

Committee on Standards of Conduct

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Preliminary Observations on Code of Conduct and Standing Orders and the Procedures for dealing with Complaints against Assembly Members - March 2011

A report by the Commissioner for Standards on his preliminary observations on the Code of Conduct and Standing Orders and the Procedures for dealing with Complaints against Assembly Members is attached as an annex to this paper.

Committee Service



Preliminary Observations on Code of Conduct and Standing Orders and the Procedures for dealing with Complaints against Assembly Members - March 2011

1. I was appointed to the role of Commissioner for Standards on 1 December 2010 and what follows, therefore, reflects early thoughts on a number of matters.
2. Following a conversation with the Chair of the Committee, Jeff Cuthbert, it was agreed that a brief report from me as to areas to which the Committee for Standards of Conduct (the Committee) in the Fourth Assembly might turn its attention could provide a useful pointer for future action.
3. I should preface my comments by indicating that, having regard to the matters brought before me to date, there is nothing to suggest that there are very serious problems in relation to Assembly Members' conduct - indeed the contrary would appear to be the case.
4. However, as my role requires me to take a proactive stance in relation to the maintenance and promotion of Standards, I believe that the combination of a new Assembly, with its enlarged powers of legislation, provides an important opportunity to look at, and where necessary renew, the instruction and guidance given to Assembly Members and the systems in place to deal with complaints, so as best to retain public confidence.

Code of Conduct and Standing Orders

5. The Code of Conduct for Assembly Members, notwithstanding a number of amendments, is now several years old. It is a document which cross references to a number of Standing Orders (or parts of them) and it seeks to provide guidance to Members and openness to the public in determining what standards of conduct are to be expected of an Assembly Member.

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6. It is in the interests of Assembly Members and the public that the Code is clear and comprehensive and that, where it purports to consider specific Standards of Conduct, it should be unambiguous. The same should apply to conduct defined by Standing Order.
7. In the light of experience, there are a number of areas in both the Code and the relevant Standing Orders where it may be seen that difficulties of interpretation and/or ambiguity have arisen or could arise (e.g. what is the meaning and purpose of Section 2 of the Code of Conduct/are the rules distinguishing the roles of regional and constituency Members clear and satisfactory/what is the meaning of Standing Order 31.7 "... greater than that which might accrue to persons affected by the decision generally"?)
8. Certainty in the area of the application of standards is vital and, accordingly, I respectfully recommend that the Committee:
 - review the Instruction and Guidance available to Assembly Members by updating the Code of Conduct;
 - consider the terms and adequacy of the relevant Standing Orders and amend as necessary; and
 - produce a single codified document/booklet dealing with Standards of Conduct to which both Assembly Members and the public may have easy access.

The Procedure for Dealing with Complaints

9. The existing procedure was last approved by the Committee in January 2008. The Procedure seeks to ensure that any complainant has a clear and understandable route to follow to make a complaint against an Assembly Member and that an Assembly Member against whom a complaint is made is kept informed and given the fullest opportunity to answer. Both objectives are plainly right and proper and the least required of any such procedure.

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10. In the light of experience – both during and predating my appointment – I venture to suggest that aspects of the Procedure might be reconsidered in order both to streamline and speed up the process, without compromising the need for openness and natural justice to prevail. Without being exhaustive, the following aspects of the process, amongst others, could profitably be reconsidered:

- whether there should be an Initial stage (before the Preliminary Investigation Stage) which essentially seeks to determine whether the “complaint” could ever be admissible, as there are from time to time complaints made which on any view could rarely satisfy 3.1.vi. of the Procedure (e.g. a complaint concerning the “quality” of representation by an Assembly Member);
- the inter-relationship between 3.1.vi, and 4.1 – it appears unclear how far the Commissioner may proceed down the line of seeking to establish whether 3.1.vi is established without embarking upon the Formal Investigation envisaged under 4.1 of the Procedure;
- similarly, section 10 of the Procedure requires that “facts” shall have been found (and not disputed) during the preliminary investigation and an apology tendered – why should this procedure not be available (in appropriate cases where the Chair agrees) at any stage of the Complaint process?;
- whether under 2.3 of the Procedure, where a complaint is dismissed without prior reference to the Member concerned because it is inadmissible, it is necessary and/or desirable that the Member must be notified that the complaint has been made and rejected;
- the requirements of, and enforceability of, confidentiality during the various processes. Thus, for example, is “will be asked to respect this confidentiality” (section 4.6 of the Procedure) sufficient?; and

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- whether the provisions of Section 6 (parallel criminal investigations) meet the needs of the National Assembly in terms of protecting its reputation in circumstances where an Assembly Member is accused of serious criminal conduct.

11. Accordingly, I respectfully recommend that the Committee:

- review, and where appropriate amend, the Procedures for dealing with Complaints against Assembly Members.

12. In the event that the Committee determines that any or all of these recommendations are acceptable, I stand ready, as Commissioner for Standards, to produce drafts of the various documents for consideration and discussion by the Committee in the Fourth Assembly. I understand that the Assembly's lawyers may also play a part in scrutinising any new proposals.

Gerard Elias QC
Commissioner for Standards
March 2011