

National Assembly for Wales
Standards of Conduct Committee

Report 04 -13 to the Assembly on Sanctions

May 2013



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

An electronic copy of this report can be found on the National Assembly's website:
www.assemblywales.org

Copies of this report can also be obtained in accessible formats including Braille, large print; audio or hard copy from:

Standards of Conduct Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 029 2082 1821
Fax: 029 2089 8021
Email: Standards@wales.gov.uk

© National Assembly for Wales Commission Copyright 2013
The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

National Assembly for Wales
Standards of Conduct Committee

**Report 04 -13 to the Assembly on
Sanctions**

May 2013



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Standards of Conduct Committee

The Standards Committee was established on 22 June 2011. The Committee's role is to carry out the functions set out in Standing Order 22. These include: the investigation of complaints referred to it by the Standards Commissioner; consideration of any matters of principle relating to the conduct of Members; establishing procedures for the investigation of complaints, and arrangements for the Register of Members' interests and other relevant public records determined by Standing Orders.

Current Committee membership



Mick Antoniw (Chair)
Welsh Labour
Pontypridd



Llyr Huws Gruffydd
Plaid Cymru
North Wales



Mark Isherwood
Welsh Conservatives
North Wales



Kirsty Williams
Welsh Liberal Democrats
Brecon and Radnorshire

Contents

The Committee's Recommendation	5
1. Introduction.....	6
2. Background.....	7
3. Legislative Background	9
4. Consultation with Members	11
5. Considerations	12
Practice in other UK Legislatures	12
Range and detail of sanctions available	13
Period of Exclusion	13
Removal of Salary	15
Withdrawal of rights and privileges	16
Expulsion	17
6. Proposed Sanctions Regime	19
Underpinning Principles	19
Discretion	19
Repeat Offences	19
Intent	19
Sanctions available	20
Requirement for an apology	20
Censure	20
Extending the sanction of exclusion.....	20
Withdrawal of rights and privileges	21
Annex A – Commissioner's Consultation Letter	23
Annex B – Commissioner's Report on Sanctions Consultation.....	25
Annex C – Proposed Revisions to the Procedure for Dealing with Complaints Against Assembly Members	28

The Committee's Recommendation

Recommendation: The Standards of Conduct Committee recommends that the Assembly's Standing Orders should:

i) enable the Standards of Conduct Committee to recommend the sanction of exclusion for a breach of the Code of Conduct for Assembly Members that does not relate to Standing Order 2 – Financial and Other Interests of Members;

ii) reflect the provisions of the current Standing Order 2.10 by not stating any minimum or maximum time period for exclusion;

iii) enable the Standards of Conduct Committee to recommend withdrawal of rights and privileges other than the removal of salary that is associated with exclusion. (Page 21)

1. Introduction

1. This report contains the Standards of Conduct Committee's findings and resulting recommendations on the sanctions that should be available to the National Assembly for Wales for breaches of standards of conduct.

2. Background

2. The Standards of Conduct Committee is responsible for establishing and laying before the Assembly “procedures for the investigation of complaints under Standing Order 22.2(i).” That complaints procedure¹ lists the sanctions that the Committee may recommend for endorsement by the Assembly if it finds a breach of the Code of Conduct for Assembly Members.

3. The Committee has considered the range of sanctions available as part of an overarching review of standards procedures in the Fourth Assembly. This review is being led by the Standards Commissioner for Wales. The Commissioner’s statutory functions include advising the Assembly on standards principles and procedures and any other matters relating to promoting, encouraging and safeguarding high standards of conduct in the public office of Assembly Member. Following his appointment in December 2010 the Committee agreed with the Commissioner’s recommendation to streamline and update standards procedures.

4. The Committee also regularly reviews procedures in the light of its investigation of complaints referred by the Standards Commissioner. In May 2012 the Committee recommended a motion of censure of a Member. In making this recommendation the Committee noted that, as the breach was in relation to personal conduct and not to financial or other interests, the sanction of exclusion from Assembly proceedings for a specified time and withdrawal of rights and privileges could not be exercised. Without making any comment on that case, it raised the question of whether the range of sanctions available was appropriately wide.

