

SENEDD STANDARDS COMMISSIONER: Annual Report 2020 - 2021



UPHOLDING
REPUTATIONS

SAFEGUARDING
STANDARDS

ADDRESSING
CONCERNS

The main responsibilities of the Standards Commissioner are to receive and investigate complaints about the conduct of Members of the Senedd, report to the Senedd about his investigations and advise Members of the Senedd and the public about the complaints procedures.



Douglas Bain CBE TD
Senedd Commissioner for Standards

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COMMISSIONER:**
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1. Introduction

- 1.** Having assumed office as the Senedd Commissioner for Standards on 1 April 2021 it falls to me to submit the report on how the functions of the Commissioner were performed during the year to 31 March 2021. I was the Acting Senedd Commissioner for Standards throughout that year.
- 2.** Everything done during the reporting year was against the background of the Covid 19 pandemic. Whilst that curtailed some planned activities it is testament to the resilience and ingenuity of the Standards of Conduct Committee Members, Senedd Commission staff and my own staff that the complaints process was largely unaffected by the various restrictions that were put in place.
- 3.** Overall the conduct of Members continues to be of a high standard. Admissible complaints were received against only eight of the 60 Members. Although the year saw an increase of 104% in the number of complaints received that was very largely due to the conduct of Neil McEvoy, a now former Member. He made six complaints, none of them admissible, against other Members and was the subject of 97 complaints about his conduct.
- 4.** This report, after summarising the statutory duties of the Commissioner, gives information on the complaints dealt with, other work undertaken during the year and the expenditure incurred. It concludes with a brief look at possible work areas for the year to 31 March 2022.

2. Functions and duties of the Commissioner

5. The office of Senedd Commissioner for Standards was created by section 1(1) of the National Assembly for Wales Commissioner for Standards Measure 2009 ('the Measure').¹ Section 5 of the Measure provides for the independence of the Commissioner from the direction or control of the Senedd.

6. Section 4 of the Measure provides for the appointment of an Acting Commissioner to carry out the functions of the Commissioner if that office is vacant or if the Commissioner is, for any reason, unable to act. An Acting Commissioner has all the powers and duties of the Commissioner.

7. The functions of the Commissioner are set out in sections 6 and 7 of the Measure and may be summarised as being –

- To receive, investigate and report of any complaint that a Member has failed to comply with a requirement of the Code of Conduct² or other relevant provision;³
- To advise Members and members of the public on the process for making and investigating complaints;
- To give advice to the Senedd on any matter of general principle relating to the standards of conduct of Members, the procedure for investigating complaints or any other matter relating to promoting, encouraging and safeguarding high standards of conduct in the public office of Member of the Senedd.

8. Section 19 of the Measure requires the Commissioner, as soon as possible after the end of each financial year, to submit a report to the Senedd on how the functions of the Commissioner have been exercised during that year.

¹ <http://www.legislation.gov.uk/mwa/2009/4/contents>; <http://www.legislation.gov.uk/mwa/2009/4/contents/enacted/welsh>.

The title of the post was changed from National Assembly for Wales Commissioner for Standards by the coming into effect of section 7 of the Senedd and Elections (Wales) Act on 6 May 2020.

² <https://www.assembly.wales/en/memhome/code-conduct-mem/Pages/default.aspx>

³ As defined in section 6(3) of the Measure

3. Complaints

Introduction

9. Section 10 of the Measure makes provisions for the investigation of complaints⁴ by the Commissioner. Section 10(1) requires the Commissioner to investigate and report on complaints in accordance with Standing Orders and any rules relating to the consideration of complaints adopted by the Assembly. The current rules are the Procedure for dealing with complaints against Assembly Members ('the Procedure').⁵ Section 10(2) of the Measure provides that "Subject to subsection (1), it is for the Commissioner to decide when and how to carry out an investigation and to report on its outcome."

Complaints carried forward from 2019 - 20

10. At the start of the reporting year eight complaints were carried forward from 2019-20. Two of these complaints had already been held to be admissible. One of them, made in October 2017, had been partially investigated by my predecessor prior to his resignation. My investigation of the other complaint made in September 2019, had been suspended to avoid the risk of prejudice to a police investigation and then criminal proceedings against one of the staff of the Member concerned. That investigation remained suspended until March 2021 and was again suspended the following month due to the prohibition on investigation during a Senedd election period. I anticipate that I will be able to submit my report to the Committee within a few months. In June 2020 I submitted the report of my investigation of the 2017 complaint to the Committee but by the year-end it had not been able to complete its consideration of it.

