AGAINST

ASSEMBLY MEMBERS

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

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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;
 - 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).

^{*} *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.*

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**