5. In considering any extension of the possible sanctions available it is important to recognise the provisions relating to their application. Under the complaints procedure, any recommendation by the Standards of Conduct Committee must be made by majority consensus of a 4-member cross-party Committee; the Member concerned has a right of appeal against the finding of a breach, on certain procedural grounds set out in section 8 of the complaints procedure; and the

¹¹ National Assembly for Wales Procedure for Dealing with Complaints Against Assembly Members, approved by the Committee on Standards of Conduct on 24 April 2012.

recommendation of any sanction must be endorsed by the Assembly in plenary.

3. Legislative Background

6. In accordance with the current complaints procedure, the Standards of Conduct Committee is responsible for considering a complaint referred to it by the Standards Commissioner and taking a decision on whether or not a breach has been found. Pending any appeal by the Member, the Committee may make one of the following three recommendations to the Assembly:

- that a breach has been found but that no further action should be taken;
- that a breach has been found and that the Member should be “censured” under Standing Order 22.10; or
- that a breach has been found and that the Member should be excluded from Assembly proceedings² for a specified time in accordance with Standing Orders.

Standing Order 22.10 provides that a report of the Standards of Conduct Committee, made under Standing Order 22.9, may include a recommendation to censure³ a Member for failing to comply with any of the matters encompassed in Standing Order 22.2(i). Those matters are:-

- Standing Order 2 Financial or Other Interests of Members;
- any Assembly resolution relating to the financial or other interests of Members;
- Standing Order 5 (Recording of Membership of societies);
- any Assembly resolution relating to Members’ standards of conduct;
- any Code or protocol made under Standing Order 1.10 and in accordance with section 36(6) of the Government of Wales Act 2006;
- Standing Order 3 (Recording of the Employment of Family Members with the Support of Commission Funds): or

² 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

³ “Censure” is not defined in Standing Orders. Dictionary definitions of the term include “severe disapproval”, to criticise (something or someone) severely”, and “an official rebuke by a legislature of one of its members”.

- Standing Order 4 (Recording Time Spent in Registrable Activities).

7. Where a report of the Committee relates to a Member's compliance with Standing Order 2, the Assembly may, on a motion proposed by the Chair, resolve to exclude the Member from any Assembly proceedings for a period specified in the motion.

8. Standing Orders 3, 4 and 5 (which relate to requirements to record specific interests and activities) do not make provision for exclusion in the event of non-compliance. Consequently the sanction of exclusion is available only when the Committee recommends that a Member be censured in respect of a complaint relating to Standing Order 2.

9. Standing Order 2 derives from section 36 of the Government of Wales Act 2006. Under section 36(7) a Member who takes part in Assembly proceedings without having complied with or in contravention of Standing Order 2 commits an offence and is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale. Any prosecution for an offence under section 36 can only be instituted with the consent of the Director of Public Prosecutions.

4. Consultation with Members

10. The National Assembly for Wales, in common with many other legislatures, has a self-regulatory procedure for sanctioning breaches of conduct, exercised by the cross-party Committee on Standards of Conduct. Any recommendation made by the Committee is then referred for endorsement by the Assembly as a whole. The views of all Assembly Members have therefore been sought by the Standards Commissioner on proposing amendments to the existing regime, which are summarised as follows:

“In relation to any breach of standards or of a specific Standing Order, the Standards Committee should have power to recommend, and the National Assembly the authority to resolve that:

The Member

- A be “censured” by the Assembly;**
- B be suspended from proceedings of the Assembly for a specified period;**
- C have his/her rights and privileges as a Member withdrawn for that period;**
- D be suspended from proceedings of the Assembly without pay for a specified period;**

Or, where deemed appropriate, any combination of the above.”

11. The Commissioner’s consultation letter is at Annex A. The Committee has considered the points raised in the Commissioner’s full report of his consultation, which is at Annex B.

12. The Committee welcomes the Commissioner’s conclusion that there is “widespread, if not unanimous, support for its proposals” and notes the Presiding Officer’s support for “a wider range of sanctions, along the lines proposed for consultation, giving the Committee and the Assembly the flexibility to apply meaningful sanction appropriate to any particular circumstance.”

5. Considerations

Practice in other UK Legislatures

13. The Committee has considered practice in other legislatures in the UK and a summary of the provisions is given in the table that follows.

