

**Committee on Standards and Privileges**

**Report on the Committee Inquiry on enforcing the  
Code of Conduct and Guide to the Rules Relating  
to the Conduct of Members and the Appointment  
of an Assembly Commissioner for Standards**

**Together with the Minutes of Proceedings of the Committee,  
Minutes of Evidence, Issues Paper and Written Submissions and  
other Evidence Considered by the Committee Relating to the Report**

**Ordered by The Committee on Standards and Privileges to be printed 18 May 2010  
Report: NIA 40/09/10R Committee on Standards and Privileges**

**REPORT EMBARGOED  
UNTIL COMMENCEMENT  
OF DEBATE IN PLENARY**



# Powers and Membership

1. The Committee on Standards and Privileges is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order No. 57.
2. The Committee has power:
  - to consider specific matters relating to privilege referred to it by the Assembly;
  - to oversee the work of the Assembly Clerk of Standards;
  - to examine the arrangement for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the Assembly, and to review from time to time the form and content of those registers;
  - to consider any specific complaints made in relation to the registering or declaring of interests referred to it;
  - to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches of any code of conduct to which the Assembly has agreed and which have been drawn to the Committee's attention;
  - to recommend any modifications to any Assembly code of conduct as may from time to time appear to be necessary.
3. The Committee is appointed at the start of every Assembly, and has power to send for persons, papers and records that are relevant to its enquiries.
4. The membership of the Committee is as follows:

Mr Declan O'Loan, Chairperson<sup>1</sup>  
Mr Willie Clarke, Deputy Chairperson<sup>2</sup>

Mr Allan Bresland	Mr Thomas Buchanan <sup>3</sup>
Mr Trevor Clarke <sup>4,5</sup>	Rev Dr Robert Coulter
Mr Mickey Brady <sup>6,10</sup>	Mr Paul Maskey <sup>7,8</sup>
Mr Alastair Ross <sup>9</sup>	Mr George Savage
Mr Brian Wilson	

5. The Report and evidence of the Committee are published by the Stationery Office by order of the Committee. All publications of the Committee are posted on the Assembly's website: ([www.niassembly.gov.uk](http://www.niassembly.gov.uk).)
6. All correspondence should be addressed to the Clerk of Standards, Committee on Standards and Privileges, Committee Office, Northern Ireland Assembly, Room 284, Parliament Buildings, Ballymiscaw, Stormont, Belfast BT4 3XX. Tel: 02890 520333; Fax: 02890 525917; e-mail: [committee.standards&privileges@niassembly.gov.uk](mailto:committee.standards&privileges@niassembly.gov.uk)

- 1 Mr Declan O'Loan replaced Mrs Carmel Hanna with effect from 3 July 2009
- 2 Mr Willie Clarke replaced Mr Gerry McHugh as Deputy Chairperson with effect from 21 January 2008
- 3 Mr Thomas Buchanan replaced Mr David Hilditch with effect from 14 September 2009
- 4 Mr Jonathan Craig replaced Mr Alex Easton with effect from 15 September 2008
- 5 Mr Trevor Clarke replaced Mr Jonathan Craig with effect from 14 September 2009
- 6 Mr Billy Leonard replaced Mr Francie Brolly with effect from 11 January 2010
- 7 Mrs Claire McGill replaced Mr Gerry McHugh with effect from 28 January 2008
- 8 Mr Paul Maskey replaced Ms Claire McGill with effect from 20 May 2008
- 9 Mr Alastair Ross replaced Mr Adrian McQuillan with effect from 29 May 2007
- 10 Mr Mickey Brady replaced Mr Billy Leonard with effect from 19 April 2010



---

# Table of Contents

**Report**

Executive Summary	1
Summary of Recommendations	2
Introduction and Background	4
Key Issues and Conclusions and Recommendations	7

**Appendix 1**

Minutes of Proceedings of the Committee Relating to the Report	19
--	----

**Appendix 2**

Minutes of Evidence	35
---------------------	----

**Appendix 3**

Issues Paper and Written Submissions	79
--------------------------------------	----

**Appendix 4**

Other evidence considered by the Committee	191
--	-----



# Executive Summary

The Committee on Standards and Privileges has completed its inquiry on the appointment of an Assembly Commissioner for Standards, on maintaining the Northern Ireland Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members (the Code of Conduct), and on handling alleged breaches of the Code of Conduct. The aim of the inquiry was to establish the most appropriate means of maintaining the Assembly's Code of Conduct and handling alleged breaches in relation to it.

The Committee has concluded that, broadly speaking, the principles of the existing system whereby the Northern Ireland Assembly regulates its own affairs and ultimately takes decisions on complaints that have been made against Members of the Assembly is an appropriate, reasonable and workable system.

However, while these principles are sound there is important work that can and should be done in order to ensure that in practice the system is more robust, and is seen to be both fairer and more transparent.

The most significant aspect of this is that the Assembly should have its own Commissioner for Standards whose role would be to carry out independent objective investigations into complaints against Members and to present his or her findings to the Committee on Standards and Privileges. The role of the Assembly Commissioner for Standards should be set out on a statutory basis. The powers of the Assembly Commissioner for Standards, including the power to call for witnesses and documents, should be set out in statute. The Assembly Commissioner for Standards' independence from the Assembly in respect of specific investigations should also be set out in statute.

The Assembly should therefore pass a Bill to create a statutory Assembly Commissioner for Standards during this current mandate and there should be an open competition for the position of Assembly Commissioner for Standards which would enable the appointed Commissioner to take up his or her post as soon as possible after the start of the next mandate.

# Summary of Recommendations

## **Recommendation 1**

In relation to modifying and maintaining the Assembly's Code of Conduct the current respective roles and duties of the Committee on Standards and Privileges and the Assembly are appropriate.

## **Recommendation 2**

In relation to handling alleged breaches of the Code of Conduct the existing fundamental roles (whereby the Commissioner investigates; the Committee determines whether a breach has occurred; and the Assembly's role is in respect of the imposition of sanctions) should remain the same.

## **Recommendation 3**

The Assembly Commissioner for Standards should be able to initiate his or her own investigation into the conduct of a Member.

## **Recommendation 4**

The Assembly Commissioner for Standards should be able to carry out investigations into matters relating to the conduct of Members referred to him or her by the Clerk/Director General in respect of issues relating to the Clerk/Director General's role as Accounting Officer.

## **Recommendation 5**

The power to dismiss a complaint as inadmissible should remain with the Committee, with the Commissioner continuing to provide advice to the Committee.

## **Recommendation 6**

The Assembly Commissioner for Standards should be able to include in any report an indication of the seriousness of any breach as a guide to what might be an appropriate sanction.

## **Recommendation 7**

There should not be a formal appeals mechanism as part of the Assembly's process to consider complaints against Members.

## **Recommendation 8**

The role of the Assembly Commissioner for Standards should be set out on a statutory basis.

## **Recommendation 9**

The Assembly Commissioner for Standards' powers, including the power to call for witnesses and documents, should be set out in statute.

## **Recommendation 10**

The Assembly Commissioner for Standards' independence from the Assembly in respect of specific investigations should be set out in statute.

## **Recommendation 11**

Legislation should provide that the Assembly Commissioner for Standards shall not be dismissed unless – (a) the Assembly so resolves; and (b) the resolution is passed with the



support of a number of members which equals or exceeds two-thirds of the total number of votes cast.

**Recommendation 12**

The Assembly Commissioner for Standards' specific salary and terms and conditions should be determined by the Assembly Commission but should be broadly commensurate with comparable office holders.

**Recommendation 13**

There should be an open and transparent competition consistent with the principles of best practice in relation to public appointments for the position of Assembly Commissioner for Standards. The appointment should be for a one off term of five years and should be approved by a resolution of the Assembly.

**Recommendation 14**

The Assembly Commissioner for Standards should report to the Assembly by means of an Annual Report.

**Recommendation 15**

The Assembly should pass a Bill to create a statutory Assembly Commissioner for Standards during this current mandate.

**Recommendation 16**

Standing Orders should be amended in order to enable the implementation of the conclusions and recommendations of this report.

## Introduction and Background

1. Further to the completion of the Committee on Standards and Privileges' review of the Assembly's Code of Conduct and the introduction of its specific requirements in October 2009, the Committee then agreed to carry out an inquiry on the appointment of an Assembly Commissioner for Standards (the Commissioner), on maintaining the Code of Conduct and on handling alleged breaches in relation to it.
2. In doing so the Committee not only recognised that it needed to formalise its arrangements in relation to the Commissioner (whose role has been carried out on an interim basis for a number of years), but also that it needed to give consideration to what the respective roles that the Commissioner, the Committee and the Assembly should be, both in terms of maintaining the Code of Conduct and in terms of handling alleged breaches of it.
3. The Committee on Standards and Privileges from a previous mandate had held an inquiry into the possible appointment of a Commissioner and reported on the matter in February 2001. The Committee concluded at that time that a Commissioner should be appointed to investigate complaints against Members of the Assembly but that the then existing system whereby the Northern Ireland Assembly regulated its own affairs and ultimately took decisions on complaints made against Members was appropriate, reasonable and workable. The Committee also stated that it would discuss with the Assembly Commission the terms and conditions of employment of a Commissioner and the process of recruiting a Commissioner.
4. The Committee also agreed interim arrangements to ensure that in the intervening period complaints against Assembly Members were subject to entirely independent investigation. The Committee concluded that the Office of the Assembly Ombudsman was well placed and equipped to discharge the functions of a Commissioner on an interim basis, as it had all of the investigative infrastructure, skills and experience to investigate complaints against Assembly Members. This interim arrangement is the arrangement that is still in place today and the current Committee is extremely grateful to the Ombudsman and his office for the diligent service that they have provided and continue to provide.
5. After having asked the Ombudsman to act as the Interim Commissioner, the Committee later decided that rather than carrying out an appointment process to recruit an individual as Commissioner it would be more appropriate if it was to introduce a Bill that would make the role of Commissioner a statutory function of the Office of the Ombudsman. A Bill was introduced by the Committee which reached second stage before falling as a result of suspension.
6. The current Committee noted what had previously occurred and agreed that a new inquiry needed to be carried out. The previous inquiry was carried out nine years ago. Since then the whole context of the accountability of public representatives has changed significantly, not least with regards to the issue of the perceived effectiveness of self-regulation. The Committee considered that it was appropriate for it to consider all the options open to it in terms of ensuring that Members are held to account within the context of the Code of Conduct.

### Terms of Reference

7. The aim of the inquiry was therefore to establish the most appropriate means of maintaining the Code of Conduct and handling alleged breaches in relation to it.

In doing so, the Committee wanted to consider:

- What the role, responsibilities and powers of an Assembly Commissioner for Standards should be;

- whether the position of an Assembly Commissioner for Standards should be placed on a statutory basis;
- how an Assembly Commissioner for Standards should be appointed;
- what the terms and conditions of any appointment might be;
- what the role of the Committee on Standards and Privileges should be in dealing with alleged breaches of the Code of Conduct; and
- what the role of the Assembly should be in dealing with alleged breaches of the Code of Conduct.

In order to come to a conclusion on these matters the Committee sought to answer the following questions:

**In terms of modifying and maintaining the Code of Conduct:**

- Are the current respective roles and duties of the Committee on Standards and Privileges and the Assembly appropriate?
- Should there be any formal role for others in terms of maintaining and modifying the Code of Conduct?

**In terms of handling alleged breaches of the Code of Conduct:**

- Are the current respective roles and duties of the Commissioner for Standards, the Committee on Standards and Privileges and the Assembly appropriate?
- Should there be any formal role for others in terms of handling alleged breaches of the Code of Conduct?
- Should consideration be given to introducing any sort of appeals procedure in relation to decisions reached by the Committee?

**In terms of appointing an Assembly Commissioner for Standards**

- What should the role, responsibilities and powers of an Assembly Commissioner for Standards be?
- Existing Standing Orders state that the Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly. Is this appropriate?
- Existing Standing Orders say that the Commissioner shall not be dismissed unless – (a) the Assembly so resolves; and (b) the resolution is passed with the support of a number of members which equals or exceeds two-thirds of the total number of seats in the Assembly. Is this appropriate?
- Should the position of an Assembly Commissioner for Standards be placed on a statutory basis?
- Should an Assembly Commissioner for Standards have statutory powers?
- How should an Assembly Commissioner for Standards be appointed?
- What should be the eligibility criteria of any such appointment?
- What should be the terms and conditions of any appointment?
- Are there any other relevant issues which should be brought to the Committee's attention in relation to the aim of the inquiry and its terms of reference?

## Conduct of the Inquiry

8. Further to having agreed the terms of reference for the inquiry, the Committee issued a public notice, drafted an issues paper and wrote to relevant stakeholders, including each

of the political parties at the Assembly, inviting written submissions. A number of written submissions were received and these, together with the Committee's issues paper, are set out in Appendix 3.

9. The Committee subsequently took oral evidence from the Interim Assembly Commissioner for Standards; the Commissioner for Public Appointments Northern Ireland; the National Assembly for Wales's Committee on Standards of Conduct; the Committee on Standards in Public Life and the Northern Ireland Human Rights Commission. This evidence is included at Appendix 2. In addition, the Committee visited the Houses of the Oireachtas where it met with Dáil Éireann's Committee on Members' Interests and the Standards in Public Office Commission. The Committee is very grateful to all of those who took the time to provide the Committee with written and oral evidence.
10. The Committee also commissioned a research paper from the Northern Ireland Assembly Research Services which is included at Appendix 4.

# Key Issues and Conclusions and Recommendations

## Modifying and Maintaining the Code of Conduct

11. In terms of modifying and maintaining the Code of Conduct the Committee asked:
- Are the current respective roles and duties of the Committee on Standards and Privileges and the Assembly appropriate?
  - Should there be any formal role for others in terms of maintaining and modifying the Code of Conduct?

The Committee on Standards and Privileges currently has responsibility for recommending modifications to the Code of Conduct while the Assembly currently has responsibility for agreeing modifications to the Code of Conduct (further to recommendations from the Committee on Standards and Privileges).

12. While there were those who argued for an end to any sort of self-regulation, the majority of respondents were satisfied that the current arrangements (in terms of the respective roles and duties of the Committee on Standards and Privileges, and the Assembly) were appropriate. This was emphasised by the Committee on Standards in Public Life and the Northern Ireland Human Rights Commission, as well as others. The Committee agrees that it is important in terms of the Assembly's credibility that the Assembly is seen to be showing leadership in respect of conduct matters and this means taking responsibility for developing its own Code of Conduct. Members should have a sense of ownership of the Code of Conduct and its values and principles. The Code should represent the collective view of the Assembly as to what it agrees constitutes appropriate and acceptable behaviour. Such ownership enables the Assembly to foster from within a culture that promotes and maintains ethical behaviour.
13. That point notwithstanding, some respondents did see a role for the Commissioner in terms of being consulted from time to time about whether any areas of the Code might need modifying. The Northern Ireland Human Rights Commission also commented on the appropriateness of the Assembly carrying out public consultations in respect of proposed amendments to the Code. In fact both of these suggestions reflect current practice. The Committee agrees that it is appropriate that the Commissioner (who has responsibility for interpreting the Code during the course of investigations) should be able to draw to the Committee's attention areas of the Code which may need to be reviewed or amended. Equally the Committee is of the view that it is appropriate to carry out public consultation before recommending any substantive amendments to the Code of Conduct.
14. **The Committee therefore recommends that in relation to modifying and maintaining the Assembly's Code of Conduct the current respective roles and duties of the Committee on Standards and Privileges and the Assembly are appropriate.**

## Handling alleged breaches of the Code of Conduct

15. In terms of handling alleged breaches of the Code of Conduct the Committee asked:
- Are the current respective roles and duties of the Commissioner for Standards, the Committee on Standards and Privileges and the Assembly appropriate?
  - Should there be any formal role for others in terms of handling alleged breaches of the Code of Conduct?
  - Should consideration be given to introducing any sort of appeals procedure in relation to decisions reached by the Committee?

16. The Commissioner currently has responsibility for receiving complaints; recommending to the Committee on Standards and Privileges that complaints are inadmissible; investigating admissible complaints; making reports to the Committee on Standards and Privileges on admissible complaints with a recommendation on whether or not the conduct complained of represents a breach of the Code of Conduct; and recommending the use of the rectification procedure (where appropriate). The Committee currently has responsibility for dismissing complaints brought to its attention by the Commissioner which it considers to be inadmissible; considering reports on admissible complaints from the Commissioner and, further to this, determining whether breaches of the Code of Conduct have occurred; recommending to the Assembly that specific sanctions be imposed upon Members who have breached the Code of Conduct; and allowing for the use of the rectification procedure (where appropriate). The Northern Ireland Assembly currently has responsibility for imposing sanctions upon Members who have breached the Code of Conduct (further to reports from the Committee on Standards and Privileges).
17. There were some respondents to the consultation who were opposed to any sort of self-regulation and who therefore effectively disagreed that the current respective roles in respect of handling complaints are appropriate. A specific point that was made in this regard was that it should be the role of the Commissioner not only to investigate alleged breaches of the Code but also to ultimately determine whether or not the Code has been breached and then, where he or she considers it appropriate, to impose sanctions. However, having considered all of the evidence and the arrangements in other places the Committee is satisfied that it would not be appropriate for the range of roles and powers to be vested in one individual who would have unilateral responsibility for enforcing the Code.
18. This view was supported by most respondents, who felt that the fundamentals of the existing system were appropriate (the fundamentals being that the Commissioner should investigate; the Committee should determine whether a breach has occurred; and the Assembly's role should be in respect of the imposition of sanctions). **It is therefore recommended that these fundamental roles should remain the same.** However, there was a variety of views on the specific details of how these roles should operate in practice, particularly in respect of the role of the Commissioner. This is set out in further detail below.

## Power of the Assembly Commissioner for Standards to carry out an investigation

19. One such area where there were differing views was on the question of whether the Commissioner should be able to initiate his or her own investigation into the conduct of Members without having first received a complaint. The Committee on Standards in Public Life was of the firm view that the Commissioner must be able to initiate his or her own inquiries. The Committee on Standards in Public Life said that this was a matter of ensuring public confidence and for that reason it had also made the same recommendation to the Committee on Standards and Privileges at the House of Commons. The Assembly Commission was also of the view that the Commissioner should be able to initiate his or her own investigation. The Committee agrees that the rationale in calling for the Commissioner to have such a power is sound.
20. Others had some concerns with this proposal. In particular the Northern Ireland Human Rights Commission warned that having the power of discretion could call into question the Commissioner's judgement whenever he or she decides whether or not to investigate a matter.
21. It is understandable that there might be concerns about the practicalities of how a Commissioner might choose to initiate his or her own investigation into the conduct of a Member. However, the Committee is of the view that not only can these concerns be addressed, they are outweighed by the consequences of not allowing the Commissioner to

initiate his or her own investigation. It is not acceptable that where there are significant, legitimate and evidential concerns in relation to the conduct of Members but where no formal complaint has been made that no investigation should be carried out. If there was no investigation in such circumstances it would undermine public confidence in the integrity of the Assembly.

22. **It is therefore recommended that the Assembly Commissioner for Standards should be able to initiate his or her own investigation into the conduct of a Member.** However such an investigation should only be carried out where the Commissioner is satisfied that there is a prima facie evidential basis to justify an investigation. The Commissioner could make preliminary enquiries in respect of a Member's conduct before concluding that a 'self-start' investigation was appropriate.
23. A further suggestion in respect of how the Commissioner might begin an investigation was made by the Speaker on behalf of the Assembly Commission. The Assembly Commission suggested that the Clerk/Director General, as Accounting Officer, should be able to consider any potential breaches by Members of the rules set out in determinations under s47 of the Northern Ireland Act 1998 or of the new Members' Financial Services Handbook and where concerns exist to refer the matter to the Commissioner. The Commissioner could then carry out an investigation in order to establish whether or not a Member had breached the Code of Conduct.
24. The Committee understands that such a proposal would be consistent with either practice or principle in other places. The Committee believes that enabling the Clerk/Director General to refer matters in this way would strengthen public confidence in respect of the measures that exist to ensure that abuses of allowances should not occur. It is not anticipated that such a proposal would significantly impact upon the required resources or workload of the Commissioner. **It is therefore recommended that the Assembly Commissioner for Standards should be able to carry out investigations into matters relating to the conduct of Members referred to him or her by the Clerk/Director General in respect of issues relating to the Clerk/Director General's role as Accounting Officer.**
25. In addition to this the Committee should retain its power to refer a matter to the Commissioner for investigation, although the Committee envisages that it would only ever use this power in exceptional circumstances. It would not be satisfactory for this power to be relied upon exclusively in order to ensure that investigations are carried out in the absence of complaints.

### Power of the Assembly Commissioner for Standards to dismiss a complaint

26. A further issue that emerged during the inquiry was the question of whether or not the Commissioner should be able to dismiss complaints as being inadmissible without any reference to the Committee. It is currently the case that the Commissioner considers a complaint against the agreed admissibility criteria and where he considers that a complaint is inadmissible he advises the Committee of this. The Committee considers the advice provided and must decide whether it agrees. It should be noted that in the case of complaints that the Commissioner considers to be admissible there is no need to seek the Committee's agreement to have these investigated.
27. The Committee recognised that there could be some value in having a mechanism which would mean that clearly inadmissible complaints received by the Commissioner did not have to come to its attention. However, the Committee also noted that there has not previously been large numbers of such complaints. Furthermore, while some complaints are clearly inadmissible other complaints may be more borderline in terms of their admissibility. Granting the Commissioner the power to determine whether or not complaints such as these should be investigated would fundamentally alter the Commissioner's role. The Commissioner would

effectively become a decision taker in terms of the outcome where someone had sought to make a complaint. The Committee agrees that it does not think that dismissing complaints should be part of the Commissioner's role. **The Committee therefore recommends that the power to dismiss a complaint as inadmissible should therefore remain with the Committee, with the Commissioner continuing to provide advice to the Committee.**

## Power of the Assembly Commissioner for Standards to recommend a sanction

28. Standing Orders currently prevent the Commissioner from recommending a sanction to be imposed upon a Member, other than in respect of the rectification procedure. The Committee on Standards in Public Life called for the Commissioner to be able to include in any report an indication of the seriousness of any breach as a guide to what might be an appropriate sanction. During oral evidence it was clarified that this suggestion did not extend to allowing the Commissioner to actually suggest specific sanctions. No-one raised any objection to this particular suggestion. In practice the Commissioner can already indicate the seriousness of a breach through the use of language to describe the conduct. **The Committee is therefore content that the Assembly Commissioner for Standards should be able to include in any report an indication of the seriousness of any breach as a guide to what might be an appropriate sanction.**

## Formal role for others in terms of handling alleged breaches of the Code of Conduct

29. The Committee asked whether there should be a formal role for others in terms of handling alleged breaches of the Code of Conduct. The Committee asked this question in terms of establishing roles additional to those existing roles for others (e.g. for the Police Service of Northern Ireland when a complaint is received which also raises questions of criminal liability). There was one substantial suggestion in this regard. The Committee on Standards in Public Life recommended that the Committee on Standards and Privileges should have at least two lay members with full voting rights. It was argued that the inclusion of lay membership on the Committee would be a useful step in enhancing public acceptance of the robustness and independence of the Assembly's governance arrangements in relation to the conduct of members.
30. A further matter arose in relation to the composition of the Committee. It was established that the Committee on Standards of Conduct at the National Assembly for Wales has been reduced in number of members. Previously, its composition reflected the party composition of the Assembly with different numbers of members from each party on the committee depending on party strength (as is also currently the case at the Northern Ireland Assembly). However, further to the Government of Wales Act 2006, the Committee on Standards of Conduct has become a much smaller committee with just four members: one from each major party in the Assembly. In that sense even though all the major parties are represented it is not party balanced.
31. Unlike other committees which quite properly come to decisions informed by party political considerations, standards committees always emphasise the importance of their members divesting themselves of party political allegiances when making decisions. When this principle is accepted it means the case for constituting such a committee based on party strength may be no longer compelling.
32. The Committee recognises the rationale for the proposal to appoint two independent lay members. The Committee also understands the reasoning for reducing the number of elected members on a standards committee. The Committee notes that the Committee on Standards and Privileges at the House of Commons had indicated that it will appoint independent lay



members and that the Committee on Standards of Conduct at the National Assembly for Wales considers that reconstituting its committee with fewer members has improved its decision making ability.

33. The Committee is committed to introducing a system for overseeing the conduct of Members that is seen to be both robust and depoliticised. The Committee recognises that altering its composition by reducing the number of elected members and appointing two independent lay members could contribute to this aim.
34. Accordingly, the Committee has already begun considering the detail of how it might appoint and hold to account independent lay members. However, the Committee wishes to explore further some of these practicalities with its counterpart committee at the House of Commons and other places before taking final decisions on how such an approach could work at the Assembly.