11. No decision had been taken on the admissibility of the other six complaints. By the end of the reporting year four of these six complaints had been held to be inadmissible. The other two of these six complaints had been held admissible and the reports of my investigation of them had been submitted to the Committee in November and December 2020. The Committee

⁴For the purposes of this report 'Complaint' means a communication to the Commissioner alleging that a Member of the Senedd, a political party, other organisation or person has contravened one or more of the provisions of the Code of Conduct for Assembly Members ('the Code') or other provision specified in Standing Order 22.2. For further information please see Standards Commissioner Annual Report 2019-20 paragraphs 03.02 to 03.04 <https://senedd.wales/laid%20documents/gen-ld13251/gen-ld13251-e.pdf>

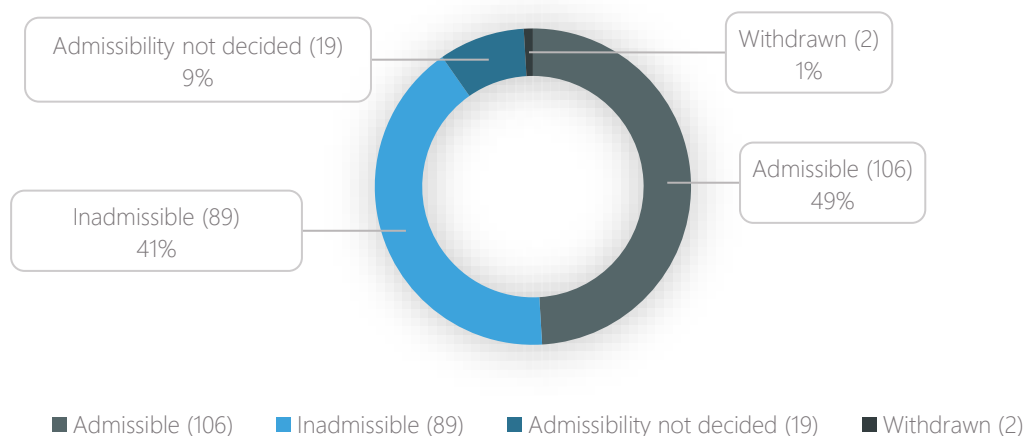
⁵ <https://senedd.wales/en/memhome/code-conduct-mem/Pages/procedure-complaints.aspx>

published its report on one of these complaints in November 2020⁶ but had not been able to complete its consideration of the other by the year-end.

New Complaints

12. During the year 216 new complaints were received. This is by far the highest number since the office of Commissioner was established in 2009 and an increase of 104% on 2019-20.

Figure 1: Summary of complaints received in 2020-21



13. Of these 216 complaints 106 were found to be admissible and 89 to be inadmissible. Two complaints were withdrawn before I had decided their admissibility. No decision had been taken by the year-end on the admissibility of the remaining 19 complaints. No consideration of 4 of these 19 was possible due to the risk of prejudice to police investigations. The remaining 15 were received only shortly before the year-end.

14. My investigation of eight of the admissible complaints had to be suspended to avoid the risk of prejudice to criminal investigations into the conduct of third parties. They remained suspended at the year-end. Two admissible complaints were dealt with under the rectification procedure provided by paragraph 10.1 of the Procedure. Reports were submitted to the Committee in respect of the other 96 admissible complaints. Three of these reports dealt with 87 complaints against Neil McEvoy who was not re-elected at the 2021 elections. By the year-end the Committee had been unable to complete its consideration of these reports. Reports

⁶ Report 02-20 to the Senedd under Standing Order 22.9

dealing with complaints against two other Members were submitted and considered by the Committee.⁷

Table 1: Complaints received, source and admissibility

	2016-17	2017-18	2018-19	2019 -20	2020-21
Received	29	26	43	106	216
% by Public	83.3	73.1	86	76.4	94
% by Member	3.3	11.5	7	13.2	5
% by Clerk of the Senedd	13.3	15.4	7	10.4	1
% not admissible	89.7	80.8	76.7	85.9	41
% admissibility not decided by year end	10.3	11.5	16.3	6.6	9

15. The increase proportion of complaints made by members of the public and the reduction in the proportion of inadmissible complaints is largely a result of 97 complaints, about the conduct of Neil McEvoy.