Sanction	Wales	Scotland	Northern Ireland	House of Commons
Censure	Standards Committee may recommend censure of an AM (SO22)	Not specified	Yes	Speaker can reprimand an MP by calling him to the bar of the House
Apology	Not specified	Not specified	Yes	Yes
Exclusion from proceedings by the PO for the remainder of the day.	Yes (SO13)	Yes	Yes	Yes
Exclusion for a specified period voted on a motion of legislature.	Yes	Yes	Yes	Yes
Loss of pay for period of exclusion.	Yes	Yes	Yes	Yes
Exclusion from the	Not specified	Yes	Yes	Yes

precincts of
the
legislature.

Expulsion
from the
legislature.

No

No

No

Yes

Range and detail of sanctions available

14. When an MP is found to have breached the Code of Conduct, the Standards and Privileges Committee makes a recommendation to the House for a suitable sanction. These are effectively limited to a personal apology or a period of exclusion with loss of pay. The Joint Committee on Parliamentary privilege did recommend in 1999 a power for both Houses to institute fines for Members but this was not implemented.⁴

15. The Scottish Parliament has a broad range of sanctions available including detailed parliamentary sanctions to restrict or prevent a Members' participation in proceedings. Its Code of Conduct also sets out the sanctions in relation to: criminal offences; conduct in meetings; expenses-related breaches; cross-party groups; and treatment of staff.

Period of Exclusion

16. Standing Order 2.10, which provides for exclusion in the case of a breach of the rules on recording and declaring interests, states that exclusion from Assembly proceedings would be for "a period specified in the motion." The Committee therefore has discretion to recommend, in the motion it puts to the Assembly, the period of exclusion it considers appropriate in the specific circumstances of the breach of this part of the Code of Conduct.

17. The other current provisions for a Member to be excluded from Assembly proceedings for behavioural misconduct are under Standing Order 13 (Order in Plenary Meetings) and Standing Order 17.27 (Behaviour in Committees). This sanction is exercised on the authority

⁴ [HC Library, *The Code of Conduct for Members -recent changes*, Standard Note SN/PC 05127, March 2011 \[accessed 7 February 2012\]](#)

of the Presiding Officer. Standing Order 13.13 states that the exclusion of a Member under Standing Order 13.12 has immediate effect and must be:

- (i) on the first occasion during any 12 month period, until the end of the working day immediately following the day of exclusion;
- (ii) on a second occasion during the same 12 month period, for five working days immediately following the day of exclusion; and
- (iii) on a third or any subsequent occasion during the same 12 month period, for 20 working days immediately following the day of exclusion.

18. Applying this same sliding scale of between one and 20 working days to exclusions for standards breaches would be consistent with this Standing Order, but not with Standing Order 2.10. In practice in other UK legislatures the length of suspension for standards breaches may vary significantly. Between 1976 and 2011, Members of Parliament have been suspended for periods of between five days and one month. In 2010, three Members of the House of Lords were suspended for wrongly claiming expenses, with one suspension lasting until the end of that parliamentary session, a period of 19 months.

19. The Committee notes that the Assembly's Labour Group has suggested that a maximum period of suspension – "perhaps 6 months" – should be explicitly set out in any new Standing Order. The Committee has also noted that under section 16(2) of the Government of Wales Act 2006, any Assembly Member who commits an offence leading to a custodial sentence of more than a year is disqualified from being a Member, although a non-custodial sentence, such as a Community Service Order, being bound over or being placed on any register, would not lead to disqualification.

20. The Committee has considered this matter carefully. It is mindful of the importance of not disenfranchising a Members' elected representatives unnecessarily, and of the role that political parties take in dealing with the actions of their own Members. The Committee is also mindful of its own important quasi-judicial role in regulating the conduct of Members of the National Assembly – it must maintain the trust of all parties and its decisions must be endorsed by the Assembly as a whole.

21. Sanctions act as both deterrent, and punishment in case of wrongdoing. The Committee is proposing extending the sanctions available in the hope and expectation that they will rarely, if ever, need to be exercised. However it does share the Commissioner's view that the institution should not find itself limited in the future from being able to take any steps that might be necessary to protect its own reputation. The Committee is therefore inclined towards taking a flexible approach to extending the provisions of Standing Order 2.10 to breaches of other aspects of the Code of Conduct, without specifying any minimum or maximum period of exclusion in the Standing Orders. The Committee exercises its functions as an independent quasi-judicial cross-party Group to which the National Assembly for Wales delegates these important matters of trust, subject always to the final approval of the Assembly itself.