### Appeals procedure in relation to decisions reached by the Committee

35. The Committee asked if consideration should be given to introducing any sort of appeals procedure in relation to decisions reached by the Committee. The response to this question was varied. Some respondents were firmly of the view that an appeals procedure was necessary. However, others disagreed.
36. The Northern Ireland Human Rights Commission said that in its view there can be no appeal from the Committee unless to the full Assembly. However, it went on to say that as the Assembly has devolved the enforcement role to the Committee, no practical purpose would be served by the Assembly giving itself an appellate role which would deprive the Committee of its *raison d'être*. The Committee on Standards in Public Life pointed out that in the most serious cases (i.e. those cases where the Committee finds that a breach has occurred and recommends imposing a sanction) it is ultimately up to the Assembly to decide whether or not to accept the Committee's decision.
37. The Committee gave careful consideration to this issue. The most significant 'decision' against which one might consider having an appeals process is any decision by the Assembly to impose a sanction upon a Member. However, the practicalities of introducing such an appeals process would be fraught with difficulties, not least the question of to whom such appeals would be made. The Committee agrees that it is not possible to identify a practical and desirable appellate jurisdiction, a point which had been made by the Northern Ireland Human Rights Commission. **It is therefore recommended that there should not be a formal appeals mechanism as part of the Assembly's process to consider complaints against Members.**
38. The Committee also agreed that in the absence of an appeal mechanism it is of critical importance to ensure that there is procedural fairness in the process for considering complaints. The Committee is of the view that the existing process for considering complaints is procedurally fair but that nonetheless it should give consideration to whether there are any further measures that could be taken in order to bolster procedural fairness. One particular issue that the Committee has identified is enhancing the existing opportunity for Members who are subject to investigation to participate and contribute to proceedings once the Commissioner's report has been sent to the Committee.
39. It should be noted that in considering the question of appeals the Committee recognised that there is a limited potential for judicial review of any Assembly decision. The Committee also noted that existing practice allows for the Commissioner to carry out a fresh investigation into the conduct of a Member where a complaint appears to provide new evidence in relation to a previous complaint.

## Appointing an Assembly Commissioner for Standards

40. In the final section of the Committee's issues paper on appointing a Commissioner the Committee asked:
- What should the role, responsibilities and powers of a Commissioner be?
  - Existing Standing Orders state that the Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly. Is this appropriate?
  - Existing Standing Orders say that the Commissioner shall not be dismissed unless – (a) the Assembly so resolves; and (b) the resolution is passed with the support of a number of members which equals or exceeds two-thirds of the total number of seats in the Assembly. Is this appropriate?
  - Should the position of a Commissioner be placed on a statutory basis?
  - Should a Commissioner have statutory powers?
  - How should a Commissioner be appointed?
  - What should be the eligibility criteria of any such appointment?
  - What should be the terms and conditions of any appointment?
  - Are there any other relevant issues which should be brought to the Committee's attention in relation to the aim of the inquiry and its terms of reference?

There were a variety of responses to these questions; on some there was a large degree of consensus, on others more of a divergence of opinion.

41. On the issue of whether the Commissioner's role should be placed on a statutory basis there was widespread support for this proposal with the exception of those who felt that to do so would introduce an unnecessary risk of judicial review. However, the Committee is satisfied that in the context of the Northern Ireland Act 1998 and the Northern Ireland Assembly, placing the Commissioner on a statutory footing will not in itself have the effect of making the Commissioner, the Committee or the Assembly more open to challenges by way of judicial review in respect of the fairness of decision making processes than is currently the case.
42. Consideration was given as to whether the Commissioner's sole role should be to carry out investigations and report to the Committee on Standards and Privileges (as provided in Standing Order 69A). The additional circumstances in which the Commissioner might carry out an investigation are referred to above. The Committee is satisfied that the Commissioner should also be able to offer opinions not just in respect of specific investigations into the conduct of Members but also on more general issues in relation to the Committee's role and into the conduct of Members (e.g. the Code of Conduct or the form or content of the Register of Members' Interests).
43. In addition, the Committee noted that in some other places the Commissioner has a role in terms of providing advice and guidance in respect of Members' requirements to register and declare interests. At the Assembly (and other places), however, it is the Clerk of Standards who provides advice and guidance to Members on the registering and declaring of interests. The Committee concluded that this arrangement works well and should continue. Firstly, the Clerk of Standards works in Parliament Buildings on a full-time basis and is therefore easily accessible for all Members at any time during the working week. Secondly, a question emerges as to whether or not there would be a conflict of interest where the Commissioner was asked to carry out an investigation into circumstances where he or she had already provided advice to the Member against whom the complaint was being made.
44. The Committee believes that placing the role of a Commissioner on a statutory basis would demonstrate the Assembly's commitment to introducing robust measures to govern the conduct of Members. Being placed on a statutory basis should strengthen public confidence in terms of the Commissioner's independence. It would also provide the Commissioner with

greater protection and authority. **It is therefore recommended that the role of the Assembly Commissioner for Standards should be set out on a statutory basis.**

45. The Committee was advised of some of the specific statutory powers that an independent Commissioner should have. These included the power to call for witnesses and documents; statutory protection from defamation (privilege); power to secure the provision of goods and services; and protection from the requirement to disclose information. The Committee agrees that the Commissioner needs to have all the powers necessary in order to be able to carry out a full unhindered independent investigation into any admissible complaint. Most important of these is the power to call for witnesses and documents. It should be an offence not to cooperate with an investigation of the Commissioner. The definitive range of powers which the Commissioner should have can be finalised as part of the process that will lead to legislation being made. However, at this current stage the Committee believes that it is important that the Assembly indicate that these powers should be statutory powers. **It is therefore recommended that the Assembly Commissioner for Standards' powers, including the power to call for witnesses and documents, should be set out in statute.**
46. All respondents agreed that it was appropriate that the Commissioner should not be subject to the direction or control of the Assembly, although some responses helpfully clarified that this was within the context of an overall agreed procedural framework. It is important to explain what is meant by the Committee in respect of the Commissioner's independence and freedom from the direction and control of the Assembly. It is not the case that the Committee should be entirely passive in respect of how investigations are carried out. Rather, the Committee has particular expectations in respect of any investigation, and these expectations are set out in the protocols and procedures that inform the Commissioner's work. Nor is it the case that the Committee should not be able to ask the Commissioner to consider specific issues in relation to a particular investigation. It would not be appropriate, for example, if further to having considered a report from the Commissioner the Committee could not ask the Commissioner to go back and establish or clarify particular points.
47. Rather, the important issue in terms of the Commissioner's independence is that neither the Committee nor the Assembly should be able to prevent the Commissioner from carrying out an investigation if the Commissioner believes that an investigation is appropriate. Furthermore, once the Commissioner has decided to carry out an investigation neither the Committee nor the Assembly should be able to prevent the Commissioner from reaching and expressing any particular conclusions on the outcome of that investigation. In support of this important principle, and in order to promote transparency, the Committee will always publish any reports of the Commissioner in full in its own reports to the Assembly. In this way the independence of the Commissioner will be safeguarded and his or her findings will always be a matter of public record. **It is therefore recommended that the Assembly Commissioner for Standards' independence from the Assembly in respect of specific investigations should be set out in statute.**
48. The Committee asked a question in relation to the existing provision which says that the Commissioner shall not be dismissed unless – (a) the Assembly so resolves; and (b) the resolution is passed with the support of a number of Members which equals or exceeds two-thirds of the total number of seats in the Assembly. The Committee believes that it is important that there is a safeguard in place which means that the Commissioner cannot easily be dismissed and that this safeguard is placed on a statutory basis. The absence of such a safeguard could be perceived as a threat to the ability of the Commissioner to reach unpopular conclusions. However, the Committee also noted that the existing requirement is actually much more stringent than the accountability requirements for Commissioners in other places. At both the Scottish Parliament and the National Assembly for Wales such a resolution would require the number of votes cast in favour to be no less than two-thirds of the total number of votes cast (as opposed to two-thirds of the total number of seats). At the House of Commons such a resolution could be agreed by simple majority. The Committee considers that the requirements of the Scottish Parliament and National Assembly for Wales are more appropriate in the case of the Northern Ireland Assembly. **It is therefore recommended that it be set out in statute that the Assembly Commissioner for Standards**

**shall not be dismissed unless – (a) the Assembly so resolves; and (b) the resolution is passed with the support of a number of Members which equals or exceeds two-thirds of the total number of votes cast.**

## Appointing the Assembly Commissioner for Standards

49. The issue of how the Commissioner should be appointed was one where there was broadly a consensus. The majority of respondents who commented felt that there should be a fair and open competition for a one off term of appointment. The Committee was particularly grateful for the advice of the Commissioner for Public Appointments Northern Ireland who emphasised this point and who offered to provide support and guidance to the Assembly in any appointment process. The Commissioner for Public Appointments Northern Ireland has developed principles of best practice for public appointments and although her statutory remit does not extend to appointments of the Assembly the Committee nonetheless recognises the significance of these principles. Any appointment must be made on merit, in a fair and open way, with equality of opportunity for everyone.
50. The only alternative considered to making such an appointment was the option of making statutory arrangements for an existing separate office holder to carry out the role of Commissioner (similar to the existing interim arrangements). However, the Committee considered that some difficulties could arise as a result of making statutory arrangements for an existing separate office holder to carry out the role. Firstly, the Assembly would effectively lose its ability to both appoint and dismiss a Commissioner. Secondly, although it is the case that the Commissioner's post will be part-time there may be occasions when the Commissioner would have to be able to work such hours as are necessary in respect of particular investigations. The Committee would need to be satisfied that a Commissioner with another primary role would be able to guarantee that the work of Commissioner could always be prioritised. Finally, having looked at the issue of costs, and having been advised by the Assembly Commission that it could (if required) provide administrative support to the Commissioner (as opposed to setting up a stand alone office), the Committee is of the view that having a separate existing office holder carry out the role would not deliver any significant level of efficiencies. None of this is to say, however, that an existing office holder who met the eligibility criteria could not be appointed through an open competition and in such circumstances it would be sensible to look at using their existing administrative support.
51. The one off term of appointment is an important feature of the Commissioner's independence. A Commissioner who has to carry out an investigation into a Member who he or she may later rely upon in order to seek reappointment could be perceived to be a Commissioner who has a vested interest in concluding that that Member has not breached the Code. The Commissioner for Public Appointments Northern Ireland recommended a one off term of appointment of five years. The Committee is content with this proposal. The Committee agrees with the Commissioner for Public Appointments Northern Ireland that this term would allow the appointee the opportunity to 'commit to a long term plan of work without looking over his shoulder wondering whether a re-appointment will come'.
52. In terms of the eligibility criteria for the Commissioner the Committee on Standards in Public Life said that they should include independence of mind and an ability to be robust against improper pressure. The Northern Ireland Human Rights Commission said that the Commissioner needs to be someone who is above reproach, enjoys full public confidence and ought to be subject to the same disclosure requirements as apply to those whom they regulate. The Committee agrees with all of these suggestions. However, the Commissioner for Public Appointments Northern Ireland said that the matter of criteria for the post first requires a clear definition of the duties and powers within legislation. Only then should a role specification and appropriate criteria be drawn up. The Committee accepts this advice and will await the outcome of the legislative process before seeking to define the eligibility criteria for the post of Commissioner. However, it goes without saying that the Commissioner must

be someone who has the skills and experience necessary to carry out investigations and can demonstrate that they will be both independent and impartial.

53. Respondents did not seek to comment on the terms and conditions of any appointment, except for the Northern Ireland Human Rights Commission who said that the terms on which the Commissioner serves should be broadly aligned with comparable public offices. The Committee has noted the particular arrangements which exist in Wales (where remuneration is provided on a per diem basis plus an annual retainer sum) and believes that such an arrangement would work well here. However, as it is the Assembly Commission that would fund the post of Commissioner the Committee is satisfied that it should take the final decision in respect of remuneration. It is recommended that **the Assembly Commissioner for Standards' specific salary and terms and conditions should be determined by the Assembly Commission but should be broadly commensurate with comparable office holders.**
54. There are different means of carrying out a fair and open appointment process. The Assembly Commission has suggested using the process which was used for the appointment of the Comptroller and Auditor General and it appears to the Committee that this is a sound and viable option. The Committee will agree the specifics of the appointment process with the Assembly Commission and will consult the Commissioner for Public Appointments Northern Ireland on its proposals. Whatever process is finally agreed, however, ultimately the Committee believes that the Commissioner should be appointed by a resolution of the Assembly.
55. **It is therefore recommended that there should be an open and transparent competition consistent with the principles of best practice in relation to public appointments for the position of Assembly Commissioner for Standards. The appointment should be for a one off term of five years and should be approved by a resolution of the Assembly.** Such an appointment would be consistent with models elsewhere, consistent with best practice on public appointments and need not lead to any significant additional resources being required.

## Other issues

56. The Assembly Commission has indicated that it could provide the necessary funding for the office of the Commissioner. The Committee welcomes this. It is of crucial importance that the Commissioner has whatever resources are necessary to allow him or her to effectively carry out the role. Clearly it would undermine the whole purpose of introducing a statutory independent Commissioner if that Commissioner was then to be constrained through lack of resource. The Committee recognises that it will be necessary for a bid to be made within the wider Assembly budget for the necessary level of resources. Nonetheless, having looked at current costs, and costs in other places, the Committee is satisfied that the costs involved in providing the required resources are unlikely to be significant. The Committee attaches great importance on the Commissioner receiving all the resources necessary in order to carry out his or her duties effectively and recommends that the Assembly Commission consider this as a similarly significant priority.
57. Of course the provision of such resources will require accountability mechanisms to be put in place and there will be areas of overlap between the Commissioner's role and accountability to both the Committee and the Assembly Commission. The Assembly Commission has also pointed to its ongoing work to establish an Independent Statutory Body for the determination of pay, pension and financial support for Members. The Assembly Commission has raised the potential role of the Independent Statutory Body and its possible involvement in the appointment process of the Commissioner. The Committee will explore these issues in further detail with the Assembly Commission. However, in addition to whatever governance arrangements are put in place, **it is also recommended that the Assembly Commissioner for Standards should report to the Assembly by means of an Annual Report.**

58. Further work will be required in order to implement the recommendations in this report. Most significantly, legislation will need to be introduced and standing orders will need to be amended. This should be done in advance of the next mandate. In respect of the required legislation, the Committee could proceed with its own Bill. However, given the Assembly Commission's work to establish an Independent Statutory Body, a further option is for the necessary legislative provisions to be included in a Bill to enable the establishment of such a body. Such an approach would generate efficiencies and would lessen the anticipated forthcoming legislative burden on the Assembly towards the end of this mandate. However, the Committee is conscious that the progress of a Bill on an Independent Statutory Body is not within its control. If it appears that there would be delays in introducing such a Bill then the Committee would seek to progress its own Committee Bill. **It is therefore recommended that the Assembly pass a Bill to create a statutory Assembly Commissioner for Standards during this current mandate. It is also recommended that Standing Orders be amended in order to enable the implementation of the conclusions and recommendations of this report.**



Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings of the Committee relating to the Report





## Wednesday, 14th October 2009

### Room 135, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Allan Bresland  
Mr Francie Brolly  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Rev Robert Coulter  
Mr Paul Maskey  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Miss Grace Hamilton (Assembly Research) (Item 6)  
Mr Gerard Rosato (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Mr Willie Clarke (Deputy Chairperson)

**2.00 pm** The meeting commenced in open session.

**5. Consider and agree terms of reference for the Committee Inquiry on enforcing the Code and Guide and appointing a Commissioner for Standards**

**2.04 pm** Mr Ross joined the meeting.

*Agreed:* Following discussion the Committee agreed the draft Terms of Reference as set out in the Clerk's paper, as amended. The Committee also agreed that a Public Notice should be issued.

**[EXTRACT]**

## Wednesday, 9th December 2009

### Room 144, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Allan Bresland  
Mr Francie Brolly  
Mr Thomas Buchanan  
Mr Alastair Ross  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Mr Vincent Gribbin (Assistant Clerk)  
Ms Tara McKee (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Rev Robert Coulter  
Mr Paul Maskey

**1.20 pm** The meeting commenced in public session.

#### **5. Update on Inquiry on the appointment of an Assembly Commissioner for Standards**

The Committee considered an update report and forward work plan for its inquiry on the appointment of an Assembly Commissioner for Standards.

*Agreed:* The Committee agreed the way forward for the inquiry as outlined in the update report.

**[EXTRACT]**

## Wednesday, 13th January, 2010

### Room 135, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Billy Leonard  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Miss Danielle Best (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)  
Miss Rae Browne (Assembly Research (Item 5))

**Apologies:** Mr Allan Bresland  
Mr Trevor Clarke  
Mr Paul Maskey  
Rev Robert Coulter

**1.18 pm** The meeting commenced in open session.

**5. Update on Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

The Committee noted written submissions and correspondence received on the Inquiry.

The Chairperson welcomed Miss Rae Browne, Assembly Research and invited her to present her Research Paper.

Following discussion the Chairperson thanked Miss Browne for her very comprehensive Research Paper and presentation.

Members noted that as part of the consultation process the Committee would travel to Dublin to meet with Dáil Éireann's Standards in Public Office Commission and the Committee on Members' Interests. Members were asked to note a provisional date of 3rd February 2010 for the visit.

**[EXTRACT]**

## Wednesday, 27th January, 2010 Room 144, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Allan Bresland  
Mr Trevor Clarke  
Reverend Coulter  
Mr Billy Leonard  
Mr Paul Maskey  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Mr Thomas Buchanan

**1.15 pm** The meeting commenced in closed session.

**8. Analysis of issues emerging from the written evidence on the Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

Members noted further written submissions received.

Members noted the issues emerging from written responses to the Inquiry Consultation as outlined in the Clerk's paper.

*Agreed:* The Committee agreed to seek legal advice on the issue of an appeals procedure and the impact of placing the Commissioner on a statutory basis in relation to the potential for judicial reviews.

**[EXTRACT]**

# Wednesday, 10th February, 2010

## Senate Chamber, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Allan Bresland  
Mr Trevor Clarke  
Reverend Coulter  
Mr Billy Leonard  
Mr Paul Maskey  
Mr Alastair Ross  
Mr George Savage

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**1.19 pm** The meeting commenced in open session.

**6. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

Members noted the Clerk's Paper and written submissions received.

**Evidence Session – The Interim Assembly Commissioner for Standards**

The Chairperson welcomed Dr Tom Frawley, Interim Assembly Commissioner for Standards and Mr John MacQuarrie, Director for Standards and Special Projects, Ombudsman's Office and invited Dr Frawley to brief the Committee.

Following a question and answer session the Chairperson thanked Dr Frawley and Mr MacQuarrie for attending the meeting.

**1.59 pm** Mr Willie Clarke and Mr Maskey left the meeting.

*Agreed:* The Committee agreed that the Clerk should prepare an estimate of the cost involved in setting up an independent Assembly Commissioner's office.

**2.00 pm** Mr Savage left the meeting.

**Evidence Session – The Commissioner for Public Appointments Northern Ireland**

The Chairperson welcomed Ms Felicity Huston, The Commissioner for Public Appointments Northern Ireland and invited her to brief the Committee.

Following a question and answer session the Chairperson thanked Ms Huston for attending the meeting.

**Evidence Session – Mr Jeff Cuthbert AM, Chairperson, Committee on Standards of Conduct, National Assembly for Wales**

The Chairperson welcomed Mr Jeff Cuthbert AM, Chairperson, Committee on Standards of Conduct, National Assembly for Wales and Mr John Grimes, Committee Clerk, and invited Mr Cuthbert to brief the Committee.

Following a question and answer session the Chairperson thanked Mr Cuthbert once again for travelling to Northern Ireland to attend the meeting.

**[EXTRACT]**

## Wednesday, 17th February, 2010

### Senate Chamber, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Reverend Dr Robert Coulter  
Mr Billy Leonard  
Mr Paul Maskey  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apology:** Allan Bresland

**2.00pm** The meeting commenced in open session.

**5. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

Members noted the Clerk's Paper and written submissions received.

**Evidence Session – Sir Christopher Kelly, Chairman, Committee on Standards in Public Life**

The Chairperson welcomed Sir Christopher Kelly, Chairman, Committee on Standards in Public Life who was accompanied by Mr Peter Hawthorne, Assistant Secretary, Committee on Standards in Public Life and invited Sir Christopher to brief the Committee.

Following a question and answer session the Chairperson thanked Sir Christopher once again for travelling to Northern Ireland to attend the meeting.

**Evidence Session – Northern Ireland Human Rights Commission**

The Chairperson welcomed Mr Ciarán O Maolain, Head of Legal Services; and Ms Angela Stevens, Caseworker, Legal Services, Northern Ireland Human Rights Commission and invited Mr O Maolain to brief the meeting.

Following a question and answer session the Chairperson thanked Mr O Maolain and Ms Stevens for attending the meeting.

**Agreed:** Members agreed the draft press release for issue.

**[EXTRACT]**

## Wednesday, 24th February, 2010

### Room 144, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Trevor Clarke  
Reverend Dr Robert Coulter  
Mr Alastair Ross  
Mr Brian Wilson

**In Attendance:** Mr Trevor Reaney (Clerk/Director General) (Item 5)  
Mr Tony Logue (Clerk to the Assembly Commission) (Item 5)  
Ms Tara Caul (Senior Legal Adviser) (Item 6)  
Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Allan Bresland  
Mr Billy Leonard  
Mr Paul Maskey  
Mr George Savage

**1.15pm** The meeting commenced in open session.

**5. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards: Advice from the Clerk/Director General**

Members noted the Clerk's Paper.

The Chairperson welcomed Mr Trevor Reaney, Clerk/Director General and Mr Tony Logue, Clerk to the Commission and invited Mr Reaney to address the Committee.

**1.21pm** Mr Ross left the meeting.

*Agreed:* The Committee agreed that the Clerk/Director General should submit a Paper to the Committee on the issues raised in his Advice.

Following a question and answer session the Chairperson thanked Mr Reaney for his Advice.

**1.56pm** The Committee moved into closed session.

**6. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards: Legal Advice**

Members noted the Paper from Legal Services.

The Chairperson welcomed Ms Tara Caul, Senior Legal Adviser, Assembly Legal Services and invited her to present the Legal Paper.

Following a question and answer session the Chairperson thanked Ms Caul for attending.

**[EXTRACT]**

## Wednesday, 10th March, 2010 Room 144, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Allan Bresland  
Mr Billy Leonard  
Mr Paul Maskey  
Mr George Savage

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Mr Thomas Buchanan  
Rev Dr Robert Coulter  
Mr Brian Wilson

**1.16pm** The meeting commenced in open session.

**1.28pm** The Committee moved into closed session.

**7. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

The Committee noted the Clerk's Paper.

**1.50pm** Mr Maskey joined the meeting.

*Agreed:* Following discussion the Committee agreed a number of issues, as set out in the clerk's memo to Members dated 16th March 2010.

*Agreed:* The Committee agreed that further consideration should be given to the issues raised in paragraphs 19 - 23 and paragraphs 24 – 28 of the Clerk's Paper. The Committee agreed that further advice would be helpful and that a briefing note on these issues should be sent to Members and copied to Party Whips.

**[EXTRACT]**



## Wednesday, 24th March, 2010 Room 144, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Allan Bresland  
Mr Trevor Clarke  
Rev Dr Robert Coulter  
Mr Billy Leonard  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Mr Jonathan McMillen (Assistant Legal Adviser) (Items 5 and 7)  
Ms Hilary Bogle (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Mr Thomas Buchanan  
Mr Paul Maskey

**1.15pm** The meeting commenced in closed session.

**5. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

Members noted the Clerk's Memo and a further paper including legal advice.

**1.25pm** Mr Wilson joined the meeting.

The Chairperson welcomed Mr Jonathan McMillen, Assistant Legal Adviser and invited him to brief the Committee on the Legal Advice received.

*Agreed:* Following discussion it was agreed that the issues raised would be considered further at the next meeting of the Committee.

The Chairperson thanked Mr McMillen.

Members noted correspondence received from the Director General on behalf of the Assembly Commission.

**[EXTRACT]**

## Tuesday, 20th April 2010

### Room 144, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Willie Clarke (Deputy Chairperson)  
Mr Mickey Brady  
Mr Allan Bresland  
Mr Trevor Clarke  
Mr Paul Maskey  
Mr Alastair Ross  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Mr Thomas Buchanan

**10.33am** The meeting commenced in closed session.

**5. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

*Agreed:* Members were updated on the current position on the inquiry. Following discussion on the outstanding issues, the Committee agreed to consider a paper on independent lay members at its next meeting.

**[EXTRACT]**

# Monday, 17th May 2010

## Room 144, Parliament Buildings

**Present:** Mr Declan O'Loan (Chairperson)  
Mr Mickey Brady  
Mr Allan Bresland  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Rev Dr Robert Coulter  
Mr Paul Maskey  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Ms Rae Browne (Assembly Research Services) (Item 8)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Mr Willie Clarke (Deputy Chairperson)

**4.15pm** The meeting commenced in closed session.

### **8. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

Members noted the Clerk's Paper and the Assembly Research Paper on independent lay members.

The Chairperson invited Ms Rae Browne, Assembly Research Services to present her research paper.

Following discussion the Chairperson thanked Ms Browne for attending.

Members noted correspondence from the Assembly Ombudsman.

**4.56pm** Mr Thomas Buchanan joined the meeting.

*Agreed:* Following discussion on the issue of independent lay members the Committee agreed that the Clerk should re-draft the relevant paragraphs in the draft Committee Report for consideration by the Committee at its next meeting.

*Agreed:* Members agreed that the Committee should meet on Tuesday 18th May 2010 to consider the re-drafted sections of the draft Committee Report.

**5.04pm** Mr Trevor Clarke left the meeting.

The Committee considered the draft Report section by section.

*Agreed:* All the following sections were agreed with the proviso that Members could raise any issues before final agreement at the next meeting.

### **Powers and Membership and Table of contents**

*Agreed:* The Committee agreed the Committee Powers and Membership and Table of Contents should form part of the Report.

### **Introduction**

*Agreed:* The Committee agreed that paragraphs 1 - 6 should form part of the Report.

### **Terms of Reference**

*Agreed:* The Committee agreed that paragraph 7 should form part of the Report.

### **Conduct of the Inquiry**

*Agreed:* The Committee agreed that paragraphs 8 to 10 should form part of the Report.

### **Modifying and Maintaining the Code of Conduct**

*Agreed:* The Committee agreed that paragraphs 11 – 14 should form part of the Report.

### **Handling alleged breaches of the Code of Conduct**

*Agreed:* The Committee agreed that paragraphs 15 – 18 should form part of the Report.

