

NATIONAL ASSEMBLY FOR WALES PROCEDURE FOR DEALING WITH COMPLAINTS AGAINST ASSEMBLY MEMBERS

Approved by the Committee on Standards of Conduct on 9 July 2013

Enquiries: Clerk to the Committee on Standards of Conduct

1. GENERAL PROVISIONS

Administrative Arrangements

- 1.1 Complaints should be made to the Commissioner for Standards (“the Commissioner”), who is an independent statutory officer appointed under the National Assembly for Wales Commissioner for Standards Measure 2009 (“the Measure”). The Commissioner’s 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 complaint can only be considered formally 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 must be conducted by the Commissioner in accordance with the Measure.
- 1.3 When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the Assembly may appoint a person as an Acting Commissioner to discharge the functions of that office. Further provisions on the appointment of an Acting Commissioner are set out in Section 4 of the Measure.

Stages

- 1.4 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 be admissible, **Formal Investigation stage** which consists of further investigation of the complaint, and reporting upon it to the Committee on Standards of Conduct.

Conduct of Investigations

- 1.5 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.
- 1.6 Each stage of an investigation into a complaint must 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 and must do so if the formal investigation has not been completed within six months of the Commissioner finding that the complaint is admissible.
- 1.7 If investigation of a complaint is on-going at the start of an Assembly election period, it will be suspended and will re-commence at the end of that election period. Consideration of a complaint against a Member who is re-elected will be concluded in accordance with this procedure. In the case of a Member who is not re-elected the sanctions which can be applied in the case of a finding of a breach are restricted and the Committee may take that into account when considering what action to take in relation to any report by the Commissioner on the complaint.

2. PRELIMINARY INVESTIGATION STAGE

- 2.1 At this stage, the Commissioner must 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 if the Commissioner believes that it is necessary to do so in order to decide whether the complaint is admissible.
- 2.2 If the Commissioner considers that the complaint is admissible, the Commissioner must proceed to a Formal Investigation into the complaint.

2.3 If the Commissioner considers that the complaint is inadmissible, the Commissioner must dismiss the complaint and must inform the complainant 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 Order 22.2(i).

4. FORMAL INVESTIGATION STAGE

4.1 At this stage, the Commissioner must 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 22.2(i).

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

4.2 When a formal investigation into a complaint has been completed, the Commissioner must make a report to the Committee on Standards of Conduct. The report must 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, and any facts provided by the Police, Crown Prosecution Service or the Courts in the case of evidence having been referred (see section on Criminal Offences);
- 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 22.2(i); but
- v. may not include any comment or recommendation as to what sanction, if any, should be imposed on the Member in question.
- vi. whether, in the Commissioner's view, the complaint raises any issues of general principle.

If, in the course of carrying out an investigation, the Commissioner becomes aware of any circumstances which give rise to issues of general principle or of general practice relevant to the Clerk's functions under Section 138 of the Act as principal accounting officer, or could, upon further consideration by the Clerk give rise to a duty on the Clerk under Section 9, the Commissioner must also separately communicate those circumstances in writing to the Clerk.

4.3 No report, concluding that a Member has breached one of the matters within Standing Order 22.2(i) may 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 there is any comment that is not accepted by the Commissioner the report to the Committee must include details of those disputed facts.

4.4 Copies of the Commissioner's final report to the Committee of a formal investigation must 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 by the Committee that he or she has 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 remains confidential until the Committee has concluded its consideration of the complaint. Those sent copies of the report will be asked to respect this confidentiality.

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 does 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:
- (i) evidence arises of conduct which could involve a breach of section 36(7) of the Government of Wales Act 2006 the Commissioner must inform the Clerk immediately. The Clerk must refer the papers concerned to the Police in accordance with the protocol agreed with the Police and Crown Prosecution Service.

- (ii) evidence arises of conduct which could involve the commission of any other criminal offence, subject only to the expectation that such evidence will usually be referred to the Police, the Commissioner shall use his/her discretion in determining if, when, and by what mechanism the matter may be referred to the Police.

6.2 In such circumstances all consideration of the complaint under this procedure will be suspended until such time as the final outcome of any investigation of the matter by the Police, Crown Prosecution Service or the Courts is known.

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 may not attend this initial private meeting unless invited by the Committee.
- 7.4 In accordance with Standing Order 22.5, where a Committee Member is subject to a complaint he or she may 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 on behalf of the Assembly Clerk, that it should meet in public - to consider:
- i. any oral or written evidence or representations that the Member complained of wishes the Committee to consider; and
 - ii. any oral or written evidence from witnesses.

The Commissioner may be invited to give evidence at the meeting at the discretion of the Chair.