Removal of Salary

22. Standing Orders 13.14 and 2.11 both state that for the period of exclusion the Member is not entitled to receive any salary from the Assembly. This means that exclusion removes a Member's voting rights and also automatically carries a financial penalty of loss of pay. This same sanction applies in the House of Commons. In Scotland and Northern Ireland there are also provisions for loss of pay, but these are separate sanctions to be applied at the discretion of the legislature. The Standards of Conduct Committee is not proposing any change to the current provision, as set out in Standing Orders 2 and 13, that exclusion from Assembly proceedings will automatically also lead to loss of salary.

23. It is important to note that Assembly Standing Orders refer to salary only, and not to removal of any other allowances provided for under the Determination, such as for office costs or travel. This means that removal of salary would not affect a Members' support staff, or prevent the Member from continuing with constituency casework during a period of exclusion from Assembly proceedings and/or removal of any other rights and privileges, such as access to the Assembly Estate. Provided that the Member remains a Member (i.e. is not disqualified by reason of the action concerned) then during the period of suspension there should be no impact on the essentially personal relationship as employer/employee which exists between the Member and their support staff.

24. The Committee recognises that maintaining a Members' right to draw on other allowances during a period of suspension might be open to abuse, but also notes concerns raised about support staff not being penalised, either directly or indirectly, by a sanction that might be imposed on a Member. The Committee is also mindful of the importance of not taking any action that might serve to unnecessarily disenfranchise a Members' constituents during a period of suspension from the Assembly or its proceedings. It will be a matter for the Member concerned, and/or their political party, to determine how the interests of their elected representatives are represented during a period of exclusion, or withdrawal of rights and privileges of Membership of the Assembly.

25. To address these concerns about the rights of a Member's employees and constituents, the Committee recommends that Standing Orders should continue to only refer to removal of the Members' salary, and not to any other allowances, and that the complaints procedure should also explicitly state that a Member's support staff will not be penalised by any sanction imposed upon a Member.

Withdrawal of rights and privileges

26. The Standards Committees of the Scottish Parliament and Northern Ireland Assembly have powers to recommend withdrawal of specific rights and privileges.

27. Section 31(4) of the Government of Wales Act 2006 states that the Assembly's Standing Orders may include provision for "withdrawing from an Assembly member any or all of the rights and privileges of membership of the Assembly." However, with the exception of the provisions in Standing Orders 2.11, 13.14 and 17.27 relating to exclusion and loss of salary, the Assembly's Standing Orders do not make reference to withdrawal of any other rights and privileges.

28. The Northern Ireland Assembly's Code of Conduct does not specify the rights and privileges that may be withdrawn from its Members, but in the Scottish Parliament these are detailed as including:

- exclusion of a member from proceedings of the Parliament generally or specifically, for example, proceedings at particular meetings of the Parliament or its committees;

- exclusion from other activities which a member might normally have a right to attend, such as Cross-Party Groups;
- withdrawal of a right of access as a member to the Parliamentary complex;
- withdrawal of a right of access as a member to Parliamentary facilities and services;
- removal of representational, ceremonial and related privileges which a member might normally enjoy as a member;
- withdrawal of a member's allowance or salary or any part of an allowance or salary.

29. The Scottish Parliament will decide on a case by case basis what rights and privileges will be withdrawn from a member and the duration of withdrawal. This sanction was used in 2005 against Members of the Scottish Socialist Party who had disrupted a meeting in the Chamber, during First Minister's Questions, and had been removed after the meeting on 30 June was suspended. The Parliament agreed to the exclusion of the MSPs for the month of September.⁵

30. The Standards of Conduct Committee recommends that Standing Orders specify that it has discretion to recommend withdrawal of other rights and privileges and that a list of those rights and privileges that may be withdrawn is specified in Section 7.11 of the Complaints Procedure.