### **Power of the Assembly Commissioner for Standards to carry out an investigation**

*Agreed:* The Committee agreed that paragraphs 19 - 22 should form part of the Report.

*Agreed:* The Committee agreed that paragraphs 23 - 25 should form part of the Report.

### **Power of the Assembly Commissioner for Standards to dismiss a complaint**

*Agreed:* The Committee agreed that paragraphs 26 - 27 should form part of the Report.

### **Power of the Assembly Commissioner for Standards to recommend a sanction -**

*Agreed:* The Committee agreed that paragraph 28 should form part of the Report.

### **Appeals procedure in relation to decisions reached by the Committee**

*Agreed:* The Committee agreed that paragraphs 36 - 40 should form part of the Report.

### **Appointing an Assembly Commissioner for Standards**

*Agreed:* The Committee agreed that paragraph 41 should form part of the Report.

*Agreed:* The Committee agreed that paragraphs 42 - 45 should form part of the Report.

*Agreed:* The Committee agreed that paragraph 46 should form part of the Report.

*Agreed:* The Committee agreed that paragraph 47 – 48 should form part of the Report.

*Agreed:* The Committee agreed that paragraph 49 should form part of the Report.

### **Appointing the Assembly Commissioner for Standards**

*Agreed:* The Committee agreed that paragraphs 50 - 51 should form part of the Report.

*Agreed:* The Committee agreed that paragraphs 52 – 53 should form part of the Report.

*Agreed:* The Committee agreed that paragraph 54 should form part of the Report.

*Agreed:* The Committee agreed that paragraphs 55 (as amended) – 56 should form part of the Report.

### **Other issues**

*Agreed:* The Committee agreed that paragraphs 57 - 58 should form part of the Report.

*Agreed:* The Committee agreed that paragraph 59 should form part of the Report.

**[EXTRACT]**

## Tuesday, 18th May 2010

### Room 135, Parliament Buildings

**Present:** Mr Declan O’Loan (Chairperson)  
Mr Mickey Brady  
Mr Thomas Buchanan  
Mr Trevor Clarke  
Rev Dr Robert Coulter  
Mr Paul Maskey  
Mr Alastair Ross  
Mr George Savage  
Mr Brian Wilson

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Clerk)  
Mr Michael Greer (Clerical Supervisor)  
Mr Christopher McNickle (Clerical Officer)

**Apologies:** Mr Willie Clarke (Deputy Chairperson)  
Mr Allan Bresland

**10.34am** The meeting commenced in closed session.

#### **5. Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards**

*Agreed:* Following discussion the Committee agreed that the outstanding issue in relation to the future composition of the committee as set out in paragraphs 29 to 34, of the draft Report, as amended, should form part of the Report.

*Agreed:* The Committee agreed that paragraph 554 of the draft Report, as amended, should form part of the Report.

*Agreed:* The Committee was content that the remaining sections of the Report as agreed at the last meeting should form part of the Report.

*Agreed:* The Committee agreed that the Executive Summary, as amended, should form part of the Report.

*Agreed:* The Committee agreed that the Summary of Recommendations, as amended, should form part of the Report.

*Agreed:* The Committee agreed Appendices 1 – 4 should form part of the Report.

*Agreed:* The Committee agreed that the relevant extract of the minutes of the previous meeting and an extract of today’s minutes of proceedings should be included in Appendix 1 of the report.

The Committee ordered the Report on the Committee’s Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the appointment of an Assembly Commissioner for Standards to be printed.

Members noted that the Report would be embargoed until the commencement of the debate in plenary.

*Agreed:* The Committee agreed a motion to debate the Report in plenary.

*Agreed:* Members agreed the draft Press Release, as amended, to be released following the debate of the Committee’s Report in plenary.

*Agreed:* The Committee agreed that an embargoed copy of the report be sent to each of the witnesses who gave oral evidence: Dr Tom Frawley (Interim Assembly Commissioner for Standards); Ms Felicity Huston (Commissioner for Public Appointments Northern Ireland); Mr Jeff Cuthbert (Chairperson, Committee on Standards of Conduct, National Assembly for Wales); Sir Christopher Kelly (Chairperson, Committee on Standards in Public Life); Mr Ciarán O Maolain (Head of Legal Services) and Ms Angela Stevens (Caseworker, Legal Services), Northern Ireland Human Rights Commission.

**[EXTRACT]**



Northern Ireland  
Assembly

Appendix 2

# Minutes of Evidence





# 10 February 2010

## Members present for all or part of the proceedings:

Mr Declan O’Loan (Chairperson)  
 Mr Willie Clarke (Deputy Chairperson)  
 Mr Allan Bresland  
 Mr Trevor Clarke  
 Rev Dr Robert Coulter  
 Mr Billy Leonard  
 Mr Paul Maskey  
 Mr Alastair Ross  
 Mr George Savage

## Witnesses:

Dr Tom Frawley Mr John MacQuarrie	<i>Interim Assembly Commissioner for Standards Northern Ireland Ombudsman’s Office</i>
--------------------------------------	--

Ms Felicity Huston	<i>Commissioner for Public Appointments Northern Ireland</i>
--------------------	--

Mr Jeff Cuthbert Mr John Grimes	<i>National Assembly for Wales</i>
------------------------------------	--

1. **The Chairperson (Mr O’Loan):** We move to our first evidence session with Dr Tom Frawley, who is the Interim Assembly Commissioner for Standards. He is accompanied by Mr John MacQuarrie, who is director for standards and special projects at the Ombudsman’s office. Tom and John, you are very welcome and thank you for attending. You have already submitted written evidence and I thank you for it.
2. Members will find the full submission from the Interim Assembly Commissioner for Standards in the submissions folder. Tom has been our Interim Commissioner for many years, and he is in a unique position to give evidence to this inquiry. Members will have read Tom’s submission and will know that it touches on a number of areas. In particular, it looks at three different models that the Committee

might consider when it comes to appointing a commissioner.

3. Tom, please give us a preliminary outline, then members may have some questions for you. Members, I draw your attention to some possible useful areas of discussion with all of today’s witnesses.
4. **Dr Tom Frawley (Interim Assembly Commissioner for Standards):** I thank the Committee for inviting me to contribute to its inquiry on the appointment of an Assembly commissioner for standards, on maintaining the Northern Ireland Assembly code of conduct, on the ‘Guide to the Rules Relating to the Conduct of Members’ and on the handling of alleged breaches of the code of conduct.
5. By way of background to the paper to which you have already referred, it might be helpful if I draw the Committee’s attention to a number of points in it that may be relevant. First, in relation to the arrangements underpinning the appointment of a commissioner, it is essential that the commissioner’s office is perceived to be independent of the Committee and of the Assembly and, therefore, impartial and objective in the conduct of its work. Secondly, it is essential, in any model that is agreed, that the Committee on Standards and Privileges remains at the centre of decisions that are taken as a result of the commissioner for standards’ investigation of a complaint against a Member. Finally, at the outset, the model that is decided on should be proportionate to the task involved and affordable, not least in light of the current and developing pressures on the public finances.
6. In so far as maintaining the code and the guide is concerned, I reiterate the comment in my written submission that they should be living documents. They need to be kept under regular review

- to reflect developments in governance standards and to facilitate a prompt response to any specific issues that may arise; for example, an issue that has been identified as a result of a commissioner's report on the investigation of a complaint.
7. The administration and investigation of alleged breaches of the code and guide must be central to the commissioner's role. The challenge of the investigative process is to strike a difficult balance between an investigation that delivers an effective response to the complainant, fairness to the Member accused of a breach, and effectiveness for the Assembly in safeguarding its reputation and, importantly, demonstrates transparency to facilitate accountability to the public. Whether the interim process currently achieves those objectives is a matter for the Committee to judge.
8. The submission also reflects the view that the Committee and, through it, the Assembly should continue to have primacy in the handling of allegations of breaches of the code and the guide that could be seen as supporting a perceived soft option of self-regulation. However, adherence to the principles of openness and transparency will address that perception and protect the primacy of the voter in judging the performance of an elected representative. The Committee has demonstrated its commitment to those principles by publishing, as an appendix to its own report, investigation reports on a complaint in each case that has been reported on thus far. All details of the commissioner's investigations are, therefore, in the public domain and open to public scrutiny, and can be tested against the Committee's and the Assembly's final judgement on any individual case.
9. In conclusion, I refer to the fact that is also reflected in my paper that the quality of any system of governance ultimately depends on behaviour, not process, with the result that there is a limit to the extent to which any regulatory framework can, of itself, succeed in delivering good governance. However, as the submission emphasises, the objective of achieving good governance requires a strong commitment to achieving the best possible outcomes at every stage of the system's operation on the part of all the stakeholders involved with the process. I believe that that commitment is shown if it can be demonstrated that there is fairness in the provision of a transparent, impartial, confidential system that is capable of offering appropriate outcomes by providing access through ensuring that the system can be easily utilised by a complainant; by delivering responsiveness in what the Committee does with the complaint once received and, critically, by the action that is taken on complaints about the complaint process itself; by delivering effectiveness through an ongoing evaluation of the process to ensure that the complaints system is credible and effective for all stakeholders involved with the process — the complainant, the Member complained of, the Assembly and, ultimately, the public — and, finally, by demonstrating accountability through ensuring that the complaints system is open to scrutiny by all.
10. I commend that approach to the Committee as a basis for its determination on how to move forward with this important review.
11. **The Chairperson:** Thank you for your opening statement. I invite members to ask questions.
12. **Mr W Clarke:** Thank you for your presentation. I wish to make a point about the appeals process. Over the years, people from organisations that made complaints felt that, at times, they did not get a fair hearing and that they did not get the justice that was required. Could you give the Committee your thoughts on the appeals process or the possibility of such a process?
13. **Dr Frawley:** In my daily work as an Ombudsman, I can honestly say that people who get an outcome that they are happy with are incredibly happy with the Ombudsman. People who do not

- get such an outcome are not happy. People enter a complaint process with a particular expectation, and if it is not met, there is clear potential for them to be dissatisfied with the process and the outcome.
14. It is reflected to date that an Assembly Member is subject to a fairly robust examination by the investigating process. Part of the difficulty may be that the complainant is not at hand, if you like, in presenting their complaint to a Committee or even participating in the process when the Committee hears the complaint. It is very difficult to see how that could be facilitated. Therefore, if there is an appeals process within the way that the Committee operates, the ultimate authority in those matters is the Assembly, where the final judgements are made if they are not recommended or accepted. That, in turn, has the potential to be the subject of the perception that party politics inform complaints. It is very difficult to separate that out, given the nature of this place.
15. I am not clear how one could get an appeals process to work in the circumstance in which people would feel that, having had an outcome from the investigation, they would then want to appeal the decision of this Committee. The only place to go to with that would be the Assembly, but, in the main, the reports that have a sanction assigned to them go to the Assembly anyway. That is where the debate takes place on the merits of the conclusion reached by the Committee and on the thoroughness of the investigation.
16. In the nature of the processes, it is inevitable that that is the limit to the legislative authority. I am unsure whether there would be any merit in challenging by judicial review the administrative process that was applied by the Assembly. That would be hard to envisage, although I am sure that it is possible.
17. **Mr W Clarke:** Your correspondence referred to the impartiality of the commissioner and the fundamental requirement that he or she should have no baggage that would prejudice any decision making. Can you elaborate on that? Does that include membership of political or secret organisations?
18. **Dr Frawley:** It is fundamental that the appointee does not have any interest or affiliation. That is key. As a starting point, the commissioner must be free from any party political association. In other words, he or she must not be a member of a party or be perceived to have an active interest in party politics. Equally, he or she should not be a member of any organisation or association which would have or be perceived to have any religious or community restriction on its members.
19. Essentially, the commissioner should be subject to the same restrictions on membership of organisations or political parties that apply to members of the Senior Civil Service, for example. The question of parallel employment is a dimension of that that would have to be considered in the light of the circumstances. However, in principle, the person should not have a continuing or recent commercial or advocacy interest or role with any political, public, private or voluntary sector organisation. A number of offices that already carry those limits come to mind, for example, the Comptroller and Auditor General and the Northern Ireland Ombudsman. Those are the requirements for those two offices. I do not consider the case for impartiality to be any stronger than it is for those offices. However, the objectivity and independence of the appointment process through which the post is filled is central. The short answer is that it is vital that the process is impartial. It is a straightforward matter of good governance. As I said, that is already standard practice for the appointment of senior staff to some of the key offices associated with the Assembly.
20. **Rev Dr Robert Coulter:** In your written submission, you noted that commissioners in other places provide advice to Members about the registers of interests. However, you have pointed out some concerns with that approach

- in respect of the time impact and potential conflict at a later stage, if there were ever to be an investigation. Will you elaborate further on that? How, on the one hand, can a Member get advice, yet, on the other hand, get around the problem of a later investigation?
21. **Dr Frawley:** As Rev Coulter said, I commented in the paper on the time that is needed to deal with inquiries. A former Commissioner at Westminster commented that some 70% of her time was devoted to giving guidance on the code and the register of interests. However, as I have said on a number of occasions, I firmly believe that in order for an investigation to be accepted as impartial by the person under investigation, the complainant and the public, the investigator should not have had previous involvement in offering advice about any matter that may be the subject of a complaint at a later date. In some cases, the investigator may be perceived as being prejudiced if he has already offered a view on the matter. In other instances, he may be compromised, particularly if the advice that he offered was followed by the Member who is being complained of.
22. I believe that the present Northern Ireland arrangements, which clearly separate the role of advice and investigation, provide an optimum model. Again, obviously, there are other perspectives on that, but I think that that separation is important. For example, and this might help the Committee, as Ombudsman, I receive many consultation documents every day from Departments and other bodies that seek my view on those. I am always reluctant to give a view, and I rarely do so, because my judgement on how a consultation was undertaken or how a policy was developed may be required at a later date. If I was to provide a view, people could say, "Well, it is interesting that you take that view; however, this is what you said at the time". That is why I think that there is real merit in separating the two functions.
23. I am sure that one of the other things about the current arrangement that
- appeals to members of the Committee is that I am not even physically present in the Building, and that highlights the separation of the role of investigation from the overall day-to-day business in this place. That, in turn, means that, to provide advice, I would have to be accessible and available to Members as they go about their daily business. There are some practical reasons for separation, but the principal reason is that it protects the impartiality and the independence of the commissioner.
24. **Mr Savage:** Who decides ultimately whether a Member has breached the code of conduct?
25. **Dr Frawley:** In the current model and the one that I am commending to the Committee, the Committee would make that decision, but the Assembly would make the ultimate decision if sanctions were involved. I believe that — I might take a different view from others on this — it is absolutely incumbent on the investigator to investigate and to provide all the evidence and a view on whether relevant codes or rules have been breached. However, that evidence must be presented to the Committee, because that affords the Committee an opportunity to test the investigation and the process that informed it with the individuals affected, particularly the person complained of. In that circumstance, the Committee would make that decision. I am absolutely clear about that. As far as I am concerned, I report on the facts that are established in the investigation. Any difference of opinion between the Committee and me will be immediately evident when my report is published as an appendix.
26. At the end of the day, it is not for appointed commissioners to make the final judgement, because elected Members must be accountable to the electorate. The commitment to openness and transparency that is built into the present process ensures that voters are in a position to make an informed judgement. I do not believe that democracy is served if unelected and appointed commissioners make

- decisions about elected representatives whose accountability is to those who elected them. However, I want to focus on two caveats in what might be termed this self-regulation model. First, as recently raised in the review of expenses in Westminster, an atmosphere of undue deference must not be allowed to develop in respect of Members being precious about being questioned. I think that is important. Members must recognise their responsibility, be familiar with the code and register, and make themselves available and accountable when required to do so by an investigation.
27. My second caveat focuses on this Committee. Members might say that it is a bit untoward of me to raise it, but I will mention it anyway because, after today, I might have to hold my peace permanently. I believe that this point is a corollary of self-regulation. It demands that when Members participate in the business of the Committee, the integrity of the Assembly must have primacy over party politics. If that spirit is met, self-regulation will work.
28. **Mr T Clarke:** I wish to make an observation rather than ask a question, but I might try to phrase a question out of it later. Tom's paper is very informative. I would like to put that on record and commend Tom and John for the work that they have done for the Committee to date. I share some of the views, specifically that on page 6, where the commissioner indicates:
- "There is not sufficient workload to warrant a full-time appointment in Northern Ireland".*
29. He suggests that the post would be part time, and I share that opinion. In his opening remarks, he referred to the cost restraints and pressures that we face in Northern Ireland. I do not think that anybody could question his independence. This is not a sales pitch for Tom Frawley or John MacQuarrie. I do not always agree with what Tom says, but that is what a democracy is about. I have only been a member of the Committee since September, but, in that time, they have shown impartiality and commitment to it. Tom comes to the Committee, he presents an excellent report, he is independent, and minimal hours have been spent on it. Indeed, in the paper he suggests that 200 hours have been spent on his Assembly work over the year. Perhaps I can frame a question by asking Tom to speak about the workload that he has served to the Committee over the past year. Perhaps that will give us better focus on the matter.
30. **Dr Frawley:** I thank Mr Clarke for his kind remarks. He highlighted from the paper that, in 2008-09, Mr MacQuarrie and I spent roughly 200 hours on evaluating complaints, collating and considering evidence, drafting reports and presenting our conclusions to the Committee. When we prepared the submission paper for the Committee just before Christmas, we had assessed or judged that we had committed about 160 hours to the work. Therefore, we were roughly in the same place with three months of the year still to run.
31. The nature of the work is spasmodic. There are periods when one gets a large number of complaints, and there are also fallow periods. The Committee has been in a very developmental, dynamic stage in designing and revising codes, and so on, and I know that that has meant a lot of work for members and for the Committee Clerk. We have contributed in a limited way to that, so that is another part of the time contribution. However, once the codes are in place, that part of the work will reduce. Therefore, my sense is that it actually sits reasonably well. Ironically, however, the immediacy of availability becomes an issue. When a complaint arises, it is not possible to say that we will come back to you in a fortnight, or that we will fit it in with something else. There is a need for primacy and priority, and therefore there has to be infrastructure, and I use that word advisedly. There must be, alongside the part-time element, a way of administratively supporting the role such that if people want to make a phone call or contact the commissioner

- it is possible to gain access. There is a balance to be struck.
32. The model has been accommodated within my office's overall capacity with a very limited investment of cost; I think we received £10,000, and up to £15,000 in the current year, for the overall work that we do on behalf of the Committee. I think that that is a defensible circumstance, and represents realistic and sensible way of doing things in the current economic atmosphere, as Trevor Clarke put it. The workload, the availability of the skill sets that Mr MacQuarrie brings to the task, and my own time can be fitted into the overall role of the ombudsman, but I think that part of the problem is that the interim First Minister — as I noted with some concern — described it as the interim ombudsman's office, and suddenly I became interim as the ombudsman and interim as the commissioner, so to speak. There is a potential for the roles to be confused.
33. It is in the nature of complaints against MLAs that there is a very high level of public awareness. However, it is helpful that the "brand" of ombudsman carries with it a significant standing in the public mind, which, in turn, reads across to the activity. Although there are issues in relation to crossover, the workload can be managed, the infrastructure is available, and the cost is defensible.
34. **Mr Ross:** This Committee has certain powers to compel witnesses to come and give evidence under section 44 of the Northern Ireland Act 1998. Your office — the future Assembly commissioner, if you become full-time commissioner — will not have similar powers. Are there any powers that you think the office should have under legislation, or any functions that you want to be laid down in statute that would help you?
35. **Dr Frawley:** As Interim Assembly Commissioner for Standards, I have not encountered any difficulty in obtaining documentation, or, indeed, comment from any individual. If that were to happen, I would come back to the Committee and ask for your support in addressing the issue. In that circumstance, the Committee would be in a position to invoke the powers of the Northern Ireland Act 1998. However, for the avoidance of potential delay inherent in the present process, I believe that it would be helpful if the commissioner had express power to obtain all information necessary for an investigation and to compel attendance of witnesses and the production of documents. The authority would be underpinned by the power to refer any incident of obstruction or contempt back to the Committee.
36. It would also be appropriate for the commissioner to be protected from any requirement to disclose information obtained in the course of an investigation, other than to the Committee or a specified regulatory body, such as the Police or the Comptroller and Auditor General. There are issues in relation to freedom of information, and so on, that may need to be explored and tested.
37. It would also be useful for the commissioner to have power to engage external expert assistance; for example, in some areas of potential complaint, a forensic accountant might be helpful in looking at accounts, financial analysis, and so on. It is, therefore, important to have the opportunity and the authority to share information with such experts.
38. I would not be inclined to expand the current arrangements. I have a belief that an investigator must be seen as impartial. That requires separation from either advocacy in the area under investigation, or giving advice in relation to matters that could be investigated. Those are issues that could be addressed in any legislation that might follow whatever decision you take. In light of the developing circumstances, those are the sorts of areas that we could firm up.
39. **Mr Ross:** What difference is there between the powers that you currently have, compared to those available to

- your equivalent in Westminster or other devolved institutions?
40. **Dr Frawley:** I am not conscious that they have particularly significant additional powers. Some of them are very separate from the Committees, and, in itself, that presents a different circumstance and probably allows for a different framework. I am describing the powers that would apply with the model that I have commended to the Committee, rather than the model that might develop with a full-blown separate office, commissioner, and so on.
41. **Mr Leonard:** Gents, you are welcome. It is good to see you, and I thank you for the work that have done. Tom, I was struck by your use of the word “proportionate” in an earlier answer, and I want to tease that out. We are always caught between the idea of administrating and demonstrating transparency, and the issue of cost. I am not reducing the entire debate down to pounds or euros, but, if proportionality were applied to the models, would a bit of the perception of transparency have to be sacrificed?
42. I am perhaps more concerned about a separated titled office sitting alongside another independent body, whatever that body may be. In the public mind, the body is, perhaps, not totally separate and totally dedicated to the role, but if it were totally separate and dedicated with its own infrastructure, it could cost more. Can you reflect on that conundrum in the various possibilities that you articulated?
43. **Dr Frawley:** As Mr Leonard has suggested, all of the models have strengths and weaknesses. If the model of a full-blown independent office were adopted, it would demonstrate that the Assembly was taking the matter forward on the same basis as the devolved Administrations in other jurisdictions. That model mirrors broadly those that are used in Westminster, Wales and Scotland, and it would allow the commissioner to develop parallel processes. There is much merit in having the ability to draw on that crossover of experience of, and insight into, procedures and protocols.
44. From my background in health, I know that the devolved Administrations are taking different directions on that central issue, so models can develop differently. Circumstances can impinge on that. For example, as a result of the unfortunate recent circumstances at Westminster, different arrangements for Standing Committees and advisory groups are emerging, and all of those are beginning to have an effect on the design and the framework within which that work is undertaken. There are issues relating to the future role of the Parliamentary Commissioner for Standards at Westminster.
45. One of the issues that impacts on me is to do with proportionality. The downside of having a full-time office or even a part-time office is that the level of workload is a significant factor in choosing the model. If the single model is chosen, issues will arise over the downtime that is involved in waiting for complaints to arrive. In 2007, we received 11 complaints; in 2008, we received nine complaints; and we are currently looking at eight complaints, which essentially cover five issues. We deal with a small number of complaints. That could always change, and one cannot predict circumstances.
46. A standing office to deal with those issues would represent an expensive overhead. A model in which there is an existing office recognises that there are periodic workloads, and that might be appropriate to our circumstances. I do not wish to sound like Job’s comforter, but I am always conscious of the fact that our population is 1.7 million, which is not on the scale of Scotland’s five million or, for that matter, Wales’s three million. Therefore, our model must be proportionate, to repeat the word that Mr Leonard used.
47. Therefore, it would not be sensible to build on another office, which has a very separate system. I cannot emphasise enough how the system that supports the Committee works; it is completely

- separate from everything else that we do in its technology, in the information systems that are used, and even the access levels that people have to that information.
48. I do not want my evidence to become a job interview or an advocacy arrangement, because that is not what I am looking for; there are other offices that probably could carry out the task. I simply think that the present model works.
49. The other advantage of the present model is that, over time, the Committee can decide to move away from it. Committee members could say that the model has served its purpose and that we are in a different place, that there is a different scale of activity to what was originally predicted, or that there is a complexity that is not being addressed effectively. Once you have moved to a full-time office, it is very hard to move back.
50. **The Chairperson:** Will you say anything more about the advantages and disadvantages of a fully independent office? Would there be any difficulties with the Assembly secretariat providing the administrative support to an independent commissioner? I ask that because those providing administrative support would arguably be dealing with the significant issue of the volatility and irregularity of business?
51. **Dr Frawley:** That is another piece of the infrastructure that could be addressed in that way. However, using the Assembly secretariat to provide administrative support would run the risk of breaching the commissioner's impartiality, although not as an individual. The Assembly is a closed village; I will not call it a bubble, as other people might, but those who work in the secretariat are part of a system. They are multitasking, doing different things for different Committees, and there is crossover. There is also pressure, which can be, on occasion, informal. Members of the secretariat are under some pressure, and, at the end of the day, all government business needs to be transacted with confidence in confidentiality.
52. Therefore, I am not saying that that could not happen or could not be done, but there would be a risk of someone working alongside the individuals who were being investigated and a potential for crossover into party political insights and perceptions, which could contaminate the process.
53. **Mr Bresland:** Have you estimated the additional cost to the Assembly of setting up a fully independent office?
54. **Dr Frawley:** I could not even speculate on how much that would cost. I am only talking about my own office. The Committee Clerk could probably provide a more accurate estimate, because he would be able to get a sense of the costs from other jurisdictions. My understanding is that the posts in Scotland or Wales are not full time. Your next witnesses may be able to provide clarification on that.
55. Obviously, the number of days that people are allocated and the level of remuneration would form part of the cost. There are further costs from advice that is offered, both technical and professional. There would be other costs from the potential of the Assembly secretariat to provide administrative support to a commissioner, which the Chairperson alluded to.
56. My secretary is the admin staff at present. When we are producing and preparing a report, it is redrafted many times to get the right balance, although it the final version may not look like it. In those circumstances, it is good to have someone to support you. It is very hard to do those tasks individually. It is very important that I have Mr MacQuarrie available to me as a second in command. It is equally important that I have administrative support available to me. Those are overheads that you could calculate, but I could not put a value on them today.
57. **Mr Bresland:** Would it possible to ask the Committee Clerk for that?
58. **The Chairperson:** We can do that.