- 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 other matters.
- 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 22.2(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:

- 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 such a minor nature that the complaint should be dismissed;

Or the Committee may decide, pending any appeal by the Member concerned, to recommend to the Assembly either:

- iii. that a breach has been found but that no further action should be taken;
- iv. that a breach has been found and that the Member should be “censured” in accordance with Standing Orders;
- v. that a breach has been found and that the Member should be excluded from Assembly proceedings¹ either generally or specifically, for example, proceedings at particular meetings of the Assembly or its committees, for a time to be specified time in the motion for exclusion, and in accordance with Standing Orders²;
- vi. that a breach has been found and that certain rights and privileges of membership of the Assembly should be withdrawn from the Member concerned; or
- vii. where deemed appropriate, any combination of the above sanctions may be applied.

The rights and privileges of membership of the Assembly that the Committee may recommend should be withdrawn will be as specified in the Committee’s report to the Assembly, and may include:

- withdrawal of a right of access as a member to the Assembly Estate;
- exclusion from other activities which a member might normally have a right to attend; and/or

¹ Assembly proceedings” are defined in section 1(5) of the Government of Wales Act 2006 as “any proceedings of the Assembly, committees of the assembly or sub-committees of such committees”.

² In the case of a recommendation of exclusion, in accordance with Standing Orders this will automatically result in the withdrawal of a member’s salary for the period of exclusion, but not to the withdrawal of any other allowances provided for under the Determination on Assembly Members’ Pay and Allowances. The salary and allowances of staff employed by the Member concerned will not be affected.

- removal of representational, ceremonial and related privileges which a member might normally enjoy as a member.

Considerations

In deciding what sanction(s) to recommend to the Assembly, the Committee will make a judgement based on the specific circumstances of the case in question. It will consider the severity of the breach, the extent to which it may have brought the Assembly into disrepute, and whether the case in question is a repeat offence, or shows persistent conduct which may be considered to show contempt for Assembly colleagues, the rules or the institution. The Committee will also take account of intent, i.e. whether a breach is deemed to have been committed intentionally or not, and whether any dishonesty or deceit is deemed to have been involved.

8. REPORTING AND APPEAL PROCEDURE

- 8.1 As soon as may be following the Committee's decision the Member complained of must be provided with a copy of the Committee's report, which must be treated in confidence by all parties. In those cases where the Committee has considered the complaint in private, and where there is no breach or the case is dismissed, the Committee must arrange for the report to be anonymised.

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 provided with the Committee's report**, appeal to the Presiding Officer.

The Committee must publish the report of its considerations and lay it before the Assembly along with the Commissioner's report to the Committee. Where the Presiding Officer informs the Committee that an appeal has been made, the Committee may not publish its report or lay it before the Assembly until consideration of the appeal has concluded.

If a complaint is referred back to the Committee under paragraph 8.6 i. the Committee must, at the conclusion of its further consideration of the complaint, prepare a revised report. Paragraph 8.1 will then apply to the revised report instead of to the original report.

Appointment of a Person to Consider an Appeal

- 8.2 The Presiding Officer must on each occasion appoint an independent legally qualified person to decide the appeal. The person appointed, who may not be an Assembly Member or a member of the Assembly's staff, must have been nominated, at the request of the Presiding Officer, by the senior Presiding Judge of the Wales circuit.
- 8.3 Following nomination and prior to appointment of the legally qualified independent person, the Presiding Officer shall afford the Member complained of an opportunity to make representations in writing as to any ground for the non appointment of such person, within five working days of being informed of the name of the nominee. In the event that the Presiding Officer accepts any such ground as valid and determines not to appoint the nominated person, he/she shall seek another nomination as in paragraph 8.2.

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 independent legally qualified person appointed to decide the appeal will consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant. That person will not conduct oral hearings or consider representations from any other source.
- 8.6 The person appointed to decide the appeal must prepare, and provide to the Member and to the Committee, a report of his or her consideration of the appeal and must either:
- i. if the grounds of appeal are established, uphold the appeal and refer the complaint back to the Committee for further consideration; or

ii. dismiss the appeal.

8.7 The Committee must lay before the Assembly the report of the person appointed to decide the appeal, together with the report of the Commissioner and the report or (if the matter has been referred back to the Committee under paragraph 8.6 i.) revised report of the Committee itself.

In those cases where the Committee has considered the complaint in private, and where the Committee has, after it has been referred back to the Committee by the person appointed to decide the appeal, dismissed the complaint, the Committee must arrange for its revised report and that of the person appointed to decide the appeal, to be anonymised.

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 decide on dismissal, the Chair of the Standards Committee must 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 must be made available as soon as may be.

10. WHERE BREACH RECTIFIED OR COMPLAINT DISMISSED

10.1 Where, at any stage of an investigation, the facts are not disputed and the Member immediately rectifies or apologises satisfactorily for a failure of a minor nature the Commissioner may recommend to the Chair of the Standards Committee that the 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.