Expulsion

31. The ultimate sanction in the House of Commons is expulsion:

“It is an outstanding demonstration of House's power to regulate its own proceedings, even its composition. The expulsion of a member cannot be challenged. It may best be understood as a means available to the House to rid itself of those it finds unfit for membership, rather than as a punishment. Members have been expelled for perjury, fraud, corruption or “conduct unbecoming the character of an officer and a gentleman”; only a few had offended against the House itself or committed a breach of privilege or contempt.”⁶

⁵ Scottish Parliament, Record, 30 June 2005, col 18669

⁶ R Blackburn et al, *Griffith and Ryles on Parliament: Functions, Practice and Procedure*, second edition, Sweet and Maxwell, 2002

32. Like the other devolved legislatures, the National Assembly for Wales can only act within the confines of its respective acts of constitution, i.e. the Government of Wales Act 2006, and therefore does not have the same parliamentary privilege from which the power for this ultimate sanction of expulsion derives. However, the power to expel has in any case not been used in Parliament since the case of Gary Allighan in 1947, where the House voted 187-75 to expel him for a breach of privilege after he leaked confidential information. Beyond the UK, in jurisdictions with a link to the House of Commons privileges, such as Canada, it seems to be accepted that the power to expel a member still obtains by virtue of that link, although in the Australian House of Representatives and New Zealand there have been moves to abolish that power.

6. Proposed Sanctions Regime

Underpinning Principles

Discretion

33. The Committee should remain free to take a discretionary approach to interpreting the sanctions available and applying them on a case by case basis. Equally, in considering any changes to the sanctions regime it does not want to recommend anything that would lead to the decision process on sanctions becoming overly onerous for the Committee.

34. Some guidance for Members on the use of sanctions is important, but the Complaints Procedure should refer to sanctions that the Committee “may” not “must” apply, and make it clear that the Committee would take account of all the circumstances in each case. If sanctions are too prescriptive this could limit how things are looked at - the Committee needs to be able to respond flexibly to different situations.

Repeat Offences

35. Repeat offending should have more serious consequences and the sanctions regime should allow for this. The Committee must be in a position to deal appropriately with both a serious one-off offence, and any instance of persistent “low level” offences which may be considered to show contempt for Assembly colleagues and the rules. Guidance in the Complaints Procedure to accompany the sanctions regime should take account of the handling of repeat offences.

Intent

36. The sanctions regime should also allow the Committee the discretion to recommend a sanction that takes account of intent – i.e. whether a breach is deemed to have been committed intentionally or not, and whether any dishonesty or deceit is involved. There is also provision in Section 10 of the Complaints Procedure for one-off small, technical or inadvertent breaches to be dealt with by the Commissioner and not to be referred to the Committee. Similar provisions for a “rectification procedure” exist in other UK legislatures.

Sanctions available

Requirement for an apology

37. Section 10 of the Complaints Procedure makes reference to a Member either “rectifying” or “apologising satisfactorily” for a failure of a minor nature, but the use of apology as a “sanction” is not otherwise specified in Wales or Scotland. A Member would be expected to apologise to the complainant and/or the Assembly for a breach of the Code of Conduct, either orally or in writing. However this is a matter for the Member concerned and there may be cases in which a Member, although acknowledging a breach, chooses for reasons of political or personal conviction not to issue a full apology for their actions, or one that the Committee considers is “satisfactory”. The Committee’s view is that its report to the Assembly provides an opportunity to express its view of the seriousness of any breach it finds, including expressing disapproval, regardless of whether or not the Member subsequently chooses to issue a personal apology.

Censure

38. The Committee does not recommend any change to the existing provisions to “censure” a Member.

Extending the sanction of exclusion

39. The Committee considers that the sanction of exclusion should be available in circumstances other than those to which it currently applies. Whilst it cannot foresee a future occasion on which it might choose to recommend this sanction other than in relation to a breach of the rules on financial and other interests, the Committee thinks it appropriate for this sanction to be available for consideration.

40. An amendment or amendments to Standing Orders would be required to achieve this change, in accordance with the procedure laid down in Standing Order 33 (Re-making, Revision and Suspension of Standing Orders). No major amendment is required to the Complaints Procedure in this respect, as it already includes the following sanction:

“v. that a breach has been found and that a Member should be excluded from Assembly proceedings for a specified time in accordance with Standing Orders.”