59. How could the Assembly hold to account a commissioner who was appointed as a separate titled office alongside another independent body?
60. **Dr Frawley:** Clearly, the issue of accountability is vested in the Committee. It is always difficult in those independently created posts to get the level of sanction that people might feel appropriate. If the Committee wants someone who is independent, then making him or her accountable becomes quite a difficult issue. In my circumstance as ombudsman, I am accountable to the Assembly with regard to financial performance and activity performance. However, with regard to my judgements, the accountability for the ombudsman's office is through judicial review, which could happen at any time on any judgement that I make.
61. However, it is about the performance of the individual, and once the Committee has made one of those appointments, it becomes hard to see the circumstances — unless somebody stole the family jewels or silver — where you would say that you were not happy with the commissioner's decision or judgement. Someone will need to clarify what the basis of that accountability will be. Is it about the quality of the decision-making, attendance, the number of cases dealt with, or the time frames? Those are all reasonable questions.
62. One of the things that I have always argued, and which the Committee has never been comfortable with, is that the relationship between a Chairperson of a Committee and someone who is doing that work is quite important. It is hard to give account — at least as I understand it — to a Committee. It is a bit like an authority, and they need to build a consensus on the performance of the individual, set that down and then allow the individual to contribute to that debate. The accountability issue and how it is developed is important, and I cannot give the Committee an informed answer at this moment, other than the way in which I am accountable to the Assembly as an ombudsman.
63. **The Chairperson:** Finally, you referred to the issue of overshadowing, whereby, because of the prominence of your role as interim commissioner, that may be associated with your work as the ombudsman, and you gave a clear example of that. How concerned are you about that issue, or how big a concern is it, in general, if it were not necessarily attached to your office but to any office?
64. **Dr Frawley:** As the ombudsman, I have a risk register. One of the risks that I have identified is being the Interim Assembly Commissioner for Standards, because one of the key issues in any of our roles is reputation. Reputation is a huge factor in fulfilling one's function. In that situation, one gets into the sort of interchangeability of roles and the perception, particularly by the media in the way in which they speak about the ombudsman's office and how they have reported on an investigation into an Assembly Member. I remind them continually that it was the Interim Assembly Commissioner for Standards who reported on an Assembly Member.
65. However, that is part and parcel of the job. I am the Northern Ireland Ombudsman, the Commissioner for Complaints, and the Interim Assembly Commissioner for Standards. Those roles are interchangeable and people use them in that way. I go to meetings where I am described as the Commissioner for Complaints, the next minute I am the ombudsman, and then someone will describe me as the Interim Assembly Commissioner for Standards.
66. In a small jurisdiction such as this, it is inevitable, if one is to secure the best proportionate use of public funds, investment and infrastructure, that people will carry joint or dual roles. It comes with the territory, and one has to live with it and continually remind the opinion-formers, such as the media, that they are separate roles.
67. One of the issues in a design, depending on how you want to move from here, is whether you want a role within an existing office to investigate standards issues, or whether you want

- the office of a standards commissioner to be separate. That is a debate that you could have as well. I do not have a difficulty with that. On occasions, however, it has been a little frustrating.
68. At the end of the day, however, people will use language that makes sense to them. They will not be that worried about whether Frawley is the Commissioner for Standards or the ombudsman; they will use whatever phrase comes into their heads at the time.
69. **The Chairperson:** Those are all of the questions from the Committee. I thank you for what has been a very interesting and informative session. Your answers were very helpful, clear and forthright. Thank you very much indeed, and thanks also to John MacQuarrie.
70. **Dr Frawley:** Thank you, Chairman and members.
71. **The Chairperson:** The second evidence session is with Ms Felicity Huston, who is the Commissioner for Public Appointments for Northern Ireland. I welcome Felicity to the meeting. Thank you very much for attending. I know that you have not been well recently. You have put yourself out to come here today. The Committee appreciates your attendance all the more because of that. Thank you very much indeed.
72. The commissioner has submitted evidence in advance. Ms Huston's role as the Commissioner for Public Appointments for Northern Ireland is to regulate the process by which many of the public appointments in Northern Ireland are made. Very usefully, from our point of view, Felicity also chaired the selection panel for the newly set up Independent Parliamentary Standards Authority (IPSA) at Westminster, so she is in an excellent position to provide advice to the Committee on its inquiry. I ask Felicity to make some introductory remarks to the Committee, after which we will ask some questions.
73. **Ms Felicity Huston (Commissioner for Public Appointments for Northern Ireland):** Thank you very much, Chairman. Rumours of my demise were perhaps a little exaggerated, but my staff were keen to plead my case. I apologise if I sound a bit croaky.
74. I am very pleased to be here. I am grateful for the opportunity to elaborate a little on the short paper that I submitted to the Committee earlier in response to its investigation into the potential for a standards commissioner. As the Chairman said, I have a variety of experience of what may be called ethical regulation and oversight of how it is implemented. As the Commissioner for Public Appointments, I write and prescribe the code of practice by which public appointments are made. Public appointments, in this case, are those that are made by Ministers in our devolved Government. If all goes well, I will take over some of the more interesting public appointments that are currently made by the Northern Ireland Office Minister, such as certain ones relating to policing and justice, in the near future.
75. That is very much an oversight role of setting the standard, but I also have the power to investigate complaints. In addition, I carry out regular audits whereby I look in depth at how appointment rounds are being carried out and whether they have complied with my code of practice.
76. As well as that, I was a member of the House of Lords Appointments Commission (HOLAC) until September 2008. That body was set up by the previous Prime Minister so that it could no longer be said that he had all patronage over elevations to the House of Lords. He said that he would give the power to identify Cross-Bench members of the peerage to a separate organisation, which is one of the roles of HOLAC. It was chaired at that time by Lord Dennis Stevenson. As well as identifying Cross-Bench peers, which we did through a very open process, we also had a role of vetting for probity and integrity the party political peerages that were put forward by the various leaders of our political parties.

77. During my time there, members may recall the cash-for-peerages scandal, which resulted in the then Prime Minister being interviewed twice by the police. It was the House of Lords Appointments Commission that first uncovered that issue. We put various measures in place to try to prevent any inference that any people may be buying their peerages, for want of another expression. Therefore, I have also seen how things can go very wrong.
78. I have very recently chaired the selection panel for the Independent Parliamentary Standards Authority. We identified the chairman, Sir Ian Kennedy, and a collection of board members from a variety of specialisms, including a former Lord of Appeal, a former Member of the House of Commons, and senior Auditor General. That was quite an interesting experience, and I will elaborate on that a little as we go on.
79. One interesting point about the post that you are considering is the complicated relationship between an Assembly commissioner and the Assembly. As we are aware from the case of the three Members of Parliament being charged with accounting fraud, they are trying to appeal on grounds of parliamentary privilege as a reason why they should not be taken to court. There is an interesting tension at the moment between the independence and supremacy of a Parliament vis-à-vis the need to have somebody in place to demonstrate openly to the outside world that they are there to make a judgement on elected representatives when something goes wrong. It is a difficult area.
80. The Committee asked Tom Frawley earlier about accountability and so on, and that is very problematic. However, taking into account the issues within the greater political world about people's opinions of elected representatives, it is important that an Assembly commissioner would have the necessary authority to do what he or she is asked to do. It is important to clearly see that he or she is independent of those who are regulated.
81. As Commissioner for Public Appointments, there is great difficulty around the rather nebulous statute that set up my office. I do not have clear independence or what anyone would measure as independence. I do not have my own staff, a delegated budget or clear sanctions. Until recently, I was based in Castle Buildings surrounded by a Department that I regulate and that funds me. That is a constant difficulty. The general public do not see me as the independent regulator that I should be because of those circumstances; nor does the Northern Ireland Civil Service, because it holds the purse strings.
82. Members will be aware that OFMDFM is cutting staff. One of my staff is being taken from me, which is a disproportionate cut compared to those being applied to anybody else in the Department. It is almost a case of, if I regulate them and say things that they do not like, look what happens. It is important that when a commissioner is in place, he or she has the control or the trappings of independence that are necessary. That does not have to be a grand panoply of staff, but they must have clearly defined independence that can be measured, and statute that clearly lays out what they can and cannot do.
83. The commissioner should also be able to take complaints directly. I believe that complaints currently come through the Committee, but I think that there is an issue as to whether people might think that that is a filter. That has to be looked at carefully, and there must be some way of making clear sanctions, because we are aware of what is going on in Westminster.
84. The Parliamentary Commissioner for Standards, John Lyon, has investigated a complaint, found that an MP has not followed the codes of conduct, and then, to the amazement of the general populace, the MP has merely been asked to apologise to Parliament. In one or two cases, people have been astonished that that was all that was asked, and that is because the report went to the Committee in London and

- that was the result of it. That is an important issue, but it is a difficult one because of the importance of the supremacy of the Assembly. The Committee cannot be seen to be interfered with either. There is no easy answer to that.
85. I expect that the commissioner will be appointed by the Assembly, and I think that the person in post should be able to be removed only if they had gone bad. The Comptroller and Auditor General can be removed under extreme circumstances, and I think that you would have to have that in place as well. Otherwise, there would be a belief that the commissioner could be removed if they do something that the Assembly does not like. We remember what happened to Liz Filkin in Westminster as Parliamentary Commissioner for Standards. She asked too many difficult questions and found herself removed from her position. Even though I have heard arguments that that was quite appropriate, it is remembered by a lot of people who take an interest in this form of governance.
86. One of the key ways for providing accountability and stability is fixed-term appointments. There are lots of models for such appointments. My appointment was for three years, with the potential for another three-year period. I stated in my code of practice that no one should be appointed for more than 10 years to any post, because that is long enough for all sorts of reasons. The difficulty with short appointments, with the potential for a second one, is that towards the end of the first appointment, one has to provide caveats to any plans. I find myself having to say that I will do such and such — if I am still in place. That happens after around two and a half years.
87. There is also the worry that, if I upset the First Minister and deputy First Minister, they will get rid of me. Three years is not very long. My colleague in England was in office for a three-year term, but she asked to have the legislation changed, and she now has a fixed five-year, non-renewable term. Janet Gaymer knows how long she will be in office, what she can do, etc. Unless she goes bad, she has security of tenure.
88. The Police Ombudsman has a seven-year term, which is quite a long term, but, because it is a fixed term, there is no concern; he does not have to look over his shoulder and wonder whether his political masters will decide that he should move on because he is asking too many difficult questions. A fixed term is also important for planning purposes, and it is a good way of giving clarity to the post and showing that the Assembly has set it up to be independent.
89. I will briefly speak about the appointment of the commissioner. I am very keen on open and transparent competitions. Those are carried out for all public appointments where I have any say, and it is important that that should be the same for the Assembly commissioner. The days of the tap on the shoulder should be gone. They have not gone, but they are fast disappearing. However, strangely enough, people still get appointed to posts, and no one knows how it happened, just that those chaps got the jobs. That would be a terrible message, and I am sure that it is not something that you are thinking of doing.
90. The competition for appointment to the Independent Parliamentary Standards Authority (IPSA) was run in the autumn. The legislation went through Parliament during the summer at something of a gallop. It was the Dangerous Dogs Act 1991 all over again, but this time it was for MP regulation. It is riddled with difficulties, including that of the definition of the individuals who would sit on that authority. We did what we could with it; I was asked to chair the panel by Mr Speaker Bercow, which was organised by the Ministry of Justice, and the competition was run with the help of headhunters because the team of civil servants involved had very little experience of such work. They did a good job, because a lot of people applied to the panel for appointment. There was an advertisement in 'The Sunday Times' and all the usual stuff.

91. The selection panel included me; one of the assistant Comptroller and Auditor Generals; a former Lord of Appeals, Sir Christopher Rose, who some of you may know as the Chief Surveillance Commissioner in the UK; and an assessor who works with my colleague in England. The panel was given authority to go ahead and make the selection.
92. One of the biggest difficulties was that we were in the midst of a firestorm of stories and constant policy changes from Number 10 at the time of the interviews. Christopher Kelly published his report in the middle of the interview process, so that made life rather exciting. Please, if you are planning to run a recruitment competition, any controversial reports about it should be published either side of the interviews, not in the middle of them. One had to say, at the beginning of the day, that, at that point, there was a Commissioner for Standards but we were not sure whether there would still be one by the end of the day. Things like that made it very difficult.
93. Despite that, it was interesting to see the enthusiasm that the general populace had for coming forward. We had difficulty finding people in some of the specialist categories, but a lot of lay people were very keen to become involved because they were very exercised about what was going on in our Parliaments.
94. We shortlisted, interviewed etc, and then we were placed in a slightly unusual position in that the Speaker was not going to make the appointment; he was going to take the names to the Speaker's Committee for the Independent Parliamentary Standards Authority, which would then make a recommendation to Parliament. I presented the names to the Speaker, and he took it to the Speaker's Committee, which is a new structure in Westminster. That Committee accepted the names and the Speaker's recommendations, but they were still subject to debate in Parliament. You may remember the outbreak of concern about what Sir Ian Kennedy's salary might be. Then later, when a former MP was selected, there was a lot of concern that the particular candidate was not as representative of the main parties as they had expected. That was a bit challenging for them. I know that there were complaints about various things, but nobody said that it was not an independent process. It worked quite well in that way.
95. There was talk about the criteria, and, if you pass legislation, please take a deep breath before the criteria for the post are drawn up, because I was convinced that not even the archangel Gabriel could have fulfilled all the criteria for the post of Chairman of IPSA, as there was such a collection and a wish list contained in it. Therefore, it is important to look hard and realistically at what can be done and what is needed.
96. The other issue with IPSA that fell out of the wash from Sir Christopher Kelly's report was that a commissioner was to be appointed for the Independent Parliamentary Standards Authority to take complaints about MPs and their allowances and whatever else IPSA might end up doing. However, that role has changed and has been, one might say, downgraded to that of a compliance officer, and the Government have said that they will change the legislation to address that. I am not really sure what the thinking was behind that, except that it was going to cause confusion with the commissioner in Parliament already.
97. The nub of the issue is the increasing number of regulators that we are producing in Northern Ireland as a model of what is going on everywhere else. I agree with Tom Frawley's view that the post does not need to be full time. I sincerely hope that it does not need to be a full-time job because that would suggest a very disgruntled population. The post could perhaps be joined with that of another investigative commissioner.
98. There has been a major review of all commissioners and regulators in Scotland, and there has been some

- bringing together of posts. For example, my colleague, the Commissioner for Public Appointments in Scotland, will have a shared service with a commissioner for their Parliament. It is a way of reducing the number of those roles. Her post is not full time, nor is the other commissioner's post. A shared service is a way of keeping staff, because people are needed to continue the work and to answer the phone and to deal with the press when they are looking for the commissioner. However, the jobs do not need to be full time. I do not think that Northern Ireland needs yet more commissioners, as that would cause great confusion.
99. Those are just a few thoughts. I am happy to answer any questions.
100. **The Chairperson:** Thank you for that useful introduction.
101. **Mr Leonard:** You are very welcome. The next step for this Committee is that we cannot be protective, and we need to have a bigger goal. You spoke of a few issues, such as the danger of the Committee being seen as a filter and the trappings of independence. What is on your mind in relation to that? I want to tease out the relationship between the commissioner and the Committee to show to the public that the process is thorough, dedicated, and transparent and that the commissioner's relationship with this politicised Committee, although we have bigger-than-party interests, will not be damaging to the process.
102. **Ms Huston:** That is one of the greatest difficulties at the moment. The public's opinion of the political class is at its lowest since goodness knows when, and what has gone on with the Committee in Westminster has not helped at all, because it has been seen to protect its own. That is how the public see it. The Speaker's Committee that was set up to help to put IPSA in place, among other things, was filled with people who were also on the Standards Committee. One could think of several people who are notorious in the press for their desire to protect Parliament to the exclusion of all else. Therefore, a terrible distance has
- come about, and it will be interesting to see how many of those people will be back in their constituencies after the elections.
103. There is a terrible problem, as everyone thinks that all parliamentarians are there to look after themselves and their friends, to put it bluntly. Therefore, one needs to have a commissioner to whom one can take a complaint directly. My understanding is that, at the moment, a complaint must go through this Committee. You must appoint somebody who has the sense to judge whether a complaint is vexatious. The person who is appointed will not take just any old complaint. I think it shows a maturity on all sides if you do not feel the need to protect yourselves and decide whether someone has a valid complaint or not. That should be appropriate, and it is an issue for the Ombudsman, because complaints about the Health Service have to come through MLAs to him. That is a barrier for people who wish to make personal complaints. For the sake of demonstrating openness, it is important to have that independence, and it show would great maturity.
104. Independence means having an Assembly commissioner who is unlikely to have his or her budget cut or staff taken away. It means that the commissioner should be given his or her own offices and so on, and he or she should not be at the whim of those who write the cheques. It was suggested that those staff should be part of the Assembly secretariat. I do not understand in sufficient detail how staffing works in the Assembly, but that might raise issues. My staff are technically OFMDFM staff, and that is why one of them can be taken away from me. It is important that staff belong to the commissioner in whatever structure the office takes.
105. It is also important that the commissioner has the freedom to spend his or her budget as he or she wishes, within the constraints of accepted practice and the requirement to submit accounts to the Assembly. My colleague the Commissioner for Public

- Appointments in Scotland has such duties, and she has her own budget. It is important that the commissioner can tell the public that he or she is his or her own man or woman and that, although they work with the Committee and the Assembly, they have not been assimilated by the structure.
106. **Mr Leonard:** Otherwise, they become part of the same institution.
107. **Ms Huston:** Yes, and what would be the point in that?
108. **Mr Leonard:** Therefore, some sort of statement or guidelines on the relationship between the Assembly and the commissioner's office is as important as everything else.
109. **Ms Huston:** Yes, it is.
110. **Rev Dr Robert Coulter:** I hope that I am correct in interpreting your belief that the commissioner must have clear statutory powers to enforce his or her findings. What exactly do you mean by that? Are you saying that, for example, if the commissioner were to consider that a breach had occurred, the Committee should not have a role in coming to that conclusion? Do you believe that the commissioner's independence should put him or her above the collective elected Members of the Assembly?
111. **Ms Huston:** As I said earlier, that is a great difficulty, given the public perception of how parliaments work. At Westminster, the approach of the Committee on Standards and Privileges has caused people to feel that such a structure merely looks after its own and does not do the right thing. If the commissioner were to be above Parliament, that would create tension because the only person who is above Parliament is the Queen.
112. The commissioner should be able to make a judgement and a deliberation on a complaint and impose a suitable sanction. Should there be an issue with that, it should perhaps be for the Assembly, rather than merely the Committee, to debate. That is not because the Committee would be an inappropriate structure to make a judgement, but because, in the current environment, people have lost faith in that sort of set up. That reality is reflected in the newspapers and can be heard when talking to people.
113. **Rev Dr Robert Coulter:** So, do you think that the commissioner should not have enforcement powers?
114. **Ms Huston:** I am very aware that I have no powers, apart from being able to name and shame. My colleague in Scotland, however, has the power to halt a competition if a Minister is not complying with the code of practice. If a Minister fails to comply with the code of practice, the Commissioner for Public Appointments in Scotland may make a report, which is laid before Parliament and discussed. One can see that sort of process, through which a Member can be sanctioned, being used. If a parliamentarian were to feel that that sanction was inappropriate, perhaps there could be a mechanism for bringing the matter to the Assembly.
115. **Rev Dr Robert Coulter:** Would that also apply to Ministers?
116. **Ms Huston:** A code of conduct is proposed for the Assembly, not for Ministers. The Commissioner for Public Appointments in Scotland has a code of practice for ministerial appointments, so that is why she deals with Ministers, as do I. A Ministers' code of practice is a different matter. I did not think that the Assembly commissioner would deal with Ministers, but I may be wrong.
117. **Rev Dr Robert Coulter:** The problem is one of differentiating between when a Member is acting as a Minister or as a Member for his or her constituency.
118. **Ms Huston:** Yes, that is one of the difficulties. It depends on the nature of the complaint. I presume that the subject of a complaint would differ depending on whether it relates to a Member acting as an MLA or as a Minister.
119. **The Committee Clerk:** The new code of conduct clarifies the extent to which the

- scope of that code applies to Members who are also Ministers.
120. **The Chairperson:** You referred to an open and transparent process. Does that necessarily mean running a publicly advertised competition with a defined post, role specification and eligibility criteria? How is that reconciled with the suggestion that the new office could be tagged on to another public office?
121. **Ms Huston:** The post must be advertised publicly. I do not think that producing an Assembly commissioner from out of a hat, as the public would see it, and presenting that person after some form of deliberation would be considered open and transparent. Modern government is not about that. As far as possible, we have competitions. Defining criteria, eligibility and so on would be important to that process, which must be measured in some manner or other.
122. For example, just because I have the required skills and experience for my post as Commissioner for Public Appointments, it does not mean that I could be the commissioner for parliamentary standards. However, there is no reason why, when advertising for the post, one could not look for people like me, like the ombudsman or like various other people who work part time.
123. **The Chairperson:** That clarifies things.
124. **Ms Huston:** It is not unusual for someone perform more than one role. On the other hand, the post need not be filled by only one person. One might consider an office of commissioners for parliamentary standards that would stretch across Executive and legislative sections of our Government. The Scottish Parliament is working more and more towards bringing those roles together. Among the models it considered was the appointment of three or four commissioners to fulfil the various functions. In the past, the Public Administration Select Committee considered including the roles in a single office, so a collection of part-time commissioners would be
- looked after efficiently through a single administrative office.
125. **The Chairperson:** You said that you might be able to provide an oversight role in the appointment process. We appreciate that offer. What would that involve?
126. **Ms Huston:** Setting aside the peculiarity that my job is to regulate appointments made by Ministers and this appointment will be made by the Assembly, my oversight could involve some sort of independent involvement in the panel, for instance, advice on how the appointment process should be run. Departments often discuss matters with me, such as the proposed criteria for a new body or organisation, so I may be able to help with those sort of issues. My code of practice, which is a set of guidelines and principles by which all appointments should be made by Ministers, could be used in the process.
127. **The Chairperson:** I would like to clarify a matter that has, to some extent, already been covered. You have said that a commissioner's freedom from the direction or control of the Assembly should be set out in statute. You have talked about the commissioner having clear, statutory powers to enforce his or her findings. There is then the difficulty or tension between that statement and the role of the Assembly as a whole, MLAs in general and this Committee. How would that balance be struck? Where would the cards ultimately lie? What authority and independence would the commissioner have vis-à-vis that of the Assembly or any part of it?
128. **Ms Huston:** There is no perfect answer to that. A single-term appointment would lend authority and independence to the commissioner. It would also give the commissioner an opportunity to carve out his or her place, clear in the knowledge that no one is looking over his or her shoulder.
129. I am not sure of the answer. If it were not for the environment nationally with regard to the political class, as they would refer to it, and all that has



- been going on, one would say that the commissioner could work closely with the Committee, and that would be fine. However, I do not believe that the populace at large would be terribly happy about that. The electorate believes that separation is needed. I am not sure what would be the best way to do that.
130. I would say that there is a need for the commissioner to be able to enforce decisions and sanctions, etc, because I am aware that I do not have that in my post. That undermines my position constantly. I compare my position with that of the Scottish commissioner, who has powers that help to reinforce her position, independence, et cetera. When I say to people who are interested in public appointments or who have an issue with one that I can do nothing but point out that, indeed, something was not done properly, they do not think much of that. It is frustrating. Therefore, you do not want to set up a commissioner in the Assembly who will be in a similar situation.
131. **The Chairperson:** Thank you very much indeed, Felicity. Your evidence is especially useful. I should have said to Tom and John earlier that we are, of course, in open session. Therefore, you are perfectly free to remain and listen to the rest of the meeting if you wish. Thank you for what you have done.
132. The third evidence session is with Mr Jeff Cuthbert AM, who is Chairperson of the Committee on Standards of Conduct in the National Assembly for Wales and Mr John Grimes, who is the Clerk to that Committee. I welcome you. Thank you very much for taking the considerable trouble to travel from Cardiff.
133. The National Assembly for Wales is in the process of implementing proposals similar to those that we are currently considering, although it is considerably further down the line with them. The Committee on Standards of Conduct has brought forward a commissioner for standards measure. For that reason, it is particularly helpful for us to hear about its experiences.
134. I noticed that among your various responsibilities in the Welsh Assembly, Jeff, you are chairperson of the cross-party healthy living group and co-chairperson of the cross-party beer and pub group. That indicates good, balanced judgement. Therefore, for that reason also, we look forward to hearing your evidence. I invite you to brief the Committee.
135. **Mr Jeff Cuthbert (Committee on Standards of Conduct, National Assembly for Wales):** Thank you very much indeed, Chairman. I try to keep those all-party informal group responsibilities — certainly, the latter one on beer and pubs — separate from my formal duties.
136. I am delighted to be here. Mr John Grimes is Clerk to the Committee on Standards of Conduct. In fairness to him, I should point out that he was not the Committee Clerk at the time when that work was undertaken. Nevertheless, he has familiarised himself fully with procedures, and he will certainly deal with any questions of a more structural or constitutional nature.
137. I am very pleased to be here. It is my first visit to the Northern Ireland Assembly, and, indeed — I am ashamed to say it, for someone of my age — it is my first visit to Northern Ireland. Therefore, I am doubly delighted to be here. I hope that you find my visit useful.
138. By way of introduction, it might be useful for me to say that we will do our best to answer any questions that you have. A little while ago, you received a paper from us, which I trust was beneficial to your work. My senior researcher, Alex Still, is with me. If there are any issues that we cannot address adequately today, we will ensure that we send your Committee Clerk that information in due course.
139. As you said, Chairman, I chair the Standards of Conduct Committee in the National Assembly for Wales. It is a much smaller Committee than this one. It used to be around the same size. Since the Government of Wales Act