16. Other than four complaints made by the Llywydd in her official capacity and one self-referral all the complaints made Members were made by Neil McEvoy. All of them were inadmissible, lacking any merit and doubtless made in an attempt to score political points.

17. Where the Clerk of the Senedd has reasonable grounds for suspecting that a Member has failed to comply with any of the relevant provisions and that the conduct is relevant to her role as the Principal Accounting Officer she must report the matter to the Commissioner who must, except in the case of alleged failure to register or declare an interest, treat it in the same way as any other complaint.⁸ During the year the Clerk referred 3 matters to me.

⁷ Reports 05.21 and 06.21 to the Senedd under Standing Order 22.9;

⁸ Section 9 of the Measure

Table 2: Reasons for inadmissibility⁹

	2016-17	2017-18	2018-19	2019-20	2020-21
Not in writing¹⁰ (Criterion i)	-	-	-	-	0
Not about conduct of identified Member (Criteria ii & iv)	2	1	1	5	2
Anonymous complaint or complainant not sufficiently identified (Criterion iii)	0	0	1	3	0
Not within time allowed (Criterion v)	0	0	0	2	1
Insufficient substance to justify further investigation (Criterion vi)	26	21	40	82	86

Table 3: Further explanation of complaints found inadmissible due to insufficient substance to justify further investigation (Criterion vi)

	2016-17	2017-18	2018-19	2019-20	2021-22
Expression of opinion	3	0	8	53	39
Insufficient evidence	4	6	8	10	27
Standard of service	3	5	9	8	3
Below registration threshold	3	0	0	3	1
About Ministerial conduct	3	2	2	3	10
About conduct in Siambr	1	3	1	0	0
Other	9	5	12	5	6

18. The most common reason why complaints were held to be inadmissible was again that they were about how a Member expressed an opinion. Members, like everyone else, enjoy a right to freedom of expression and it is recognised that whilst that right is not absolute in the political sphere things can be said that would not be acceptable elsewhere. Many of the

⁹ The admissibility criteria are at paragraph 3.1 of the Procedure

¹⁰ This information was not recorded prior to 2020-21

expressions of opinion complained about were made on social media and I would again remind Members of the need to take care before 'liking' or 're-tweeting' posts made by another person.

19. Lack of sufficient evidence to satisfy me that the conduct complained of may have taken place, and if proved might amount to a breach of the Code or another relevant provision continued to be the second most common reason for finding a complaint inadmissible. Before holding a complaint to be inadmissible on that basis it is my practice to afford the complainant an opportunity to provide further information. Few avail of that opportunity.

20. The remit of the Commissioner is limited to investigation of alleged contraventions of the Code of Conduct or of other matters governed by Standing Order 22. Poor service by a Member would not be a contravention of any of those matters and accordingly complaints about alleged poor service by a Member are always inadmissible. The remedy for such poor service is through the ballot box not by way of complaint to the Commissioner.

21. Under Standing Orders 2.6, 13.8A and 17.24A Members have a duty to declare specified financial and other relevant interests before taking part in plenary or committee proceedings. Under Standing Order 2.2 Members are required to register specified financial and other interest in a register maintained by the Table office on behalf of the Llywydd. Members are required to register any gifts, hospitality, other material benefit or advantage with a value in excess of £320. In previous years complaints had almost always related to failure to register offers of hospitality at rugby and football internationals. The absence of such events and offers of hospitality at them due to the Covid pandemic may explain why only one such complaint was made during the reporting year. The complaints of failure to declare an interest were all about the conduct of Neil McEvoy, whom it was alleged had on two occasions failed to declare a relevant interest before taking part in the proceedings of the Petitions Committee. My reports in relations to these complaints were submitted to the Committee in November 2020 and March 2021 but by the year-end the Committee had been unable to complete its consideration of either of them.

22. Section 8 of the Measure makes clear that the Commissioner has no role in relation to complaints of alleged misconduct by a Minister. The ten complainants who alleged ministerial misconduct were directed to the office of the First Minister.

23. No complaints were received about the conduct of Members in the Siambr. Under the protocol between the Llywydd and the Commissioner I would have treated any such complaints as inadmissible and referred them to her for consideration. I am pleased to note that in the

Code of Conduct that came into effect at the commencement of the Sixth Senedd this referral procedure has been formalised.