Withdrawal of rights and privileges

41. The Standards of Conduct Committee considers that, in common with sanctions provisions in the Scottish Parliament and Northern Ireland Assembly, it should also have discretion to be able to recommend withdrawal of rights and privileges other than the removal of salary associated with exclusion. This might, for example, include preventing a Member from having access to the Assembly Estate, or to representing the Assembly in any other capacity during a period of exclusion. The Standards of Conduct Committee may introduce this through an amendment to the Complaints Procedure but the Committee's ability to recommend this sanction would also need to be included in Standing Orders, as Standing Order 22 currently only refers to the ability to censure.

Recommendation – The Standards of Conduct Committee recommends that the Assembly's Standing Orders should:

- i) enable the Standards of Conduct Committee to recommend the sanction of exclusion for a breach of the Code of Conduct for Assembly Members that does not relate to Standing Order 2 – Financial and Other Interests of Members;**
- ii) reflect the provisions of the current Standing Order 2.10 by not stating any minimum or maximum time period for exclusion;**
- iii) enable the Standards of Conduct Committee to recommend withdrawal of rights and privileges other than the removal of salary that is associated with exclusion.**

42. Subject to these recommendations being implemented by the Assembly, the Standards of Conduct Committee will lay an amended 'Procedure for Dealing with Complaints Against Assembly Members' before the Assembly. As set out in Annex C below, the amended procedure will include:

- sanction of withdrawal of Members' rights and privileges (other than loss of pay), specifying those rights and privileges that could be recommended be withdrawn.
- some further guidance on the Committee having discretion to make its recommendation(s) to the Assembly based on the circumstances in each case, and that it will take account of

factors such as intent or repeat offending when recommending any sanction.

43. The Standards of Conduct Committee commends this report to the Business Committee.

Annex A – Commissioner’s Consultation Letter

18 March 2013

Strictly Confidential

Dear

The Standards of Conduct Committee has this week, in private session, considered the question of the sanctions available to it for recommendation to the National Assembly, in the event that it finds an Assembly Member to be in breach of the appropriate standards or Standing Order.

As you will know, currently, except in the case of one specific “financial” infringement, the powers of the Committee –and the Assembly – are limited to either proposing that no further action be taken or to table/approve a motion of censure.

The preliminary view of all members of the Committee is that these currently available sanctions may not be satisfactory in all future circumstances and that a regime which gives the power to make further recommendations – and for the Assembly to approve - is required. The Committee noted that the proposed regime would largely mirror those of other United Kingdom & Irish Assemblies & Parliaments.

The Committee has therefore put forward the following proposals for consultation:

In relation to any breach of standards or of a specific Standing Order, the Standards Committee should have power to recommend, and the National Assembly the authority to resolve that:

The Member

- A be “censured” by the Assembly***
- B be suspended from proceedings of the Assembly for a specified period***
- C have his/her rights and privileges as a Member withdrawn for that period***

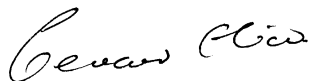
D be suspended from proceedings of the Assembly without pay for a specified period

Or, where deemed appropriate, any combination of the above.

The Committee has requested me to carry out the consultation process and report back by 23rd April. Thus it is that I propose to seek the views of all Members on this proposed regime. I am writing individually to all Assembly Members to seek their views but send this to you (copied to your Party Chair), to underline the fact that I am happy to meet with you and/or any representative of your party to discuss this matter. I would also welcome any observations on the subject in writing.

I would appreciate your assistance in encouraging Members to contact me during this informal consultation period. I shall be pleased to receive all representations by no later than close of play on 12 April. Jonathan Thomas is away for the next couple of weeks so, for now, I may be contacted via John Grimes on xt 8225 or by email at Standards.Commissioner@Wales.gov.uk

With best wishes



**Gerard Elias QC
Y Comisiynydd Safonau
Commissioner for Standards**

Annex B – Commissioner’s Report on Sanctions Consultation

Background

1. In mid March 2013, the Committee requested that I carry out a consultation to ascertain the likely acceptability of its preliminary views in relation to the sanctions which should be made available to it to recommend to the National Assembly in the event that a breach of standards or of Standing Orders had been proved against a member.