- 2006 came into force, we have become a much smaller Committee of just four members; one from each party in the Assembly. Therefore, we are not party-balanced in that sense. I represent the Labour Party on that Committee, and I have the honour of being its chairperson.
140. The perceived main function of the Standards Committee is to consider complaints that the current standards commissioner has upheld as having some merit. It must then decide whether it agrees with the commissioner's decision and, on that basis, whether to issue a penalty or to dismiss the case as being minor. I am pleased to say that, for the past 17 to 18 months, the standards commissioner has not seen it necessary to refer any such complaints to us, which shows how well behaved the Members of the National Assembly for Wales are, but that is not to say that we have been idle — certainly not. The work that we have done on that measure shows that we have been extremely busy. Indeed, we are considering other issues, such as protocols on the recording of information on family members who are employed by Members and the recording of other employment that Assembly Members may have. We, therefore, have a broader remit than simply dealing with disciplinary cases.
141. I wish to summarise some of the key points from the written information that we sent. We decided that the post of the commissioner should have a statutory basis, mainly to ensure that there will be true independence from the National Assembly, so that that person can act completely objectively in investigating any complaints and that the public can, therefore, have full confidence in the deliberations of whoever the statutory commissioner may be. Although that work was in hand before the unfortunate incidents in another place, those incidents have certainly given extra impetus to our work and given us greater assurance that we have done the right thing.
142. One of the key differences between the statutory commissioner, once appointed, and the existing voluntary commissioner is that the statutory commissioner will have authority to compel witnesses to appear at hearings and to require that documentary evidence is produced. At the moment, such things are more or less voluntary. However, I am sure that the current standards commissioner has not had any difficulty in getting the co-operation of Members or those who complain about the conduct of Members. The statutory commissioner will also have a responsibility to advise on the code of conduct, especially if he is requested to do so by the National Assembly.
143. What is explicitly excluded from the duties of the standards commissioner — I was pleased to have heard the earlier evidence sessions — is responsibility for any aspects of the ministerial code. That does not mean that Assembly Members who are appointed as Ministers will escape his or her attention. However, the commissioner must make it clear that the complaints that are being made relate to the conduct of that person as an Assembly Member; for example, a complaint concerning a relationship with a constituent or expenditure on a constituency office. Issues that relate to the function of that Assembly Member as a Minister remain within the ambit of the First Minister under the ministerial code. That appears explicitly in our measure.
144. We believe very much that the post of the standards commissioner should not be a full-time one. The current standards commissioner works, on average, four days a month, and, over the past couple of years, he has incurred costs of about £20,000 per annum to operate his post. In addition to that, the cost of in-kind support from other Assembly staff has worked out at about £10,000 to £11,000 per annum.
145. Finally, at this point, I wish to make it absolutely clear — this was quite an important part of our deliberations — that, although we want to give as much

- power and authority as we can to the standards commissioner, it is not the job of the standards commissioner to initiate complaints.
146. The Commissioner for Standards must receive complaints, but we recognise that, during the investigation of complaints, matters may arise that could involve other Assembly Members. In such circumstances, the duty of the commissioner is to refer the matter to the Clerk to the Assembly, who is the chief accounting officer, to investigate and decide whether there is anything to refer back to the commissioner for further investigation. That is quite an important principle to enshrine in our measure. We are also very proud of the measure, because it is the first Committee-driven one that has been approved by the National Assembly for Wales.
147. **Mr Ross:** Welcome to the Assembly and to Northern Ireland. The Committee has visited the Scottish Assembly and Westminster; Wales is the only part of the UK that we have not gained first-hand knowledge of with regard to the issue of standards. Will you explain how members of the public make a complaint? Do they make a complaint to the Committee Clerk, or do they make it directly to the Commissioner for Standards?
148. **Mr Cuthbert:** Members of the public make their complaints directly to the Commissioner for Standards; they can appeal to him or her without having to go through any other officer of the National Assembly.
149. **Mr Ross:** You said that you have not been handed any matter by your commissioner for 17 months. If the commissioner determines that no action is required or that the complaint has no basis for investigation, does it not come to you at all?
150. **Mr Cuthbert:** No, it does not. We have just received an annual report from the current commissioner, in which he was able to inform us that there were quite a number of complaints that he had received and investigated, but had not felt it necessary to pass any of them to the Committee for Standards.
151. Between March 2005 and 31 December 2009, 39 complaints were received and investigated by the commissioner. Two of those are still undergoing examination and may be brought to our attention. Unfortunately, there was a recent occurrence that may result in a complaint; I would not be surprised if it did. Thirty of the complaints were ruled inadmissible, and one was discontinued because no further evidence was provided by the complainant. Three complaints were dealt with swiftly: they were of a minor nature and the Assembly Member apologised for and rectified his or her error. Three complaints were referred to the Standards Committee, but that was in the earlier part of the period.
152. **Mr Ross:** Many of the complaints that our Committee Clerk has received have originated from media reports; someone has read something in a newspaper and decided to make a complaint. What experience have you had of that in your Assembly, and how does the commissioner deal with such cases, given that the only evidence is a newspaper article?
153. **Mr Cuthbert:** That is a difficult question for me to answer, because I am not party to the complaints that the Standards Commissioner chooses not to forward to us. There have been examples of articles in newspapers that have led to some complaints. However, the Standards Commissioner tries to ensure that there is substance to the complaints and that they are not due to journalistic license. Therefore, hard evidence is required by the commissioner before he proceeds with any complaints.
154. **Mr Ross:** Under the current system, the complaints go directly to the Interim Assembly Commissioner for Standards. If the Committee comes across a newspaper article about a particular big story, like we have had here recently,

- does it have the power to initiate an investigation?
155. **Mr Cuthbert:** No. Anyone in Wales, including Assembly Members, can initiate a complaint. That also includes the four Assembly Members who are on our Committee, but, of course, if they initiated a complaint, they could not serve on the Standards Committee for the duration of the consideration of that complaint.
156. **Mr Ross:** What if it is not a complaint as such, but you believe that it is in the public interest to have an investigation on something? Would that have to come from an individual Member?
157. **Mr Cuthbert:** In your experience, Mr Grimes, what do you think is the right response?
158. **Mr John Grimes (National Assembly for Wales):** If something happened that was of concern to Members, it would be raised as a complaint by Members other than those on the Standards Committee. If there was a feeling that there was something to be looked at, the matter would end up with the Standards Commissioner one way or another. It would not involve the Committee as such.
159. **Mr Cuthbert:** From memory, very few, if any, complaints have been initiated by Assembly Members.
160. **Mr Ross:** You mentioned how your Standards Commissioner has the powers to compel people to give evidence. Our interim commissioner cannot do that currently, but this Committee has the power to do that. Does your Committee have the power to compel Members to give evidence to you or your commissioner? Does the commissioner have difficulty in getting them to do so?
161. **Mr Cuthbert:** Under the Government of Wales Act 1998, I am pretty sure that Committees — certainly scrutiny Committees — have the power to compel. I am not sure whether that is the case for the Standards Committee because that is established under a different Standing Order, and because of our relationship with the Standards Commission. I qualify all of my remarks by saying that that person is not in post yet, so we do not have any experience of any difficulty to draw upon. However, I am not sure whether the Standards Committee could compel someone to appear separately from an investigation of the Standards Commissioner.
162. **Mr Grimes:** The powers that we have relate to functions that are exercised by Ministers and devolved functions, so I am not sure whether that would read across to the way in which Members behave, and standards issues. That is probably one of the reasons why it is important to have that in the measure to clarify that issue.
163. **Rev Dr Robert Coulter:** Thank you for coming to the Committee today and for your help. What sanctions can be applied to Members who are found to have breached the code? Who determines what those sanctions should be?
164. **Mr Cuthbert:** I am sure that Mr Grimes will assist me in this regard. Once a report is received by the Standards Commissioner that a complaint has been upheld, the Committee receives that as evidence and can then make a decision to recommend one of a number of actions. It could decide that no breach has been found, and that the complaint should be dismissed. It could decide that a breach has been found, but that it is a failure of a minor nature and that the complaint should be dismissed. It could decide that a breach has been found and that no further action should be taken.
165. The Committee could, however, decide that a breach has been found and that the Member should be censured under Standing Order 16. Perhaps we could make available that Standing Order. Furthermore, it could decide that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time, which is the most serious outcome. That specified time would

- be a matter for further consideration. If excluded, the Member concerned would not be entitled to draw salary and allowances.
166. **Rev Dr Robert Coulter:** That was the question that I was going to ask.
167. **Mr Cuthbert:** I think that I am correct.
168. **Mr Leonard:** It is good to see you. You are very welcome. If I have picked up anything wrong, please correct me. I am interested in a couple of the tensions that seem to be around. I do not mean that in a negative way; we have to resolve the same tensions between where the Committee finishes and where the Assembly, per se, comes in.
169. You said that its statutory nature gives the Committee independence, and in your submission you stated that the Committee:
- “Must report to the Assembly on the outcome of...investigation”.*
170. Is that information filtered through the Committee on behalf of the Assembly, and what is the relationship between the Committee and the officer concerned? Furthermore, on the issue of dismissing without investigation, are the reasons for dismissal fed back into the system?
171. **Mr Cuthbert:** When you say dismissal, do you mean of the report?
172. **Mr Leonard:** Yes. I am referring to the Committee’s:
- “ability to dismiss the complaint without reporting.”*
173. You detailed that in your submission under paragraph 10, which deals with the investigation of complaints.
174. Is a report sent back to the Assembly to advise under what grounds the complaint was dismissed? Where do the responsibilities lie among the officer, the Committee and the Assembly overall?
175. **Mr Cuthbert:** John, can you comment on that?
176. **Mr Grimes:** The commissioner reports to the Committee.
177. **Mr Leonard:** Therefore, the report is not made to the Assembly, but to the Committee?
178. **Mr Cuthbert:** Yes.
179. **Mr Leonard:** And the Committee acts on behalf of the Assembly?
180. **Mr Cuthbert:** Yes, but as it says in the Committee’s recommendations in clause 7(1)(2), as soon as may be following its decision, but not sooner than 10 working days after providing the Member complained of with a copy of the Committee’s report, the Committee will publish the report of its consideration and lay it before the Assembly along with the commissioner’s report to the Committee.
181. **Mr Leonard:** OK. I was just trying to establish the sequence. Are the reasons for dismissing the complaint without a report given to the Assembly?
182. **Mr Cuthbert:** Not other than statistically. In those circumstances, the commissioner does not need to report to the Committee except to recommend any action that may be needed to clarify or interpret rules for future reference. Therefore, it is the lessons that were learned, rather than the specific complaint, that is reported on.
183. **Mr T Clarke:** It seems to me that the complaint is left to the commissioner for reasons of independence, and, for that reason, it is not necessary to report back for the Committee to reopen that investigation. Is that correct?
184. **Mr Cuthbert:** Yes, the Committee does not reopen the investigation. However, it is required by Standing Orders to receive the commissioner’s findings and decide whether it agrees with them. If the Committee wishes, it can also call the Member before it to ask him or her questions and can receive other evidence and then come to a decision. As I said earlier, that may be that the Committee does not agree with the commissioner’s decision and, therefore, take no further action, or that it does agree, which means that it will then

- decide on a course of action depending on the nature of the offence.
185. **Mr T Clarke:** If the commissioner makes the suggestion that no further action is required and the Committee disagrees with that position, what do you do?
186. **Mr Cuthbert:** Do you mean in the event that the complaint is not upheld?
187. **Mr T Clarke:** Yes.
188. **Mr Cuthbert:** In that case it would not come to us. At that point it ends.
189. **Mr T Clarke:** Therefore, the Committee does not have the ability to re-examine the complaint, or disagree with the commissioner, because it must accept the determination?
190. **Mr Cuthbert:** Yes, and, strictly speaking, the Committee is not aware of the issue itself.
191. **Mr T Clarke:** Rev Dr Coulter raised a point earlier and you said that one of the powers that the Committee has is to expel a Member for a period of time.
192. **Mr Cuthbert:** Exclude.
193. **Mr T Clarke:** Sorry, exclude, and they would lose their pay and allowances for that period. What allowances would that Member lose? The loss of his or her office cost allowance could have also have an impact on their staff.
194. **Mr Cuthbert:** We will check that and get back to you with clarity on that question.
195. **Mr Bresland:** If a Member is found to be in breach of the code, has he the right to appeal?
196. **Mr Cuthbert:** Yes. The procedure contains a right to appeal. The Member found has to appeal to the Presiding Officer within 10 working days of having received the decision. Should such an appeal be lodged, the Presiding Officer must appoint a further committee, an Appeals Committee, consisting of four Assembly Members who must not have been connected in any way with the original hearing, to consider the appeal. The Appeals Committee cannot reopen the case, but can decide whether there have been serious inaccuracies or major pieces of evidence not considered that were pertinent to the case, or whether due process has not been followed.
197. **The Chairperson:** From what you have said, I have a fair idea of what your answer to this question will be. However, I should ask whether any media comment is made when an investigation is being carried out to the effect that a complaint has been made and is being investigated, or is any other comment to the media made?
198. **Mr Cuthbert:** If you are asking whether there may be leaks from time to time, the answer is yes. However, we do not issue statements until matters are resolved.
199. **The Chairperson:** Can I ask about resources? You referred to the costs to date. Under the new scheme, how will the office be resourced and how does that relate to the independence of the office?
200. **Mr Cuthbert:** I will invite John to contribute to answering that question in a moment. Essentially, we do not envisage that the post will be a full-time one. We do not rule that out, but it is extremely unlikely that that will be necessary. Working on the basis of current practice, we anticipate that it will take four or five days a month. The cost, as I mentioned, may be £20,000 per annum.
201. We envisage that support will be drawn from other offices paid through the Consolidated Fund, which is a central fund for these matters in Wales, such as the offices of the Ombudsman and the Auditor General.
202. **Mr Grimes:** I think that Jeff mentioned earlier that the commissioner currently costs around £23,000 a year. The remuneration of the new commissioner will be met directly from the Consolidated Fund in the future. That is based on the assumption that there is no significant increase in the level of business. However, we really do not know that that will be so.

203. **The Chairperson:** When you say that that cost will be met out of the Consolidated Fund, it has to go through some mechanism. Does it come through a Minister or a Department?
204. **Mr Grimes:** The measure provides that it is a call on the Welsh Consolidated Fund, so there is no Budget motion required. The cost of staff to support the commissioner, is currently about £10,000, plus accommodation costs of £3,000. At present, the staff are Assembly staff. Those costs could be met from the Consolidated Fund. However, as you have discussed already today, it is probably too small to be significant, so the measure provides that the Assembly Commission will provide that funding. It will then appear in the Assembly Commission's Budget motion. Whether the commissioner handles his staff directly or uses another office, such as that of the ombudsman, is to be decided in the future.
205. **Mr Ross:** One of the problems we have had in this Committee since the restoration of devolution is that it tends to split down party lines. If that is not the reality, it is the perception. If we do not split down party lines, we may split down unionist/nationalist lines. That is one of the most difficult things that members have had to come to terms with. We will have to get around that.
206. Do you think that, by adopting your set-up of having an individual from each party, irrespective of party strength, we will get around that issue? Might it mean in some cases that all the other parties will gang up on one? All the other parties may want to stick the boot into the Government parties.
207. **Mr Cuthbert:** I understand the political realities. The work of the Committee on Standards of Conduct is provided by four Members. We do not have a scrutiny role as such, and we do not hold Ministers to account, so the need for party balance is not so necessary. However, before the Government of Wales Act 2006 came into force, it was felt that, because the Committee was much larger than it is now, some members of the Committee had a tendency towards tribal loyalties to their parties. I have no doubt that that happened, because I sat on the Committee at that stage. There is no hard evidence to show that that happened, but I am sure that that was the case.
208. I must say that the four members of the current structure, regardless of whether that be the Labour Party, the Conservative Party, Plaid Cymru — the Welsh nationalist party — or the Liberal Democrats, act objectively. They put party loyalties to one side because there is no argument to be won. However, there is also a practical reason for that. The Assembly comprises just 60 Members, and the demands on their time from scrutiny Committees and other Assembly Committees, which are much larger than ours, mean that we must give — we have done this — serious consideration to how we allocate Members' work.
209. **The Chairperson:** There are no further questions. I neglected to thank you for the evidence that you sent in advance. It was substantial and extremely pertinent to our work. This witness session has also been extremely useful to us, so thank you very much. We hope that you enjoy the rest of your stay in Northern Ireland. You are welcome here on any occasion.
210. **Mr Cuthbert:** Thank you very much indeed. It has been a pleasure to be here.







- donations. I am happy to talk further about those issues if members so wish. However, I will not say any more on that for the moment, except that in its report, my committee recommended that dual mandates should go, ideally by the next Assembly election in 2011, or if not, by 2015 at the latest, and it recommended that the employment of family members should stop after a transitional period. I say that because the steps that we recommended are essential and necessary in restoring public confidence in politicians and the political process. They are necessary but not sufficient.
217. The subject of this Committee's inquiry is very much part of the same process. The surveys that the Committee on Standards in Public Life has undertaken of public views of politics and those in public office have consistently found that there is a widespread feeling that those who hold public office are not sufficiently brought to account when they misbehave, or if they do misbehave they are let off lightly, particularly when they are judged by their peers. If the response to that is that there has to be proper process and the appointment of robustly independent people to investigate complaints of wrongdoing and ensure transparency of the process and the reports that are produced, I welcome the fact that those are your objectives too. Those objectives are central to the process, but a lot depends on the precise way in which they are implemented.
218. That is all that I want to say by way of introduction. I am happy to answer any questions.
219. **The Chairperson:** Sir Christopher, thank you for setting the scene. In the present time, this Committee is conscious of its role in re-establishing public confidence in the conduct of elected representatives; specifically, in this case, Members of the Northern Ireland Assembly. We see this inquiry into how we maintain our code and how we should appoint a Commissioner for Standards as being an important element of that.
220. We shall move to questions on that key issue. Members should be clear that we shall not refer to any particular case during questioning.
221. **Mr Ross:** We have gone through a painstaking process on the code, so we have probably asked enough questions on that.
222. Sir Christopher, in your submission you said that you believe that a Commissioner for Standards should be able to initiate his own inquiries and that, when he brings a report to this Committee, he should give stronger indications of the severity of a breach of conduct and should possibly recommend sanctions. The Committee has the power to initiate an inquiry already, and we have done so recently. We decide on sanctions and everything else. How would you see the Committee's role changing if the Commissioner for Standards were to have the ability not only to initiate inquiries but to provide guidance on the sanctions that should be operated?
223. **Sir Christopher Kelly:** I shall begin by explaining why I believe that the commissioner should have the power to start investigations proactively. The view that a commissioner ought to be able to investigate on his or her own initiative is not only my personal view but one that the Committee on Standards in Public Life has taken under previous Chairmen.
224. One of the reasons for the commissioner having that power can be best illustrated by the fact that, at times, the Parliamentary Commissioner for Standards at Westminster has come under criticism for appearing to do nothing when public criticism of a Member of Parliament appears in the press. He has had to say that he cannot do anything because no one has made a complaint for him to investigate, which sounds rather lame. The Assembly would be wasting its time if it were to establish a commissioner who did not have public confidence; therefore, whatever you do, it is important that you create circumstances in which the

- commissioner does not appear to have one arm tied behind his back.
225. Some people have said that that would run the risk of the commissioner having to launch all sorts of trivial investigations. That does a disservice to the sort of person whom I imagine you will wish to appoint. I am sure that if you appoint someone with the qualities that you would want for that type of role, they will be able to distinguish between idle tittle-tattle and serious allegations that require further investigation and have a proper evidential base.
226. If that were the case, I do not see that the role of the Committee would change greatly. It would still be open to the Committee to ask the commissioner to start investigations that it thought were necessary, and some cases would be initiated by the commissioner without a request from the Committee. I see the process after that as being exactly the same as the current process.
227. **Mr Ross:** In Northern Ireland, the experience has been that if there is any hint of a scandal, Members are not slow in making a complaint.
228. You mentioned that the Committee should include two lay members. How would that benefit the process? We are a Committee of the Assembly that is made up of Assembly Members — I was going to say elected Members but there are now two of us for whom that is not necessarily the case. Could the fact that the Committee contained two members who were not Assembly Members create a potential difficulty?
229. **Sir Christopher Kelly:** I am not an expert on Assembly procedure. I realise that the Assembly has been established differently from the Westminster Parliament. The Committee on Standards and Privileges at Westminster has not yet implemented that recommendation but it has told us that it accepts it.
230. The reasons for that proposal go back to what I said in my introduction: a lot of people believe that even if people who misbehave are brought to book, they are not dealt with in an adequate manner. That claim is sometimes quite difficult to substantiate. I apologise for not having looked into decisions of this Committee, but if one considers some of the decisions of the Committee on Standards and Privileges at Westminster, one will see that that allegation is not necessarily justified. However, on some occasions the Committee's treatment may seem lenient to someone who is not part of the whole process, who has not seen the evidence and who is going on only what they have read in the press, which may not always be accurate. The presence of lay members on a Committee of this kind would give the public greater confidence that it was not a question of peers being soft on each other. It may also afford greater protection to Committee members against accusations that that was happening. That is not a complete solution, but it is one small and necessary step.
231. **Mr Ross:** My final question relates to the composition of the Committee. Last week we heard evidence from the Chairperson of the Welsh equivalent of our Committee. He said that in recent years they have moved away from having a large standards Committee to one with appointees from just the four main parties in Wales. Rightly or wrongly, even if it is not the reality, it is the perception that many decisions in our Committee are taken along party lines or on nationalist/unionist lines. That is something for which we have been criticised. Sir Christopher, what is your view on our having a smaller Committee with four or five members, with one from each of the main parties? Do you believe that that would engender more public confidence and make our role easier?
232. **Sir Christopher Kelly:** I have not thought about that a great deal, so I will be giving an off-the-cuff response. I suspect that there might be something in the argument that members would be less likely to divide along party political lines if it were more obvious that people were being appointed to the Committee as

- individuals, because of their seniority or reputation for integrity and fairness, rather than as representatives of political parties. However, I hesitate to express a firm view because I know how complex the political circumstances are here.
233. **Mr P Maskey:** I welcome the witnesses and thank them for coming over. You suggested that the commissioner should have the power to investigate without a formal complaint having been lodged. How do you envisage that happening? Sometimes allegations are made or there are media reports that cannot be further from the truth, although, in other cases they might be truthful. How would a commissioner start to investigate such allegations without having received a formal complaint? What remit would the commissioner have to investigate a particular issue?
234. **Sir Christopher Kelly:** I would expect the commissioner to approach whoever was making the allegation to see what evidence they had to support it, at which stage some evidence either would or would not be produced. If it were produced, the commissioner would be able to make a judgement on whether it established a prima facie case for investigation or whether it was just malicious gossip. In the absence of evidence, the commissioner would be in a strong position to say that he or she had approached whichever part of the media was making the allegation and that nothing could be produced to substantiate it. To me, that seems to put the Member concerned in a stronger position than simply allowing allegations to remain on the table.
235. **Mr P Maskey:** Thank you for that answer. I can see how that approach could work and how it could put the individual concerned on a stronger footing. If that proposal were adopted, would it diminish or enhance the responsibility of this Committee?
236. **Sir Christopher Kelly:** It would enhance the Committee and give it greater strength. I do not see how it could take anything away from the Committee.
237. **Mr W Clarke:** You are very welcome, Sir Christopher. I want to raise a few points, the first of which is about the independence of a future commissioner. What interests — such as political dealings, political influences, membership of secret organisations and monetary interests — will a future commissioner have to declare? Would those interests have to be declared in advance? How would that work?
238. My second point is about the employment of family members by Assembly Members. Will you outline your dealings in that regard and how you see us as failing on it?
239. Over lunch, we discussed the issue of Members' careers outside of Parliaments. Will you outline your thoughts on that? A balance is required; all institutions and Parliaments need expertise from all walks of life. However, in general, the public want elected representatives to serve the people by dedicating enough time to the role that they are elected to.
240. **Sir Christopher Kelly:** Those are three interesting questions. I will start with the question about what interests I would expect a commissioner to declare. Transparency is one of the principles of public life, and people in such posts should be prepared to be as transparent as possible about their interests. That is no different for the Committee on Standards in Public Life; there is a register of interests for all of its members. That does not include details of salaries but it includes declarations regarding all bodies with which members have a significant association and that might, therefore, influence our judgement on important issues in some way. The same rules should apply to the Assembly Commissioner for Standards. The Committee might think that it is necessary for someone who investigates MLAs to subject themselves to the same disclosure requirements that apply to MLAs. On the face of it, that seems reasonable.
241. The employment of family members was possibly the most difficult issue