24. As in previous years a number of complaints were received that Members had failed to deal with other matters, such as the actions of an educational institution and the actions of the Welsh Government. Consideration of such complaints is not within the remit of the Commissioner. In all such cases the complainant is contacted and signposted to the appropriate complaint handling organisation.

Table 4: Complaints by subject matter

	2016-17	2017-18	2018-19	2019-20	2020-21
Conduct on social media	5	0	7	58	60
Misuse of resources	3	4	8	15	25
Standard of service	6	5	9	13	7
Failure to register/declare an interest	4	3	4	9	95
Outside remit	7	7	6	7	12
Other conduct	5	7	9	4	17
TOTAL	30	26	43	106	216

25. Conduct on social media remained the most common ground for complaints received. The increase number of complaints about use of Senedd resources was due to a number of complaints I received in the run up to the Senedd elections. These complaints alleged contraventions of the Rules on the use of Senedd Commission resources in relation to the use of party logos and branding on Senedd funded material. Many of these were made by other candidates. I was concerned that the Rules in relation to these matters were imprecise leading to different interpretations. I welcome the attempts being made to clarify these matters which should assist in reducing the number of such complaints received. Please refer to paragraph 21 for an explanation of the huge increase in the number of complaints about failure to declare or register an interest

Complaints carried forward to 2021-22

26. On 31 March 2021 I had still to determine the admissibility of 19 complaints received shortly before that date. Nine admissible complaints remained under investigation. At the year end the Committee had been unable to complete its consideration of three reports submitted in 2020-21 and one from each of 2017-18 and 2019-20. All five reports were about the conduct of Neil McEvoy.

27. By the date of this report I had held 14 of the 19 complaints to be inadmissible and one other had been withdrawn. No action had been possible on the other 4 to avoid the risk of prejudice to police investigations.

Trends

28. All the figures for 2020-21 are skewed by the conduct of a single former Member, Neil McEvoy. He made 6 complaints and was the subject of 91 admissible complaints and five reports to the Committee. When his conduct is discounted there has been no significant change in the level of complaints activity during the year.

29. Apart from the complaints against Mr McEvoy of failure to declare a relevant interest by far the largest number of complaints were again about comments made by Members on social media. I understand that the Northern Ireland Assembly is to provide a focussed training programme to Assembly Members in an attempt to reduce the number of complaints about such conduct. The Committee and the Commission may wish to monitor the progress of the Northern Ireland initiative, evaluate its effectiveness and, if appropriate, provide a similar programme to Members of the Senedd.

30. Whilst the level of inadmissible complaints continued at a high level the Code of Conduct that came into effect at the commencement of the Sixth Senedd and the proposed new procedural rules and guidance will provide an opportunity to reduce this wasteful activity.

4. Other work

31. During the year I took steps to further increase openness and transparency. Since April 2020 I have, on a voluntary basis, published on my website information about my financial and other interests under broadly the categories required of Members. Quarterly statistics on complaints received have been published on that website since June 2020. Following discussion with the Chief Executive it has been possible to include in the expenditure information in Section 5 of this report the cost of the legal and media support made available to me.

32. I have given evidence to a number of standards related inquiries. In November 2020 I submitted written evidence to the House of Commons Standards on Conduct Committee inquiry into the Code of Conduct for Members of Parliament. In January 2021 I gave oral evidence to the Senedd Standards of Conduct Committee in connection with its Review of the Code of Conduct for Members of the Senedd. In March 2021 I gave oral evidence the Committee on Standards in Public Life as part of its Standards Matter 2 review.

33. On several occasions during the year I met remotely with the Chief Executive to discuss matters including the use of Senedd Commission resources, the staff complement of my office and the way in which legal advice should be made available to me. I also met remotely with the Chief Executive and the Chair of the Independent Remuneration Board of the Senedd to discuss matters of mutual interest. I welcome the agreement to hold tripartite meetings on a number of occasions each year. I also had numerous remote meetings with Commission staff in connection with the Code of Conduct review, the proposed revision of the complaints procedure and matters relating to particular complaints.

34. Unfortunately, the Covid pandemic did curtail some work planned for the reporting year. The Standards Conference, which was due to take place in Cardiff in autumn 2020, had to be postponed. It is hoped to hold it in Cardiff when it is considered safe. Due to the huge additional pressure on South Wales Police it was not possible to complete work on the proposed Memorandum of Understanding although I am hopeful that it will be concluded within the next few months. In view of the significant changes being made to the Code of Conduct and being considered for the complaints process I decided to postpone the issuing improved user guidance until all the changes had been made.