2. The preliminary view of the Committee was incorporated by me in a letter sent on 14 March to all Assembly Members, the Presiding Officer and Party Leaders. The terms of the letter were as follows:

“The Committee has therefore put forward the following proposals for consultation:

In relation to any breach of standards or of a specific Standing Order, the Standards Committee should have power to recommend, and the National Assembly the authority to resolve that:

The Member

- A be “censured” by the Assembly*
- B be suspended from proceedings of the Assembly for a specified period*
- C have his/her rights and privileges as a Member withdrawn for that period*
- D be suspended from proceedings of the Assembly without pay for a specified period*

Or, where deemed appropriate, any combination of the above.”

Consultation

3. Consultees were given the option to meet with me, discuss the issues by telephone or respond in writing or by email and, in any event, asked to respond on or before 12th April.

4. In the result I have received 4 individual substantive responses including a response from the Presiding Officer, together with a response on behalf of the Labour Group in the Assembly, pursuant, I understand, to a meeting of that Group.

Conclusions

5. All responses have positively endorsed the proposals with no voice of dissent whatsoever. Individual responses variously described the proposals as “*notably sensible*” and “*perfectly appropriate*”.
6. The Labour Group response indicated that the Group “*broadly accepts the proposals set out.....and feels that the Assembly should be provided with a more effective range of sanctions.*”
7. The Presiding Officer’s response contained the following comment which, I believe, pithily conveys the essential message of all responders:

“I would support a wider range of sanctions, along the lines proposed for consultation, giving the Committee and the Assembly the flexibility to apply meaningful sanction appropriate to any particular circumstance.”

Accordingly, I am confident that there is widespread, if not unanimous, support for the proposals under consideration.

Important Further Considerations

8. As the Presiding Officer reminds us in her representations, any change in the sanctions regime will doubtless require changes to Standing Orders, with the procedural rigours which that will properly involve, including the need, as I understand it, for a majority of at least two thirds of the Members voting to approve.
9. Accordingly, I respectfully suggest that it is important to note and take account of the following points, summarised by me, but made by the various responses:
 - what “*rights and privileges*” are, or should be, encompassed by C above? In any new Standing Order dealing with sanctions this will need to be explicitly set out;
 - any amended structure of sanctions should explicitly state that a **Member’s support staff will not be penalised** by any sanction imposed upon a Member;
 - the Labour Group suggests that a **maximum period of suspension – “perhaps 6 months”** – should be explicitly set out in any new Standing Order. Without commenting on the merits, I remind the Committee that the only existing Standing Order which provides for suspension of a member, namely 31.10, refers only to “a period specified”.

10. The Labour Group make two further representations which I summarise:

- any new arrangements must be flexible enough to distinguish between “vexatious complaints” and those with a “proper basis”, and
- it is important to provide clear guidance to Assembly Members of any new arrangements and to assist them in avoiding “inadvertent breaches of standards or Standing Orders.”

11. Whilst acknowledging the importance of clarity and communication of any new regime, these understandable concerns may have more relevance in relation to our on-going reconsideration of the Code of Conduct and relevant “penal” Standing Orders rather than with sanctions themselves – and I shall certainly bear them well in mind in the next part of our review. However, I would venture to suggest that “vexatious complaints” will not get to the sanctions stage and that genuinely “inadvertent breaches” of standards are unlikely to attract the more serious penalties envisaged.

The Process

12. I have touched upon the procedural stages which must follow before any new regime can operate. I would simply respectfully remind the Committee that the need for a carefully crafted and drafted Standing Order seems essential so that the Business Committee and the Assembly can move a new sanctions regime forward with confidence.

Gerard Elias QC
Commissioner for Standards
16 April 2013

Representations, for which I am very grateful, were received from the following:

Ieuan WynJones AM
Jocelyn Davies AM
Peter Black AM
Rosemary Butler AM, Presiding Officer
Ann Jones AM representing the Labour Group

Annex C – Proposed Revisions to the Procedure for Dealing with Complaints Against Assembly Members

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 proceedings⁷ either generally or specifically, for example, proceedings at particular meetings of the Assembly or its committees, for a time to be specified in the motion for exclusion, and in accordance with Standing Orders⁸;

⁷ 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

⁸ 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.

- 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
- 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 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.