- that our committee had to face. A significant number of Members — about 200 out of approximately 640 — of the Westminster Parliament employ family members, and I am conscious that an even greater proportion of legislators in this Assembly employ family members. I am also conscious that we received a great deal of evidence that many of those family members — mainly, but not only, spouses — work enormously long hours and perform beyond expectations that should be placed on any staff.
242. In Westminster, we started from a scandal that involved the employment of family members and from a presumption, which far too many people now have, that politicians of all kinds cannot be trusted. Furthermore, in no other sphere, with the partial exception of GP practices, would it be for one moment considered remotely appropriate to use public money to employ family members.
243. Taking all that into account, we came to the view that the employment of family members should cease after a reasonable transitional period. Unless and until that happens, the Westminster Parliament will be unable to feel and demonstrate that the arrangements for supporting MPs have been completely cleaned up. It is absolutely essential now that Westminster should be able to demonstrate that the expenses system has been completely overhauled and is free not just from abuse, but from the appearance of abuse.
244. I recognise that in Northern Ireland, as is so often the case, particular circumstances and a particular history account for so many family members being employed by Members of the Assembly. I hesitate to get into that matter because, frankly, I do not know as much about it as the Committee members. However, it would surprise me if exactly the same principles did not apply to Members of the Assembly as to Members of Parliament. I am encouraged in that belief by the fact that there is a trend in other legislatures to come to exactly the same conclusion. The employment of family members has now been stopped in Scotland; it was supposed to be stopped in Wales, although there is some doubt as to how that will proceed; it has been stopped in the House of Representatives in the US; and it has been stopped in the European Parliament.
245. Some would claim that that falls foul of various pieces of discrimination legislation. However, legal advice has been obtained by us and by the Independent Parliamentary Standards Authority (IPSA) that says that, although people can challenge anything, there is a perfectly adequate defence against such allegations.
246. Your third question was about MPs holding more than one job. We came under considerable pressure in that regard. There was a lot of evidence on this issue, with a number of witnesses wanting us to ban second jobs altogether. I have some sympathy with that view, on the grounds that, at one extreme, being a Member of the Westminster Parliament is, or ought to be, a full-time job and doing another full-time job is incompatible with doing that. At the other extreme, the committee took the view that there was absolutely no objection to a Member of Parliament undertaking some political or non-political journalism, or those with professional backgrounds undertaking bits of work sufficient to keep their professional hand in, so that they would have a profession to go back to when they left the House of Commons. There is a much-cited case of one MP who is a dentist. I am not sure that I would want to go to a dentist who only practiced one day a week, but that is another matter. All of that seemed to us to be perfectly reasonable.
247. Where those two views meet in the middle — that is, what any reasonable person would think of as too much of an outside commitment for a Member of Parliament to expect to do his job properly as opposed to things that are perfectly legitimate for them to do — is a matter of judgement. We took the view that the right approach to that was transparency. Not only should MPs

- declare in the House what else they are doing besides being a Member of Parliament, but, when standing for election, they should tell the electors what they intend to do. They should declare, for example, "I want to be your MP but, by the way, I intend to carry on my almost full-time practice of being a criminal barrister." That is an essential part of informing the electorate.
248. There is a particular issue in Northern Ireland because of dual mandates. After this election, it is said that there will be no other examples of dual mandates; that is, between other devolved legislatures and Westminster. There is one example in Scotland at the moment, but that Member has already announced that he will not be standing for a Westminster seat. There are no examples in Wales.
249. My committee took the view that, if it is wrong for someone to do something that amounts to a full-time job as well as being an MP, that must also apply to someone's being a Member of this Assembly and a Member of Parliament. Therefore, we recommended that the practice should be brought to an end, ideally by the next Assembly election in 2011 but failing that, by the following election in 2015. We are encouraged in that belief because the leaders of, I think, all the political parties told us that they also took the view that double-jobbing or dual-mandates should come to an end, albeit without agreement as to when that should happen.
250. We hope that in making the recommendation, we are providing something around which views can coalesce so that the practice can be brought to an end. I am conscious that there are particular reasons why there may be dual mandates in Northern Ireland as opposed to in Scotland and Wales.
251. **Mr Leonard:** Gentlemen, you are welcome. Sir Christopher, you forthrightly spoke about the general opinion of politicians, and I will not start defending some of the things that have come out in recent times. Do you agree that such behaviour sullies the reputation of people in politics who work full-time, keep to the required standards and give a lot of their lives devoted to serving the public? As well as referring to the negatives, some of which are disgraceful, do you think that more reference should be made to the good side of the coin as opposed to the bad side?
252. I have two points on the nitty-gritty of your presentation. In discussing proactive investigation by a commissioner, you referred earlier to a situation wherein allegations are made and a commissioner could have a chat with the person or people concerned. Could that system be open to manipulation? Could it mean that the commissioner will go off on the basis of the latest rumour? You said that the standing of the commissioner may mitigate that possibility, but there would have to be clear guidelines for the role of the commissioner, such as an evidence-gathering part of the process that involves absolutely no inference whatsoever. To facilitate that action, which you recommend, there would have to be a related provision in the description of the commissioner's role.
253. I appreciate what you have said about lay members, in that the perception would be that it is not simply peers investigating each other. That is an important issue. However, is there not the possibility that the couple of lay people involved would end up being under pressure to be the validators of the political machine and the politicians involved in the workings of that machine?
254. **Sir Christopher Kelly:** To answer your first question, one of the tragedies of the current situation is that the good name of all MPs, and one suspects of politicians generally, has been brought into disrepute by what has happened. For the considerable number of Members of Parliament who have conducted themselves with integrity, in this area and in others, that is a great shame. I am second to none in my admiration for the work that many MPs do.

255. Having said that, there were many people in Westminster who must have known that the expenses system was flawed, and who stood aside when the House of Commons authorities tried, unsuccessfully in the end, to resist the application of the Freedom of Information Act 2000 to Members of Parliament and their expenses. They are, therefore, guilty of going along with a flawed system.
256. In their defence, even though some of them might have suspected that something was wrong — as, indeed, the rest of us might have done — it was not until the full details of expenses were revealed, initially by the ‘Daily Telegraph’, that many of them became aware of the extent to which a number of their colleagues were exploiting the system, particularly the support offered for mortgages and the flipping of main homes and second homes, which applies in Westminster but does not apply here. It will be some time until the reputation of politicians improves.
257. You asked whether there is a danger of political manipulation of the commissioner. Of course there is; there must be. One has to depend on the good sense, intelligence and robustness of the commissioner to deal with that. I still think that the commissioner initiating investigations is a better option than only allowing the commissioner to react to complaints that are formally made, because not everyone will understand that that is what they need to do.
258. I want the lay members to endorse the decisions taken by this Committee. The key thing about the lay members is that there should be a sufficient number of them. I do not think that one lay member is enough because, unless they are a very exceptional individual, one lay member can easily be leant on. In the case of the Committee on Standards and Privileges at Westminster we recommended that there should be three members, which seemed to us to be sufficient to ensure both that there would be lay members at any individual meeting and that they could provide mutual support to each other, so that if they came to the conclusion that something was radically wrong and that decisions were being determined along party lines, they would have sufficient support for each other to press back against that, and, if necessary, make their views public.
259. **Rev Dr Robert Coulter:** Sir Christopher, we meet again. In your report you suggested that the commissioner should give an indication of the seriousness of any breach of the rules. Would that in any way pre-empt the judgement of the Committee, or would it cast a shadow on its ability to make a proper judgement?
260. **Sir Christopher Kelly:** I do not think that it would necessarily pre-empt the decision of the Committee. I am not sure how different that would be in practice from what happens at present. At the moment I suspect that it is often done by words being used in a certain way. It seems to me that, as part of being able to demonstrate that justice had been properly done, both in punishing people whose misbehaviour has been really serious and in exonerating those who have done nothing wrong, the process would be further strengthened by the commissioner explicitly indicating whether, in their view, it was fairly trivial or was something to be taken seriously. That does not necessarily prevent the Committee from deciding that something the commissioner thought was serious was not serious, but if the Committee did that, you would no doubt have to explain why you took a different view.
261. **Rev Dr Robert Coulter:** If the commissioner declares that someone has not broken the rules, is it right for the Committee to go against that decision?
262. **Sir Christopher Kelly:** It has to work both ways. I do not know how often it happens in practice, but if the Committee took a different view from the commissioner, you would be obliged to explain your reasons. That would seem to me to be a good part of the checks and balances.

263. **Rev Dr Robert Coulter:** We had a situation in which the commissioner declared that someone had not broken the rules and, when some of us voted according to the commissioner's declaration, we were accused of voting on sectarian lines. What is your view on that?
264. **Sir Christopher Kelly:** I have no knowledge of that case, so I am not sure whether I can comment on it.
265. **Rev Dr Robert Coulter:** Is it a reflection on the commissioner or the Committee?
266. **Sir Christopher Kelly:** If the Committee were to take a different view from that of the commissioner, it might cause some people to question the commissioner's judgement. It depends on the reasons for the decision being taken. As I said, if a full explanation is given for a difference in views, that is an important safeguard.
267. **Mr Ross:** How do you envisage lay members being appointed to the Committee? Would they be appointed by the Assembly or through the Commissioner for Public Appointments?
268. **Sir Christopher Kelly:** The way in which members were appointed to IPSA set a good precedent. Such appointments are the formal responsibility of the Speaker, his commission and, ultimately, the House of Commons. To all intents and purposes, the process that was followed was analogous to an ordinary public appointments process. That is to say, a panel was appointed under an independent chairperson, which included members of the Speaker's commission as well as other independent members. One of those independent members, although not formally appointed by the Office of the Commissioner for Public Appointments (OCPA), the public appointments regulator, is, nevertheless, someone who is experienced and fulfils the same role as an assessor appointed by OCPA, which is to say someone who is able to certify that proper processes have been followed.
269. That panel then made recommendations to the Speaker, who made recommendations to the House. Either the House or the Speaker could have overturned those recommendations. That did not happen, because they wanted to demonstrate that the process had been independent and conducted properly. Unlike some public appointments, the independent panel did not offer a choice, it simply recommended people for appointment. It seems to me that that process is a good model for making such appointments.
270. **Mr B Wilson:** I wish to refer to the appointment of the lay members, which would be an important role. Would either lay member be able to become the Chairperson of the Committee?
271. **Sir Christopher Kelly:** That is an interesting question. There is an analogy in England, although I do not think that it applies here. In England, all local authorities have their own standards committee, the chairperson of which, I believe, always has to be an independent member. Indeed, I was the chairperson of the standards committee for the London borough of Camden, which is where I lived for some years, although, in that time, we did not have any cases.
272. We did not make that recommendation in relation to the Westminster Parliament. I am not an expert in the area; however, before recommending that lay members be allowed to become the Committee's Chairperson, I would want to consider carefully whether any privilege issues would be involved in doing so. For example, this Committee will make judgements about the behaviour of Assembly Members in the Assembly, which is a privilege issue. I am not sure that having an independent Chairperson would sit very well with that role. However, that is a technical issue, on which, as I said, I am not very well qualified to express an opinion.
273. **Mr Savage:** Do you agree with the House of Commons Committee on Standards and Privileges that, for an inquiry by the commissioner to take place, there must be a firm evidential basis? How, for example, would the



- commissioner be expected to respond to media allegations of a breach of the code of conduct?
274. **Sir Christopher Kelly:** Yes, of course I think that there should be a firm evidential base to inquiries and recommendations. However, there are two different stages: one is the decision to initiate an inquiry and the other is the recommendations of the inquiry. At the point at which an inquiry is initiated, what needs to be established is not that some misdemeanour has occurred but that there are reasonable grounds — a prima facie case — for thinking that that has happened. As I said in answer to an earlier question, I would expect that as a first step in responding to media allegations of misbehaviour, the commissioner would ask the journalist concerned to demonstrate his evidence for those allegations. If there were no evidence, I would also expect the commissioner not only to not undertake an investigation but to say that having contacted the media, there was nothing of substance to support the allegation that had been made.
275. **Mr P Maskey:** Reverend Coulter touched on some of the decisions that a commissioner might take to the Committee. I believe firmly that each of us, as members of different political parties, should leave our political baggage at the door when we come to this or any other meeting. It is important to ensure that, no matter what we are discussing, we do not work on the basis of political allegiance, particularly in this Committee.
276. I want to ask you about the lay members that may be on the Committee. Reverend Coulter mentioned that the Committee had considered certain cases on which members voted in different ways. A commissioner might be faced with a situation in which someone disagrees with his decision. Have you given any thought to the possibility that the two lay members could work alongside the commissioner when he is carrying out an investigation and producing a report? I am conscious that the commissioner would be working alone, but if the two lay members, who might also be members of this Committee, were to work alongside him, would that add a bit more strength to the commissioner's report?
277. **Sir Christopher Kelly:** I had not thought of that. There is a distinction between the role of someone who carries out an investigation and that of someone who sits in judgement on the results of that investigation. I guess that it would be important to keep those roles separate, not least because there is no appeal mechanism. Natural justice requires that there should be a separation and a two-stage process in which an individual is either found guilty or not guilty, or whatever terms the commissioner chooses to use. An individual would then have the opportunity, if he or she so wished, to make a case to the Committee, which might, as in the previous example, decide to exonerate that person despite the commissioner's report. I suspect that a separation of roles is probably important.
278. **The Chairperson:** You referred to the commissioner having the right to initiate an inquiry of his or her own accord. Do you have any view on the effect that that would have on the workload and resources needed for the office?
279. **Sir Christopher Kelly:** There would be no point in making that provision unless it increased the workload to some extent. I have no information to go on to judge what the effect of that would be. I suspect that it is a case of suck it and see.
280. **The Chairperson:** You talked about the Assembly commissioner being able to say something in his report about the seriousness of a breach. Why do you think that that should be done? Do you not think that that might pre-empt the Committee's judgement? Is it not the Committee's role? If the commissioner were to include that in a report, how would he do that? Would it be done by using a form of words, or would it be done in a more formal way, using a scale of seriousness?

281. **Sir Christopher Kelly:** I would not expect the commissioner to say that a situation was so serious that it required, for example, suspension from the Assembly for three months, or, perhaps, expulsion. That really would be a pre-emption of this Committee's role. It would be perfectly natural and helpful to the Committee and the Member concerned for the commissioner to say either that an investigation has taken place and, in his or her view, there was a misdemeanour, albeit a relatively trivial one, or that the misdemeanour was a serious one that the Committee would want to consider. I am not sure that that would pre-empt any decision that the Committee might wish to take. It might force the Committee to be more explicit about its reasons for taking a different view from that of the commissioner, either by giving a trivial response when the commissioner recommended a serious one or vice versa.
282. **The Chairperson:** The Committee has the power to call for witnesses and documents; should such powers for the commissioner be set in legislation?
283. **Sir Christopher Kelly:** There is something to be said for that. Experience will show whether it is absolutely necessary. If it is known that the commissioner has only to appeal to the Committee to get it to lend its support to a requirement for documents, such legislation may not be necessary in practice. However, the commissioner ought to have the ability to do that, whether he or she is given the power explicitly or whether it happens because everyone knows that if they do not co-operate with inquiries, the Committee will step in and require them to do so.
284. **The Chairperson:** Are there any other powers, duties or responsibilities for a commissioner that could usefully be set down in statute?
285. **Sir Christopher Kelly:** I misled myself. I am not sure that the commissioner's role should be statutory. It is not statutory in Westminster. I am not an expert on the matter, but I am told that if it were statutory, the commissioner's actions would be subject to judicial review. There is a place for judicial review, but it is for the Committee to carry out the second stage of a review of a decision. I am not sure that, in such cases, judicial review would be helpful. We do not want the decisions of the commissioner or the Committee to be second-guessed.
286. **The Chairperson:** Should there be a quorum rule that requires the presence of at least one lay member?
287. **Sir Christopher Kelly:** There should be at least one lay member present at each meeting. The issue for decision is whether there should be a quorum requiring two members, for the reason I gave earlier about mutual support.
288. **The Chairperson:** Is it necessary for quorum purposes?
289. **Sir Christopher Kelly:** Yes.
290. **The Chairperson:** Some people have put the view to us that rather than having an open competition for the post of commissioner, the office should become a separate role that is attached to an existing public office. What is your view on that? In those circumstances, do you have any concerns about how the commissioner might be accountable to the Assembly?
291. **Sir Christopher Kelly:** I see no reason why someone performing two roles could not, in one role, be accountable to the Assembly and accountable to someone else for their performance of the other role. It is largely a practical question. It is important to appoint the right person, and the process by which he or she is appointed should be seen to be manifestly above suspicion to ensure that the appointee is the best person for the job and has sufficient independence of mind. Whether or not two posts could be combined depends on how much business is expected. If there is little business, it might be practical and sensible to combine two posts, as I understand has happened with the interim commissioner. There is a practical issue about the manner of the appointment that must be overcome.

292. **The Chairperson:** There is a distinction between conducting an open competition and appointing someone who holds another role and permanently attaching the post to another office.
293. **Sir Christopher Kelly:** It is necessary to be pragmatic about such matters.
294. **The Chairperson:** The Committee has heard some views about managing the cost, which can vary over time. It was suggested that the Assembly secretariat could provide permanent secretarial support. Do you have a view on that? Would that breach the independent nature of the function in any way?
295. **Sir Christopher Kelly:** It is most important for the commissioner to have had no previous relationship with the Assembly. Whether the staff supporting him or her need also to be similarly separated by Chinese walls from the Assembly depends on two things. The first is the amount of work that there is and, if it is only intermittent work, it would be a waste of resources to employ full-time support staff. The second issue is the credibility of Assembly staff. If one goes back to the expenses in Westminster, the way in which the fees office in Westminster dealt with expenses claims — even with the unclear rules that then existed — has meant that it has lost all credibility. Therefore, as long as those staff members remain in the fees office, no one could reasonably expect them to be used to support the Independent Parliamentary Standards Authority.
296. Although Scotland has an analogous arrangement, no one has raised any questions about the credibility of the Scottish parliamentary staff to support an expenses system, and that seems to work perfectly well. The answer partly depends on the credibility of Assembly staff, and that, I am afraid, is an issue on which I do not have enough experience to pass a judgement.
297. **The Chairperson:** I want to go back to one of the foundation points. Is it possible to defend the right of Members of Parliament or Members of the Assembly to police themselves, rather than having a totally independent system?
298. **Sir Christopher Kelly:** Where do I begin? It is an oddity. Increasingly in other professional walks of life, the expectation is that although peers are involved in judgements, there is a strongly independent element and, finally, in the health professions, a completely independent element takes judgements. One has to justify why that should not be the case in relation to MPs, Members of the Assembly or Members of the Scottish Parliament. There are two answers: one is that Assembly Members ought to take responsibility for themselves. If external regulation has to be applied, it is because internal regulation has failed. There needs to be a change in culture in Westminster in relation to expenses, and there are some signs that that change in culture might happen or, at least, there are good reasons to hope that it will happen, not least with the large number of new MPs that are likely to arrive after the next election. The first part of the answer is that you should take responsibility for yourselves.
299. The second part of the answer goes back to privilege. In Westminster, it is a fundamental issue going back to the Bill of Rights that — I am paraphrasing this and undoubtedly I will get it technically wrong — there should be no external constraint on the freedom of Members of Parliament to say what they think in Parliament. I know that privilege in the Assembly is different, because it is based on statute rather than on the Bill of Rights. However, I suspect that the same point applies.
300. **The Chairperson:** I am sure that you will agree that if this Committee is to police Members of the Assembly, it will put a heavy duty and burden on its members to demonstrate the same principles in the conduct of their affairs that they will demand of other Members of the Assembly.
301. **Sir Christopher Kelly:** Absolutely.

302. **The Chairperson:** Sir Christopher, that finishes the questioning. Thank you for that very useful session. We are deeply obliged to you for coming.
303. **Sir Christopher Kelly:** It has been a pleasure. Thank you.
304. **The Chairperson:** Our second evidence session is with representatives of the Northern Ireland Human Rights Commission (NIHRC). I welcome Ciarán Ó Maoláin, head of NIHRC legal services, and Angela Stevens, a caseworker for NIHRC legal services. I thank you both for waiting patiently.
305. The Northern Ireland Human Rights Commission is an independent statutory body that was set up in 1999. Its role is to promote awareness of the importance of human rights in Northern Ireland, to review existing law in practice and to advise government on what steps need to be taken to fully protect human rights in Northern Ireland. Over the years, the commission has provided advice and evidence to the Committee on a number of occasions. For that reason, we are particularly grateful to be able to hear from the commission once again in the context of this inquiry. The commission submitted a paper to the Committee in advance of today's session. I invite Ciarán to brief the Committee before we move to members' questions.
306. **Mr Ciarán Ó Maoláin (Human Rights Commission):** Thank you very much. First, I wish to apologise on behalf of the chief commissioner, Professor Monica McWilliams, and other commissioners who are unable to attend today's evidence session because of a pressing prior engagement. It is not ordinarily the practice that we send members of staff to give evidence to Assembly Committees, and we will try to avoid that in future. That said, I have had the pleasure of appearing before this Committee, or rather its predecessor, in 2002, along with our then chief commissioner.
307. We have always taken very seriously the quality of self-regulation by the Assembly. We are firmly convinced of the necessity of the Assembly's being able to regulate its affairs, as is the norm in every democratic legislature. I accord with Sir Christopher's point that any form of external regulation or intervention in the regulatory process of a democratic Assembly is only necessary to the extent that the Assembly fails to regulate its affairs properly.
308. The commission is broadly content with how the current code of conduct and procedures work, but we wish to comment on some of the detail of the process. For example, we would like the number of possible recommendations from the commissioner to the Committee to be limited to two. We are committed to the principle of transparency in the processes and, above all, of fairness. We believe — and on this we differ from the Joint Committee on Human Rights — that article 6 of the European Convention on Human Rights, which is on the requirements of a fair trial, is engaged in the self-regulation of a legislature but that that degree of fairness can be delivered by the self-regulatory process.
309. In our submission, we have commented on the nature of the commissioner post and on the desirability of having the type of independent appointment process that Sir Christopher alluded to, should it be decided to create a separate statutory appointment. However, we have noted that the current Northern Ireland Ombudsman has fulfilled the role to date, and we do not see any pressing reason to deviate from that arrangement so long as the ombudsman's other duties allow him to continue with that function.
310. I would be happy to take any questions from members.
311. **Mr P Maskey:** You are both welcome. I asked the previous witnesses about the issue of lay members. Has the commission given much thought to whether lay members can or should be members of the Committee on Standards and Privileges?