5. Expenditure

35. Under section 3 and paragraph 5 of the Schedule to the Measure, the Senedd Commission must pay to the Commissioner the salary and allowances agreed in the terms and conditions of appointment. The Commission must also pay all reasonable expenses lawfully incurred by the Commissioner in employing staff, securing the provision of goods or services, and paying allowances or expenses to witnesses. There was no Commissioner in post during the reporting year: all the functions were undertaken by the Acting Commissioner.

36. The expenditure by the Commissioner's office for the period April 2020 to March 2021 is shown in Table 5.

Table 5: Commissioner's office expenditure 2020-21

	2016-17 £	2017-18 £	2018-19 £	2019-20 £	2020-21 £
Commissioner employment costs*	17816	19535	26105	17446	0
Commissioner T & S*	73	180	0	376	0
Hospitality & other costs	0	0	0	0	0
Acting Commissioner employment costs*	0	0	4786	10188	42517
Acting Commissioner T & S	0	0	695	2655	105
Acting Commissioner Hospitality & other costs	0	0	0	0	0
Total Commissioner and Acting Commissioner expenditure	17889	19715	31586	30665	42622
Staff employment costs**	4070	5756	44798	123630	92834
Staff T & S [3]	0	0	0	504	0
Total Staff costs	4070	5756	44798	124134	92834
Other liabilities incurred [4]	0	0	0	1661	25259
TOTAL COMMISSIONER OFFICE EXPENDITURE	21959	25471	76384	156460	160715

37. Throughout the year every effort was again made to keep expenditure to the minimum consistent with proper performance of the duties of the Commissioner. Although the total cost of the Commissioner's office increased by 2.7% compared with 2019-20 that is not a true reflection of the efficiencies made by the office. The number of complaints received during 2020-21 increased by 104% compared with the previous year. Further the 2020-21 figure for 'Other liabilities incurred' incurred includes matters not previously attributed to the cost of the office. The most significant of these are £16667 for the provision of legal advice and £3600 for media support. Staff costs reduced during the year as a consequence of the redeployment of one of the two fulltime staff and her replacement by a part-time staff member at a lower grade. Discussions are ongoing with the Chief Executive on the appropriate staff complement.

6. The year ahead

38. What is practicable in the coming year will to an extent depend both on the state of the Covid pandemic and on the volume and complexity of complaints received. For planning purposes I have assumed that life will return to near normal during the year and that there will be a significant reduction in the number and complexity of complaints compared with 2020 -21.

39. I shall continue to work closely with the Standards of Conduct Committee and its staff on the proposed new procedure for dealing with complaints. When that work has been completed new comprehensive guidance will be made available on my website. I will consider other ways of making the public more aware of their rights under the complaints process.

40. I will also work with the Committee on its review of the Dignity and Respect Policy with the aim of making it more user-friendly and aligning it with the relevant provisions of the new Code of Conduct.

41. I hope that Standards Conference, postponed from autumn 2020, will be held in Cardiff at some time during the year. It will provide a useful opportunity to discuss issues and best practice with my opposite numbers from legislatures throughout the British Isles. I will take soundings on the appetite for a similar meeting of other Welsh conduct regulators. Consideration will be given to holding an event to promote high standards of ethical conduct in the Senedd and elsewhere in public life.

42. When the Memorandum of Understanding with South Wales Police has been concluded I will seek the agreement of the other Welsh Chief Constables to entering into similar memoranda.

43. The discussions with the Chief Executive on the staff complement of my office will be concluded. Consideration will be given to the desirability of including in the figures for the cost of my office items such as accommodation costs.

44. I will work with the Chief Executive and her staff on a protocol setting out the principles of how the relationship between the two offices is to be managed.

7. Acknowledgements

45. Throughout the year I received assistance from many staff at all levels from all parts of the Commission. Jonathan Thomas and Abigail Phillips, the two staff members seconded to my office, once again provided me with exemplary support often going the extra mile to ensure that deadlines were met. And when Abigail moved on to assist with the work of preparing for the Sixth Senedd she was replaced by Ryan Bishop who very quickly adjusted to this totally new work area and took on the daunting task of supporting me in the very numerous complaints by and against Neil McEvoy. Without the support of these three individuals my consideration of complaints would undoubtedly have been less effective and timely.



Douglas Bain CBE TD
Senedd Commissioner for Standards

Signed: 13 July 2021

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