312. **Mr Ó Maoláin:** That is not a matter on which the commission took a position. We have no fundamental objection to lay members being brought onto the Committee if they provide necessary expertise, but Members of an Assembly ought to have the type of expertise that is needed to police their affairs. That said, the chair of the commission's audit committee is an independent person, and to the extent that the Committee on Standards and Privileges is analogous to an audit committee, a case could be made for having an independent member, and even an independent Chairperson, of the Committee. We have no objection to the Assembly choosing to involve that kind of outside expertise. However, if the Assembly is content that it can regulate its own affairs, the commission would not recommend any departure from that.
313. **Mr P Maskey:** How would the Human Rights Commission react to, for example, a situation in which a commissioner investigated a Member's conduct without an official complaint having been made to the Committee?
314. **Mr Ó Maoláin:** That is a slightly more problematic area. Most national human rights institutions, like our commission, and most ombudsmen, are able to investigate suo motu — on their own motion — when a concern is raised. It would be problematic if an Assembly Commissioner for Standards were able to do that. That raises the question as to what is the proper threshold for launching an investigation. Would allegations made in a newspaper report or a television programme, for example, be enough to cause an investigation to be launched, or in what circumstances would an investigation not be launched?
315. Such a provision would generate more work for the commissioner and it would call into the question the commissioner's judgement whenever he or she decides whether or not to investigate on foot of a report. The commissioner would be forced into making judgements about the credibility of a media report or a rumour that caused him or her to launch an investigation. It is probably best that there ought to be an evidence base before any kind of investigation is formally launched.
316. It could be that, as has been suggested, the commissioner could have a private conversation with a Member who has been impugned in some way by rumour or by media reportage before deciding whether to launch an investigation. That raises questions about the fairness of procedure and whether the Member concerned is entitled to refuse to answer questions. Ideally, in every case, the commissioner's role should only kick in when a formal complaint is presented that has some basis on which to proceed. Otherwise, the commissioner has rather more discretion than he or she could really be comfortable with when it comes to deciding whether or not to investigate on foot of suspicion or media report.
317. **Rev Dr Robert Coulter:** Thank you for coming today. Do you think that it is a breach of a MLA's human rights and those of his or her family members that they would be barred from being employed by the MLA just because they are family members?
318. **Mr Ó Maoláin:** That matter goes somewhat beyond the Human Rights Commission's settled position. The commission has not addressed that particular issue. In general terms, of course, the Human Rights Commission favours fair, open and transparent procedures for selection and employment. I can only speculate as to what its position might be, but I would expect it to take the view that appointments to any kind of employment that is funded from the public purse should, in general, be on the basis of open competition and merit.
319. **Rev Dr Robert Coulter:** Is it a breach of those people's human rights if they are not allowed even to apply to be employed, even though they may be fully qualified to take the post?
320. **Mr Ó Maoláin:** It would certainly require justification. The exclusion of any person

- from eligibility for employment purely on the basis of something over which they have no control — such as their being the son, daughter or spouse of an Assembly Member — would require a strict justification as to why it would be improper to allow that person to compete for the post. The Human Rights Commission would say that, in principle, such posts ought to be open to all comers and appointments should be made on the basis of merit.
321. **Mr Savage:** How much importance do you place on the Assembly's authority to regulate its own code of conduct?
322. **Mr Ó Maoláin:** It is the norm in every democratic legislature that the conduct of Members should be regulated by their peers. That is by far the best way of doing things, so long as the Assembly can be confident that it has the capacity among its membership to regulate its own affairs. To some extent, it would be an admission of failure by the Assembly if it were required to go beyond its own membership to regulate its affairs. So long as the regulatory system meets the standards of fairness and transparency to encourage public confidence in the system, then, as far as possible, regulation should reside with the Assembly itself.
323. **Mr W Clarke:** You are very welcome. In your submission you said that the commissioner should appoint his or her own staff, subject to normal rules. Other people have said that that should be done in-house, using the Assembly secretariat, to reduce administration costs and cut down expenditure.
324. As regards the independence of a future commissioner, do you envisage that he or she will have to declare his or her interests, as an Assembly Member does?
325. **Mr Ó Maoláin:** To begin with your second question: certainly, the Commissioner for Standards needs to be someone who is above reproach and enjoys full public confidence. It seems reasonable that he or she ought to be subject to the same disclosure requirements as apply to those whom they regulate.
326. As I understand it, under current arrangements, the ombudsman, in exercising the role of interim commissioner, is able to call on his own staff to provide any assistance that is needed with investigations. I see that as being preferable to Assembly staff being drawn into investigations of allegations against individual MLAs, given that they interact with MLAs from day to day. It could potentially create, if not mere embarrassment, difficulties in day-to-day working relationships between a MLA and a member of Assembly staff if each is aware that the other is subject to, or involved in, an investigative process.
327. Therefore, ideally the commissioner should be able to control and direct his or her own staff in a way that does not allow even an appearance that the Assembly has control over the direction and conduct of the investigation.
328. **Mr Ross:** In your submission, you said that the appointment of a commissioner should be for a fixed term. Last week, we discussed that matter with the Commissioner for Public Appointments. Is the fixed term that you have in mind the lifespan of an Assembly? What length of term do you envisage? Can you go into more detail as to why you believe that a fixed term would be preferential to a permanent appointment?
329. **Mr Ó Maoláin:** With regard to national human rights institutions and ombudsmen throughout the world, the principle of a fixed term of reasonable duration is seen as key to independence. The term should not necessarily be tied to the life of a particular Assembly, because then there would be a suggestion that each Assembly appoints the commissioner that suits it or that allows it to get away with whatever it wishes to get up to.
330. If the commissioner had a term of office of, say, seven years, that would allow a transition during the life of the Assembly to a new appointee. The current arrangements, whereby the

- interim commissioner, as ombudsman, essentially holds a career-long appointment, may work well for the ordinary running of the ombudsman's work to investigate complaints about administration. However, if a new office of Assembly Commissioner for Standards were created, the commission would prefer a fixed-term model, which allows the office holder to plan for the exercise and end of his or her period in office and leaves the commissioner free from any suggestion of dependence on the favour of Assembly Members for reappointment when his or her term is finished. The point of a fixed term is that it allows the commissioner to be independent of the influence of MLAs and the appearance of being subject to MLAs' influence with regard to possible reappointment.
331. **Mr Ross:** Presumably, then, that individual could not go forward for reappointment? Would he or she be allowed to hold the office only once?
332. **Mr Ó Maoláin:** The norm with regard to appointments of ombudsmen and human rights commissioners is that a second term can be allowed. If during his or her first tenure, the office holder expresses a desire to go forward for a second term, there should be a presumption in favour of reappointment. However, after two fairly long terms, it may be that it is time for a change, and a new office holder could see things differently. It could be a single fixed term of five or seven years, or it could be a fixed term with the possibility of one reappointment, but it should not be a life-long appointment, as is the case with the appointment of the ombudsman. That is no reflection of the integrity of the current ombudsman, for whom we have the highest respect.
333. **Mr Leonard:** It is good to see you, Ciarán and Angela: you are very welcome. You came down pretty strongly in favour of the commissioner responding to formal complaints rather than undertaking proactive investigation. You also said that there are no fixed positions, and that you are in listening mode. Referring back to the questions from other members, in a situation in which a formal complaint is not made, can you see any space in the human rights context to allow evidence gathering that will not involve anybody being impugned? Are there circumstances in which a commissioner could go out and gather evidence, with it being made clear to the people concerned and the public at large that it is only evidence gathering and that it may never lead to a formal action?
334. When is a formal complaint is made, that has to be reacted to, obviously, but if there is a proactive approach, could there perhaps be a buffer zone without impugning anybody? Is that fair play within the human rights context, or do you see real problems with it?
335. I have another question in relation to paragraph 17 of the NIHRC submission, which states that:
- "The role ... should be defined in greater detail and would best be set out in statute, or in the interim with a more detailed Standing Order".*
336. Are you, by implication, saying that it must be set out in statute, no matter how long it takes? What is your position on judicial review? Should we worry about the system being clogged by judicial reviews, or is that very understandable in the human rights context?
337. **Mr Ó Maoláin:** Those questions are interlinked, in that the possibility of judicial review is a safeguard against any kind of unreasonable exercise of the investigative power. If the commissioner is empowered to launch investigations without a formal complaint being made, there is an expectation that he or she must exercise that power reasonably. The kind of oversight that would be provided by the possibility of judicial review would require the office to be established in statute. That is why the questions are interlinked; if there is a statutory basis for it, there is judicial review.
338. Departing from Sir Christopher's viewpoint, we are not afraid of judicial review. We think that it is a good

- safeguard to have when someone is exercising considerable powers over people who have been elected by the public to govern them. It is quite a serious matter for the conduct of any elected representative to be investigated. It is not something that should ever be done lightly, and, in the absence of a formal complaint to found an investigation, it is necessary for the commissioner's own protection that there be some safeguard against even the appearance of arbitrariness or political influence in deciding whether to investigate an allegation that impugns any Member of the Assembly.
339. On the whole, the preference has to be that investigations should follow from a formal complaint. If the Assembly is minded to give the commissioner power to launch investigations without such a complaint, it is necessary that there be some protection, such as would be provided by a statutory basis for the office and, thereby, the possibility of judicial review.
340. **Mr Leonard:** So, even with a proactive approach, you are saying that it would have to be in statute and, therefore, subject to challenge?
341. **Mr Ó Maoláin:** If the commissioner did not have a statutory basis and was able to launch complaints purely on a whim, it would not do much to build confidence in the office of commissioner. Every time that the commissioner decided to launch an investigation, or decided not to do so, he or she would be open to question. Without recourse to judicial review, there is no real option for being able to prove that the investigation was properly founded and was anything other than politically motivated.
342. **The Chairperson:** I do not think that you touched on the possibility of appointing lay members to the Committee on Standards and Privileges. Do you have a view on that subject?
343. **Mr Ó Maoláin:** The subject came up earlier. The commission has not addressed that question in its discussions about the proposals,
- but it is not averse to the notion of lay membership. Indeed, the chairperson of the commission's audit committee is a lay member and a non-commissioner. We would go along with Sir Christopher's view that the selection process for independent members must be transparent and open to ensure that the right level of expertise and independence is brought to the Committee. In principle, the Committee itself should be sufficient to regulate the affairs of the small body of men and women in the Assembly.
344. **The Chairperson:** What are your thoughts about a possible appeals process? That might touch on what you said about judicial review. In your written submission, you said that no practical purpose would be served by giving the Assembly an appeal function. Why should there not be a normal appeals mechanism for decisions of the Committee?
345. **Mr Ó Maoláin:** The requirements of procedural fairness in article 6 would normally mean that a chain of appeals is expected. However, when one is talking about a legislature, the first problem is that the Assembly is a creation of Parliament, and the Act that created the Assembly gave it the power to regulate its own affairs, so Parliament would have to revise that legislation to allow for an appeals mechanism that goes beyond the Assembly.
346. The second problem is that it is difficult to identify a possible appellate jurisdiction. The Judicial Committee of the Privy Council is one possible avenue. However, beyond acting as the final court of appeal to various overseas territories, it has very limited appellate roles. The Royal College of Veterinary Surgeons is about the only profession that is currently subject to its oversight, and I am not sure whether all Members of the Assembly would be comfortable with the idea of the Judicial Committee of the Privy Council being the final arbiter of their performance and integrity.
347. A number of procedural issues would arise if the Judicial Committee or some



- other body were to be designated as a court of appeal. For example, if a Member appealed against a sanction, would the Assembly be the respondent? How would the Assembly be represented, and who would bear the costs of an appeal, which, at that level, could be considerable? We have experience of taking cases to the House of Lords, and, if the costs were comparable, you would be talking about many tens of thousands of pounds to hear a single appeal about what, ultimately, might be a fairly trivial breach.
348. In its role as a possible appellate jurisdiction the Judicial Committee ordinarily deals with courts that are below it. However, in making final determinations the Assembly would be, in effect, constituting itself as a court, and that would be the court against which the MLA would be appealing to a higher court. The whole process would create an uncomfortable area of confusion between legislative and judicial powers. In principle, every legislature around the world should be capable and confident enough to regulate itself, without having to draw the courts in to determining whether its Members have breached its own rules.
349. If the process were to be seen as being open to appeal to a higher court, that, in turn, would create all sorts of article 6 requirements about procedural details. For example, it would raise questions about whether Members can be obliged to answer questions or to participate in what would otherwise be voluntary procedures and about whether Members would be entitled to legal representation in any hearing before the Committee. To turn an internal regulatory process into what would essentially be a judicial process appears to be an unnecessarily complicated thing to do. We do not see any need for the final decision of the Committee, communicated to and approved by the Assembly, to be subject to an appeal to an outside court.
350. **The Chairperson:** Finally, in your submission, you caution against an appointment that might “unduly fetter ... successive legislatures”, which I take as meaning a future mandate of this Assembly. Why did the commission raise that as a concern?
351. **Mr Ó Maoláin:** The very fact that the Committee is reviewing the code of conduct and procedures in 2010, having revised them in 2008 and considered them in the years between, shows that, from time to time, and in the light of experience, any legislature sees a need to review and revise its procedures. Therefore, the creation of a permanent appointment, such as is the case for the ombudsman, might be viewed differently by a future Assembly. However, if the post were permanent rather than for a fixed-term, which would expire, there would be no easy option for change. In principle, just as no Parliament can bind a successor Parliament, this Assembly should not seek to set in stone permanent regulatory mechanisms that a future Assembly cannot easily revise in the light of experience.
352. **The Chairperson:** Yes; therefore, everything could be changed, but not easily revised.
353. **Mr Ó Maoláin:** Indeed, and it may be that, three or four years from now, some other event or experience will lead the Assembly to think that some aspect of the procedure or of the appointment of a commissioner requires a different approach. Once a permanent lifetime or career-long appointment is made, it becomes so much more complicated to change.
354. **The Chairperson:** Members have no other questions. I thank the witnesses. You must have dealt with your brief very well, Ciarán, because Angela did not need to come to your rescue.
355. **Mr Ó Maoláin:** I was relying on her to answer any technical questions.
356. **The Chairperson:** In that case, perhaps our questions were too easy. The Committee is obliged to you for your contribution.





Northern Ireland  
Assembly

Appendix 3

# Issues Paper and Written Submissions



# Issues Paper

The Northern Ireland Assembly Committee on Standards and Privileges has agreed to carry out an Inquiry on the appointment of an Assembly Commissioner for Standards, on maintaining the Code of Conduct and on handling alleged breaches in relation to it.

## Terms of Reference

The Aim of the Inquiry is to establish the most appropriate means of maintaining the Code of Conduct and handling alleged breaches in relation to it.

In doing so the Committee will consider:

- What the role, responsibilities and powers of an Assembly Commissioner for Standards should be;
- whether the position of an Assembly Commissioner for Standards should be placed on a statutory basis;
- how an Assembly Commissioner for Standards should be appointed;
- what the terms and conditions of any appointment might be;
- what the role of the Committee on Standards and Privileges should be in dealing with alleged breaches of the Code of Conduct; and
- what the role of the Assembly should be in dealing with alleged breaches of the Code of Conduct.

## Current Position

The Northern Ireland Assembly's new Code of Conduct came into effect on 12 October 2009 see <http://www.niassembly.gov.uk/reports/nia24-01.htm>. As per the existing arrangements, the new Code of Conduct was consulted upon and drafted by the Committee on Standards and Privileges before having been put to and agreed by the Assembly. The new Code of Conduct sets out, inter alia, the process which allows for the Interim Commissioner for Standards to investigate complaints, the Committee on Standards and Privileges to determine whether breaches have occurred and, where they have, for the Assembly to impose sanctions. The role of Interim Commissioner for Standards is fulfilled by the Northern Ireland Ombudsman, Mr Tom Frawley CBE.

The Committee now needs to formalise its arrangements in relation to a Commissioner for Standards but believes that in doing so it should also give consideration to the respective roles that the Commissioner, Committee and Assembly should fulfil, both in terms of maintaining the Code of Conduct and in terms of handling alleged breaches of it.

The respective roles of the Commissioner, Committee and Assembly are set out in detail in the Assembly's Standing Orders 57 and 69 to 69C (enclosed) and the Code of Conduct. However, broadly speaking, the respective roles in relation to maintaining the Code of Conduct and handling alleged breaches of it are as set out below:

The Commissioner for Standards has responsibility for:

- Receiving complaints;
- Investigating admissible complaints;
- Recommending to the Committee on Standards and Privileges that complaints are inadmissible;

- Making reports to the Committee on Standards and Privileges on admissible complaints with a recommendation on whether or not the conduct complained represents a breach of the Code of Conduct; and
- Recommending the use of the rectification procedure (where appropriate)

The Committee on Standards and Privileges has responsibility for:

- Recommending modifications to the Code of Conduct;
  - Dismissing complaints brought to its attention by the Commissioner which it considers to be inadmissible;
  - Considering reports on admissible complaints from the Assembly Commissioner for Standards and, further to this, determining whether breaches of the Code of Conduct have occurred;
  - Recommending to the Assembly that specific sanctions be imposed upon Members who have breached the Code of Conduct; and
  - Allowing for the use of the rectification procedure (where appropriate).
- The Northern Ireland Assembly has responsibility for:
- Agreeing modifications to the Code of Conduct (further to recommendations from the Committee on Standards and Privileges); and
  - Imposing sanctions upon Members who have breached the Code of Conduct (further to reports from the Committee on Standards and Privileges).

## Issues for Consideration

The Committee would welcome any comments or opinions from interested parties in respect of the terms of reference. Particular issues that respondents may wish to comment on include the following:

In terms of modifying and maintaining the Code of Conduct:

- Are the current respective roles and duties of the Committee on Standards and Privileges and the Assembly appropriate?
- Should there be any formal role for others in terms of maintaining and modifying the Code of Conduct?
- In terms of handling alleged breaches of the Code of Conduct:
  - Are the current respective roles and duties of the Commissioner for Standards, the Committee on Standards and Privileges and the Assembly appropriate?
  - Should there be any formal role for others in terms of handling alleged breaches of the Code of Conduct?
  - Should consideration be given to introducing any sort of appeals procedure in relation to decisions reached by the Committee?
- In terms of appointing an Assembly Commissioner for Standards
  - What should the role, responsibilities and powers of an Assembly Commissioner for Standards be?
  - Existing Standing Orders state that the Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly. Is this appropriate?
  - Existing Standing Orders say that the Commissioner shall not be dismissed unless – (a) the Assembly so resolves; and (b) the resolution is passed with the support of a number

of members which equals or exceeds two-thirds of the total number of seats in the Assembly. Is this appropriate?

- Should the position of an Assembly Commissioner for Standards be placed on a statutory basis?
- Should an Assembly Commissioner for Standards have statutory powers?
- How should an Assembly Commissioner for Standards be appointed?
- What should be the eligibility criteria of any such appointment?
- What should be the terms and conditions of any appointment?
- Are there any other relevant issues which should be brought to the Committee's attention in relation to the aim of the inquiry and its terms of reference?

## Submission of Evidence

Ideally submissions should be submitted in MS word format by e-mail to committee. standards&privileges@niassembly.gov.uk with a single additional hard copy in the post addressed to the Clerk of Standards, at the address overleaf:

The Clerk of Standards  
Room 284  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

Responses should be submitted by Friday 18 December 2009.

Responses will be published in a report of the Committee at a later date. Written responses to the Committee should be kept confidential until published by the Committee. Further to the submission of written responses, the Committee may invite respondents to appear before it to discuss responses in further detail.

Ideally evidence should be constructed to reflect the points raised in this Issues Paper.

Please feel free to pass this on to other individuals or organisations that may have an interest in the subject.

Any further enquiries can be made to the Committee Clerk on 028 9052 0333. Information regarding the Committee can be obtained from its website

<http://www.niassembly.gov.uk/standards/2007mandate/standards.htm>.

## Northern Ireland Assembly's Standing Orders 57 and 69 to 69c

### **57. Committee on Standards and Privileges**

- (1) There shall be a standing committee of the Assembly to be known as the Committee on Standards and Privileges –
- (a) to consider specific matters relating to privilege referred to it by the Assembly;
  - (b) to oversee the work of the Clerk of Standards; to examine the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interests established by the Assembly; and to review from time to time the form and content of those registers;

- (c) to consider any matter relating to the conduct of members, including specific complaints in relation to alleged breaches of the Code of Conduct which have been drawn to the committee's attention;
  - (d) to recommend any modifications to the Code of Conduct;
  - (e) to consider any reports of the Assembly Commissioner for Standards;
  - (f) to perform the functions described in Standing Orders 69B and 69C;
  - (g) to make reports (including reports to the Assembly) on the exercise of any of its functions or any other matter listed above.
- (2) The committee shall be appointed at the commencement of every Assembly and may exercise the power in section 44(1) of the Northern Ireland Act 1998.

### **69. Members' Interests**

- (1) A Register of Members' Interests, which shall list the categories of registrable interest, shall be established, published and made available for public inspection.
- (2) The Clerk of Standards shall compile, maintain and from time to time publish, the Register of Members' Interests.
- (3) Every member shall inform the Clerk of Standards of such particulars of their registrable interests as shall be required, and of any alterations to such interests within 28 days of each alteration occurring.
- (4) Before taking part in any debate or proceeding of the Assembly or its committees, a member shall declare any interest, financial or otherwise, which is relevant to that debate or proceeding, where such interest is held by the member or an immediate relative.
- (5) No member shall, in any proceeding of the Assembly –
- (a) advocate or initiate any cause or matter on behalf of any outside body or individual; or
  - (b) urge any other member to do so; in return for any payment or benefit specified in this context in the Code of Conduct.
- (6) In this order –
- “financial interest” means any registrable interest other than one falling within category 3 which is not remunerated, category 11 or category 12 of the Code of Conduct;
- “registrable interest” means any category of registrable interest defined as such in the Code of Conduct.

### **69A. Assembly Commissioner for Standards**

- (1) There shall be an officer of the Assembly, to be known as the Assembly Commissioner for Standards, who shall upon referral –
- (a) from any person of a specific complaint, in relation to alleged contravention of the Code of Conduct; and
  - (b) from the Clerk of Standards, in relation to any matter falling within paragraph (2);
- carry out an investigation and make a report thereon to the Committee on Standards and Privileges.
- (2) Those matters are –
- (a) matters relating to members and Assembly privilege, including alleged breach of privilege;



- (b) specific complaints about members made in relation to the registering or declaring of interests; and
  - (c) matters relating to the conduct of members, including specific complaints in relation to alleged contravention of the Code of Conduct.
- (3) A report made under paragraph (1) shall not include any recommendation for any sanction to be imposed upon any member, other than a recommendation for rectification under Standing Order 69C.
- (4) The Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly.
- (5) The Commissioner shall not be dismissed unless –
- (a) the Assembly so resolves; and
  - (b) the resolution is passed with the support of a number of members which equals or exceeds two-thirds of the total number of seats in the Assembly.

### **69B. Sanctions**

- (1) Where it appears to the Committee on Standards and Privileges that a member has failed to comply with any provision of the Code of Conduct or Standing Orders 69 to 69C, the committee may make a report to the Assembly. The report may include a recommendation that a sanction be imposed upon the member.
- (2) In consideration of such a report, the Assembly may impose a sanction upon a member who has failed to comply with any of those provisions.
- (3) Sanctions may include, but are not limited to –
- (a) a requirement that the member apologise to the Assembly;
  - (b) censure of the member by the Assembly;
  - (c) exclusion of the member from proceedings of the Assembly for a specified period;
  - (d) withdrawal of any of the member's rights and privileges as a member for that period;
- and for the avoidance of doubt, the rights and privileges withdrawn under sub-paragraph (d) may include the rights to salary and allowances.

### **69C. Rectification**

- (1) Rectification under this order means –
- (a) rectification of the Register of Members' Interests, in the case of a complaint following failure by a member to register an interest in the Register;
  - (b) reporting and apologising to the Assembly in respect of a failure of a member to declare an interest, in the case of a complaint following that failure.
- (2) The Committee on Standards and Privileges may allow rectification under this order if –
- (a) the Assembly Commissioner for Standards recommends it;
  - (b) the failure was minor or inadvertent; and
  - (c) the member acknowledges the failure and either undertakes to apologise for it or has apologised for it.

# Committee on Standards in Public Life

## 1 December 2009

In terms of modifying and maintaining the Code of Conduct

**Are the current respective roles and duties of the Committee on Standards and Privileges and the Assembly appropriate?** Yes.

**Should there be any formal role for others in terms of maintaining and modifying the Code of Conduct?** It might be helpful if the Committee consulted the Commissioner from time to time about whether any areas of the Code might need modifying.

In terms of handling alleged breaches of the Code of Conduct

**Are the current respective roles and duties of the Commissioner, the Committee and the Assembly appropriate?** In line with what we recommended in our recent report on MPs' expenses we suggest the powers of the Commissioner include allowing him or her to conduct investigations proactively without waiting for a formal complaint, and enabling him or her to include in any report to the Committee on Standards and Privileges an indication of the seriousness of any breaches of the Code of Conduct as a guide to what might be an appropriate sanction.

**Should there be any formal role for other in terms of handling alleged breaches of the Code of Conduct?** In matters relating to privilege, it should be for the Assembly to decide the procedures for handling alleged breaches of the Code.

**Should consideration be given to introducing any sort of appeals procedure in relation to decisions reached by the Committee?** Ultimately the Assembly can decide whether to accept the verdict of the Committee on Standards and Privileges.

In terms of appointing an Assembly Commissioner for Standards

**What should the role, responsibilities and powers of an Assembly Commissioner for Standards be?**

It might also be appropriate for the Commissioner to investigate any alleged breaches with regard to the Members' register of Interests in line with the Commissioner's role at Westminster.

**Existing Standing Orders state that the Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly. Is this appropriate?** It is essential that the Commissioner is seen to be independent in all that he or she does.

**Existing Standing Orders say that the Commissioner shall not be dismissed unless a) the Assembly so resolves; and b) the resolution is passed with the support of a number of members which equals or exceeds two-thirds of the total number of seats in the Assembly. Is this appropriate?** It would be helpful to make clear that it would not be acceptable for a Commissioner to be dismissed simply because members of the Assembly did not like the way the Commissioner did his/her job.

**Should the position of an Assembly Commissioner for Standards be placed on a statutory basis?** The Code of Conduct is a privilege issue. Making the post of Commissioner a statutory appointment risks judicial reviews of decisions taken by the Commissioner. The Committee also believes that it is vital that the Assembly buys into the standards of conduct and behaviour it considers acceptable. Such behaviour should be a key part of the culture of the Assembly, and cannot effectively be imposed from outside.

**Should an Assembly Commissioner for Standards have statutory powers?** See the answer to the previous question.

**How should an Assembly Commissioner for Standards be appointed?** On the basis of fair and open competition.

**What should be the eligibility criteria of any such appointment?** They should include independence of mind and an ability to be robust against improper pressure.

**What should be the terms and conditions of any appointment?** We have no comments to make about this.

**Are there any other relevant issues which should be brought to the Committee's attention?**

In the Committee's recent report on MPs' expenses we recommended that the Committee on Standards and Privileges at Westminster should have at least two lay members with full voting rights. The Committee thinks that this should also be the case for the Committee on Standards and Privileges in the Northern Ireland Assembly. In the current climate of public disillusionment with politicians, the Committee thinks that having lay membership of the Committee would be a helpful step towards enhancing public acceptance of the robustness and independence of the disciplinary process.

## Committee on Members' Interests, Dáil Éireann 7th December 2009

I refer to your letter of 29th October, 2009 which was considered by the Committee at its meeting of 18th November, 2009. The following information may be of help to your Committee:

### **Legal Framework**

The Ethics in Public Office Acts 1995 and 2001 form the legal framework for the application of standards in public life in Ireland. Under the Acts, Members of the Dáil, as holders of designated public offices, have to disclose interests including property and gifts received. The Acts of 1995 and 2001 also established an independent commission called the Standards in Public Office Commission and as well as a Select Committee on Members' Interests in each House of the Oireachtas.

### **Role of the Committee**

The role of the Committee is to:-

- (i) publish guidelines;
- (ii) draw up a Code of Conduct for the Guidance of Members who are not office holders;
- (iii) provide advice to ensure compliance with the Acts; and
- (iv) investigate and report in relation to possible contraventions of the Acts.

I attach for information a copy of the guidelines that were issued last December to Members of the Dáil by this Committee. A new set of guidelines is currently being drafted and will issue to Members on 1 January, 2010. The Acts can be viewed on our website [www.Oireachtas.ie](http://www.Oireachtas.ie)

### **Standards in Public Office Commission**

The Commission is an independent body established on 10 December 2001 by the Standards in Public Office Act 2001.

The Commission supervises the Ethics in Public Office Acts 1995 and 2001 insofar as they apply to office holders (e.g. Members of the Government), the Attorney General, Ministerial special advisers, senior civil servants and directors and executives of specified public bodies. It provides guidelines and advice on compliance with the Ethics Acts and, where appropriate, investigates and reports in relation to possible contraventions.

The Commission also has a supervisory role, under the Electoral Acts 1997 to 2002, which relates to disclosure and limiting of political donations; disclosure, limiting and reimbursement of election expenditure and exchequer funding of political parties that received at least 2% of the first preference votes at the most recent Dáil General Election.

The Commission also has a supervisory role in relation to exchequer payments made to the leaders of political parties with members in either House of the Oireachtas.

### **Visit to Dublin**

At its meeting in November, the Committee expressed the view that a meeting between the two Committees would be beneficial in explaining the way the Ethics legislation operates which would prove informative to your Members as they seek to put a framework in place. To that end, the Chairman of the Committee has directed that I extend a formal invitation to Members of your Committee to visit Dublin in the New Year. We can make the necessary arrangements nearer the time of the visit, should your Committee wish to accept our invitation.

In the meantime, if there is anything I can do to help your process, please give me a ring.

**Guidelines for Members of Dáil Éireann who are not office holders concerning the steps to be taken by them to ensure compliance with the Provisions of the ethics in Public Office Acts 1995 and 2001.**

Published by the Committee on Members' Interests of Dáil Éireann  
January 2009.

**For the guidance of members (who are not office holders) for the registration period 1st January, 2008 to 31st December, 2008.**

# Table of Contents

The Ethics in Public Office Acts 1995 and 2001

Introduction to Guidelines

Members and Office Holders

Procedure for Registering Interests

Registrable Interests

1. Occupational income
2. Shares
3. Directorships
4. Land
5. Gifts
6. Property and service
7. Travel facilities
8. Remunerated position
9. Contracts
10. General guidance

Declaration of Interests in Proceedings

Specified acts

Tax Clearance Certificates and Statutory Declarations for election purposes

Appendix 1 – Definitions

Appendix 2 - Code of Conduct

---

## The Ethics in Public Office Acts 1995 and 2001

### (Act Number 22 of 1995 and Act Number 31 of 2001)

The Ethics in Public Office Acts 1995 and 2001 provide for the disclosure of interests by holders of certain public offices, including members of the Houses of the Oireachtas, and designated directors of and persons employed in designated positions in certain public bodies. The Acts also deal, *inter alia*, with gifts to holders of certain public offices and with personal appointments by them. The Acts of 1995 and 2001 established an independent Standards in Public Office Commission and a Select Committee on Members' Interests in each House of the Oireachtas.

The role of the Committee on Members' Interests of Dáil Éireann (the Committee) is to publish guidelines, to draw up a Code of Conduct for the Guidance of Members who are not office holders and to provide advice to ensure compliance with the Acts and to investigate and report in relation to possible contraventions of the Acts.

The Act of 2001 introduced a new area of possible complaint concerning members. Such complaints can be made by a member or any other person in respect of a member of Dáil Éireann or a connected person alleging that such member may have done an act or made an omission that is, or the circumstances of which are, inconsistent with the proper performance by such member of the functions of the office of member or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance. These functions of the Committee relate only to those members of Dáil Éireann who are *not* holders of certain public offices.

The Select Committee on Members' Interests of Seanad Éireann has similar functions in relation to members of the Seanad (who are *not* holders of certain public offices) and the Standards in Public Office Commission has similar functions in relation to holders of certain public offices, special advisors and designated directors of and persons employed in designated positions in certain public bodies.

## Introduction to Guidelines.

These guidelines for members have been drawn up by the Committee following consultation with the Standards in Public Office Commission and the Select Committee on Members' Interests of Seanad Éireann, as required under section 12 of the Ethics in Public Office Act 1995 ("the 1995 Act"). The guidelines relate specifically to members of Dáil Éireann who are *not* office holders. Separate guidelines have been published by the Standards in Public Office Commission for members who *are* office holders, special advisors, designated directors of and persons employed in certain public bodies.

The guidelines provide information on the steps members need to take in order to comply with the requirements of the Act of 1995 as amended by the Act of 2001. In addition to the guidelines, the Act of 1995 provides, under section 12 as amended by the Act of 2001, that members may seek advice from the Committee in relation to any provision of the Acts or its applicability in any particular case.

Section 12 of the Act of 1995 as amended by the Act of 2001 also provides that members must act in accordance with the guidelines and any advice given by the Committee under that section, unless by so doing they would be contravening another provision of the Act of 1995.

[Note: A number of key terms arise in the Act and in the guidelines. These are set out in **bold type** on the first occasion on which they occur in a paragraph of text and a definition of each term is provided in Appendix 1].



---

## Members and Office Holders

These guidelines have been compiled for use by members of Dáil Éireann who are *not* office holders. As stated previously, separate guidelines for office holders have been issued by the Standards in Public Office Commission. For the information of members, a list of office holders is given below and, accordingly, any member who is an office holder should refer to the guidelines issued by the Standards in Public Office Commission and should, in the case of any query, refer to that body for advice.

In the Acts and in the guidelines, “office holder” means:

An Taoiseach,

An Tánaiste,

A Minister,

A Minister of State,

A member of Dáil Éireann or of Seanad Éireann who is Attorney General,

A person who is Chairman or Deputy Chairman of Dáil Éireann or Chairman or Deputy Chairman of Seanad Éireann,

A person who holds the office of Chairman of a committee of either House, being an office that stands designated for the purposes of the Act for the time being by resolution of that House, or

A person who holds the office of Chairman of a joint committee of both Houses, being an office that stands designated for the purposes of the Act for the time being by resolution of each House.

## 1 Procedure for Registering Interests

If you are a member of Dáil Éireann on 31 December, 2008, you are required to submit to the Standards in Public Office Commission (“the Commission”) by 31 January, 2009, on a form provided by the Commission, a statement in writing of your registrable interests. The statement should cover any period(s) when you were a member of either House of the Oireachtas between 1 January, 2008 to 31 December, 2008, both dates included\*.

If you are a member of Dáil Éireann on any subsequent **registration date**\*, you are required to submit to the Clerk, within 30 days of that subsequent registration date, a statement in writing of your registrable interests during the period between that subsequent registration date and the last previous registration date.

Your statement of registrable interests will be entered in a register established by the Clerk and a copy of the register will be furnished by the Clerk to the Standards in Public Offices Commission and will be laid before Dáil Éireann and will be published in *Iris Oifigiúil*. The Clerk may correct errors in the register and may amend the register as provided in the Acts.

\*You will note from the definition of “registration date” provided in Appendix 1 that this date will always be 31 December, unless on that date in a given year the Dáil stands dissolved for the purpose of the holding of a general election. If so the registration date for that year is the date that is 30 days after the date of the first meeting of Dáil Éireann after 31 December. In any year in which a general election occurs and as a result of that general election the registration date is not 31 December, it should be noted that, in the following year, the registration date will revert to 31 December.

## Registrable Interests

The following paragraphs detail registrable interests which you are required as a member to disclose in your annual statement. It should be noted that it will *not* be necessary to specify in a statement of registrable interests *the amount or monetary value* of any interest or the remuneration of any trade, profession, employment, vocation or other occupation included in the statement.

### 1. Occupational Income, etc.

A remunerated trade, profession, employment, vocation or other occupation (*other* than that of office holder or member) held by you during the registration period concerned where the remuneration, e.g. pay, pension, retirement gratuities, benefits-in-kind, rental income, etc., during the period exceeded €2,600.

Where remuneration arises from land held jointly with another it is for you to determine whether or not your share of that remuneration exceeded €2,600 during the registration period concerned.

Normal pension entitlements which accrued and which were not payable during the registration period are not reckonable for the purposes of the calculation of remuneration.

An occupational income exceeding €2,600 in the registration period concerned is a registrable interest even if you do not yourself actually carry on the business to which that interest relates.

### 2. Shares, etc.

If, at any time during the registration period concerned, you had a holding of shares, bonds, debentures or the like, with an aggregate nominal or market value in excess of €13,000, in respect of any one **company**, (or) enterprise or undertaking, you are required to disclose that holding. Accordingly, for example, if a member holds €12,000 in one company and €11,000 in another the member is not obliged to declare either holding even though the combined value of both holdings exceeds €13,000.

Holding does not include money in a current, deposit or other similar account, including an SSIA deposit-based account, with a financial institution but does include a holding in unit trusts, managed funds or SSIA equity-based accounts.

In respect of a holding in a unit trust or managed fund, the initial investment or the value of the overall aggregate investment at any time during the relevant period, is required to be disclosed where this value exceeds €13,000. A break-down between individual investments within the holding in the unit trust or managed fund is not required.

Shares held by you solely in a capacity as an executor to a will are not a registrable interest. If, however, in addition to being an executor, you are also a beneficiary of the shares this interest is registrable if its value exceeds €13,000 at any time during the registration period concerned and the shares have been transferred to you or you have, as executor, the right to transfer ownership of such shares to yourself.

An investment exceeding the value of €13,000 held in a company which is the subject of a Business Expansion Scheme is a registrable interest. You should judge the value of an interest of this kind against the size of the original investment rather than against its periodically fluctuating value.

A pension fund for which you are paying which will mature only on retirement and in respect of which no dividends are payable is not required to be disclosed.

### 3. **Directorships.**

A directorship or shadow directorship of any company held by you at any time during the registration period concerned.

### 4. **Land.**

In this section land includes property. You are required to disclose any interest (including freehold or leasehold interests) you have in land, including land in the State and land in any other jurisdiction, *exceeding* in value €13,000 at any time during the registration period concerned, including an interest in any contract for the purchase of land, whether or not a deposit or part payment has been made under the contract. Any interest you have in an option held by you to purchase land, whether or not any consideration has been paid, should also be disclosed as should any interest you have in land in respect of which such an option has been exercised but where the land has not been conveyed to you.

You must disclose the full address of any land or property in which you have a registrable interest.

Where an interest in land is held jointly with another it is for you to determine whether or not your share of that interest exceeded €13,000 during the registration period concerned.

Land or property held by you solely in a capacity as an executor to a will is not a registrable interest. If, however, in addition to being an executor, you are also a beneficiary of the land or property this interest is registrable if its value exceeds €13,000 at any time during the registration period concerned and the land or property has been transferred to you or you have, as executor, the right to transfer ownership of such land or property to yourself.

You are *not* required under this heading to disclose information regarding your private home and/or that of your **spouse** and any subsidiary or ancillary land to such home that is not being used or developed primarily for commercial purposes. Also excluded is a holiday home and any other family residence used by your family and any land that is subsidiary or ancillary to it which is required for its amenity or convenience and is not being used or developed primarily for commercial purposes.

### 5. **Gifts.**

You are required to disclose a **gift**, or gifts by the same person, given to you during the registration period concerned where the **value**, or the aggregate value, exceeded €650.

The interpretation by the Acts of a gift as meaning a gift of money or other property includes money's worth but excludes a **donation** as defined by the Electoral Act 1997 (See Appendix 1 - Definitions).

Gifts given to you by your political party are registrable where these are over and above the normal services and supports provided generally by the party to members.

The allowance paid by the State to the leaders of political parties is not a registrable interest.

*Excluded* from this requirement is a gift given to you for purely personal reasons, by a **relative** or friend of yours, of your spouse, of your child (meaning a son or daughter of any age) or of your spouse's child *unless* acceptance of the gift could have materially influenced you in the performance of your **functions** as a member.

### 6. **Property and Service.**

A property or service could be supplied or lent for **political purposes** or not and each such case should be decided by the Member on its own merits. Please note that a property or service given for political purposes would be more properly classified as a donation within the

meaning of the Electoral Act 1997 and should be declared as such. A definition of “political purposes” and “donation” are set out in appendix 1. Such a property or service, if declared as a donation does not need to be declared again under Ethics legislation.

You are required to disclose a **property** supplied or **lent** or a service supplied to you, once or more than once by the same person, during the registration period concerned, where the consideration or price was less than the **commercial consideration** or **price** by more than €650. This includes property lent or a service supplied free of charge where the commercial consideration or price would have been more than €650. By way of example, a room in a hotel or public house provided to you for holding a clinic must be disclosed if an ordinary member of the public would have to pay at least €650 more than you, for the same facility (during the registration period).

Property supplied or lent or a service supplied to you by your political party are registrable where these are over and above the normal services and supports provided generally by the party to members.

*Excluded* are a property supplied or lent or a service supplied to you:

- (a) as a gift *for purely personal purposes* by a relative or friend of yours, of your spouse, of your child or of your spouse’s child *unless* acceptance could have materially influenced you in the performance of your functions as a member, or
- (b) as declared by you as a donation within the meaning of the Electoral Act 1997.

If services you are required to disclose relate to legal services or medical services (including psychiatric or psychological services) it will be sufficient to state that the services were supplied and no further details will require to be furnished.

## 7. **Travel facilities, etc.**

Travel facilities, living accommodation, meals or entertainment provided during the registration period concerned free of charge or at less than the commercial price must be disclosed.

*Excluded* are travel facilities, living accommodation, meals or entertainment supplied to you, by the same person once or more than once, free of charge during the registration period concerned where the commercial price or the aggregate of the commercial prices was less than €650, or provided where the difference between the price paid and the commercial price was not more than €650.

Travel facilities arising from the accrual of credits in generally applicable customer loyalty schemes are not registrable.

*Excluded* also are travel facilities, living accommodation, meals or entertainment provided:

- (i) within the State, or
- (ii) in the course and for the purpose of performing your functions as a member<sup>1</sup>\*, or
- (iii) in the course and for the purpose of any trade, profession, employment or other occupation (other than office holder), or
- (iv) as a member, in the course of Conferences of the Inter Parliamentary Union, Conferences and Parliamentary Assemblies of the Council of Europe and its Committees, Parliamentary Assemblies of the Organisation for Security and Co-

---

<sup>1</sup> \* Travel facilities, living accommodation, meals or entertainment provided to a member during the course of travel undertaken by a member, by virtue of his/her position as a member, which is purely of a humanitarian or educational nature, or travel undertaken by a member as a result of parliamentary expertise being sought from that member, comes within this exclusion.

operation in Europe, Parliamentary Assemblies of the Western European Union, bilateral visits pursuant to invitations from the speakers of other parliaments and such other conferences and visits that may arise from time to time, or

- (v) as a member, by any other organisation of states or governments of which this State or the Government is a member or a body of or associated with.

Further items *excluded* are travel facilities, living accommodation, meals or entertainment supplied as a gift *for personal reasons* by a relative or friend of yours, of your spouse, of your child or of your spouse's child *unless* the acceptance of such a gift could reasonably be seen to have been capable of influencing you in the performance of your functions.

#### **8. Remunerated Position.**

A remunerated position held by you as a political or public affairs lobbyist, consultant or advisor during the registration period concerned.

#### **9. Contracts.**

Any contract, or contracts, exceeding €6,500 in aggregate value for supply of goods or services to a Minister of the Government or a public body, in which you had a material interest during the registration period concerned.

#### **10. General Guidance.**

- If you had *no* registrable interests during the appropriate period you must, within the same timescale, furnish a statement to this effect to the Clerk of the Dáil.
- If you have an interest that is not a registrable interest you may, if you so wish, at any time prepare a statement of the interest and furnish it to the Clerk. Where a statement of the interest is furnished, the Acts will apply and have effect as if the interest was a registrable interest.
- If there is a change in your registrable interests you may, if you so wish, furnish a statement in writing of the change to the Clerk.
- If you are advised by the Committee under section 12 of the Act of 1995 as amended by the Act of 2001 that an interest is a registrable interest you must furnish to the Clerk a statement of that interest.
- If you become a member after a registration date you may, before the next registration date, furnish a statement of your registrable interests to the Clerk.
- If you become an office holder after a registration date you may, before the next registration date, furnish a statement of your additional interests to the Clerk who will furnish a copy of the statement to the Taoiseach and to the Standards in Public Offices Commission.

---

## Declaration of Interests in Proceedings

In accordance with section 7 of the Act of 1995 as amended by the Act of 2001, if you propose to speak or vote in proceedings in Dáil Éireann, a committee of Dáil Éireann or a joint committee of both Houses and if you have **actual knowledge** that you or a **connected person** has a material interest in the subject matter of the proceedings then:

- (i) if you propose to speak, you must make a declaration of the interest before or during the course of your speech, and
- (ii) if you propose to vote, but not speak, you must make the declaration in writing and furnish it before voting to the Clerk of the Dáil or the Clerk to the committee concerned, as appropriate.

It should be noted that, for the purpose of this requirement only, you or a connected person have a material interest in the subject matter of proceedings if the consequence or effect of any decision by the House or the committee or joint committee concerned, or by the Government or an office holder, concerning the matter may be to confer on or withhold from you, or a connected person, a significant **benefit** or impose on the person a significant loss, liability, penalty, forfeiture, punishment, or other disadvantage without also conferring it on, withholding it from or imposing it on persons in general or a class of persons which is of significant size having regard to all the circumstances and of which you, or a connected person, are a member.

It should also be noted that a declaration will not be required to be made in accordance with this provision if you already declared the interest under the statement of registrable interests furnished by you to the Commission.

Where it is proposed to seek the advice of the Committee to the application of this requirement in any particular case, members are requested to inform the Committee as soon as possible that such advice is required. The Committee will endeavour to give such advice as soon as possible.

A Member who requests advice and who does not receive the advice before the speech or vote concerned shall, in the case of a speech, declare the fact of the request in the proceedings concerned and on receipt of the advice furnish a copy to the Clerk of the Dáil or the Clerk to the Committee as appropriate and in the case of a vote, declare the request for advice in writing and furnish the Clerk of the Dáil or the Committee as appropriate a declaration in writing of the advice when received.

## Specified acts

A specified act is an act or omission referred to in section 4(1)(a) of the 2001 Act. To be a specified act the act in question must:

1. be inconsistent with the proper performance of the functions of office or position, or
2. be inconsistent with the maintenance of confidence in such performance by the general public, and
3. be of significant public importance.

The Committee has not yet had to make any determination in respect of a specified act. However, Members may wish to be aware that the most prevalent complaints received by the Committee relate to the alleged misuse of Oireachtas pre-paid envelopes. In this context Members are advised that free postal facilities are provided to them in their capacity as Members of the Oireachtas and in respect of their duties as public representatives.

## Tax Clearance Certificates and Statutory Declarations for Election Purposes

There are new requirements in relation to tax clearance which have come into force since the commencement on 10 December, 2001 of the Standards in Public Office Act 2001.

In the future, in addition to the statement of registrable interests, members will also be required, not more than nine months following their election to the Dáil, to furnish to the Standards in Public Office Commission an appropriate Tax Clearance Certificate/application statement, and Members will also be required to make one month either side of an election a Statutory Declaration as set out in Section 21 of the Standards in Public Office Act 2001. The Statutory Declaration must also be furnished to the Standards in Public Office Commission not more than nine months following election to Dáil Éireann



## Appendix 1 - Definitions

The list below contains a selection of the definitions provided in section 2 of the Act which are referred to in the guidelines. You should refer to that section for a more comprehensive list of definitions. The definition of shadow directorship is provided in the Second Schedule to the Act.

**“actual knowledge”** means actual, direct and personal knowledge as distinct from constructive, implied or imputed knowledge and includes, in relation to a fact, belief in its existence the grounds for which are such that a reasonable person who is aware of them could not doubt or disbelieve the fact exists;

**“benefit”** includes-

- (a) a right, privilege, office or dignity and any forbearance to demand money or money's worth or a valuable thing,
- (b) any aid, vote, consent or influence or pretended aid, vote, consent or influence,
- (c) any promise or procurement of or agreement or endeavour to procure, or the holding of any expectation of, any gift, loan, fee, reward or other thing aforesaid,

or other advantage and the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;

**“commercial price”**, in relation to the supply of property, whether real or personal, or the supply of a service, and

**“commercial consideration”**, in relation to the lending of property, means -

- (a) where the person by whom the property is supplied or lent or the service is supplied carries on a business consisting wholly or partly of the supply or lending of property or the supply of a service, the lowest price or consideration charged by him or her for the supply or lending in the normal course of business of an equivalent amount of property of the same kind or for the supply of a service of the same kind and to the same extent (allowance being made for any discount which is normally given by him or her in respect of the supply or lending of property of the same kind or the supply of a service of the same kind) at or about the time of the first-mentioned supply or lending of property or the first-mentioned supply of a service, and
- (b) where the person by whom the property is supplied or lent or the service is supplied does not carry on a business consisting wholly or partly of the supply or lending of property or the supply of a service of the same kind, the lowest price or consideration for which an equivalent amount of property of the same kind and to the same extent may be procured in the normal course of business (allowance being made for any discount which is normally given in respect of the supply or lending of property of the same kind or the supply of a service of the same kind) at or about the time of the first-mentioned supply or lending of property or the first-mentioned supply of a service from a person who carries on such a business;

**“company”** means any body corporate;

**“connected person”**: A person is deemed to be connected with another where:

- (i) that person is a relative (brother, sister, parent, spouse, child or the child of the spouse) of the other person;
- (ii) that person is a business partner of the other person;
- (iii) that person is a trustee of a trust where the other person, or any of his/her children, or a body corporate which he or she controls, is a beneficiary of that trust;

- (iv) a company is connected with another person if that person has control of it, or if that person and any person connected with that person together have control of it;
- (v) any two or more persons acting together to secure or exercise control of a company shall be deemed, in relation to that company, to be connected with one another and with any person acting on the instructions of any of them to secure or exercise control of the company.

**“control”** has the meaning assigned to it by section 157 of the Corporation Tax Act 1976, and any cognate words shall be construed accordingly.

**“functions”** includes powers and duties and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of the duties;

**“gift”** means a gift of money or other property excluding a donation (within the meaning of the Electoral Act 1997);

note: **“donation”** for the purposes of Part IV of the Electoral Act 1997 means (with specified exceptions such as free postage and party political broadcasts) any contribution given for political purposes by any person, whether or not a member of a political party, to a political party, a member of either House of the Oireachtas, a representative in the European Parliament or a candidate at a Dáil, Dáil or European election and includes all or any of the following, namely—

- (1) a donation of money,
- (2) a donation of property or goods,
- (3) conferring the right to use, without payment or other consideration, indefinitely or for a specified period of time, any property or goods,
- (4) the supply of services without payment or other consideration therefor,
- (5) the difference between the commercial price and the price charged for the purchase, acquisition or use of property or goods or the supply of any service where the price, fee or other consideration is less than the commercial price, or
- (6) in the case of a contribution made by a person in connection with an event organised for the purpose of raising funds for a political party, a member of either House of the Oireachtas, a representative in the European Parliament or a candidate at a Dáil, Dáil or European election, the proportion attributable to that contribution of the net profit, if any, deriving from the event.

Matters expressly deemed not to be donations are specified in S22 (2)(b) paragraphs (i) to (vii) of the Electoral Act 1997.

**“lend”** includes lease or let and any cognate words shall be construed accordingly;

**“political purposes”** means (under the Electoral (Amendment) Act 2001) any of the following purposes, namely—

- (i) (I) to promote or oppose directly or indirectly, the interests of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament, or  
  
(II) to present, directly or indirectly, the policies or a particular policy of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party, or

(III) to present, directly or indirectly, the comments of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament or a third party with regard to the policy or policies of another political party, political group, a member of either House of the Oireachtas, representative in the European Parliament, third party or candidate at an election or referendum or otherwise, or

(IV) to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority;

(ii) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election or otherwise;

(iii) otherwise to influence the outcome of the election or a referendum or campaign referred to in paragraph (i)(IV) of this definition;

**“property”** means real or personal property. [A person shall be deemed to have an interest in property if the person would be regarded as having, for the purposes of the Capital Acquisitions Tax Act 1976, the power to make a disposition of that interest.];

**“registration date”** means, in relation to Dáil Éireann and its members and Clerk-

(i) 31 December or, if on that date Dáil Éireann stands dissolved, the date that is 30 days after the date of the first meeting of Dáil Éireann after 31 December.

**“relative”**, in relation to a person means a brother, sister, parent or spouse of the person or a child of the person or of the spouse;

**“shadow directorship”** means the position held by a person who is a shadow director within the meaning of the Companies Acts, 1963 to 1990, or, in the case of a public body that is not a company (within the meaning of the Companies Act 1963) and is specified in subparagraph (8), (9), (10), (11) or (12), or stands prescribed for the purposes of subparagraph (13), of paragraph 1 of the First Schedule (of the Act), the position held by a person in accordance with whose instructions or directions the members of the body or the members of the board or other body that controls, manages or administers that body are accustomed to act;

**“spouse”**, in relation to a person, does not include a spouse who is living separately and apart from the person;

**“value”**, in relation to a gift, means the price which the property the subject of the gift would fetch if it were sold on the open market on the date on which the gift was given in such manner and subject to such conditions as might reasonably be calculated to obtain for the vendor the best price for the property, and any cognate words shall be construed accordingly.

## Appendix 2 - Code of Conduct for Members of Dáil Éireann other than office holders

### Preamble

Members of Dáil Éireann other than office holders (referred to hereafter as “Members”) recognise that it is in their individual and collective interest to foster and sustain public confidence and trust in their integrity as individuals and in Dáil Éireann as an institution. To this end, Members should at all times be guided by the public good and ensure that their actions and decisions are taken in the best interests of the public.

Members are in the unique position of being responsible to the electorate which is the final arbiter of their conduct and has the right to dismiss them from office at regular elections. Accordingly, and as a matter of principle, individual Members are not answerable to their colleagues for their behaviour, except where it is alleged to breach the obligations to answer to them which have been placed on Members by law, by Standing Orders or by Codes of Conduct established by the House.

To this end and in exercise of the powers conferred by Article 15.10 of the Constitution, the Members have adopted this Code of Conduct, the purpose of which is to assist Members in the discharge of their obligations to the House, their constituents and the public at large, without, however, trespassing into areas where Members more properly submit themselves to the judgement of their electors rather than the jurisdiction of this House.

### Code

1. Members must, in good faith, strive to maintain the public trust placed in them, and exercise the influence gained from their membership of Dáil Éireann to advance the public interest.
2. Members must conduct themselves in accordance with the provisions and spirit of the Code of Conduct and ensure that their conduct does not bring the integrity of their office or the Dáil into serious disrepute.
3.
  - (i) Members have a particular obligation to behave in a manner which is consistent with their roles as public representatives and legislators, save where there is a legitimate and sustainable conscientious objection.
  - (ii) Members must interact with authorities involved with public administration and the enforcement of the law in a manner which is consistent with their roles as public representatives and legislators.
4.
  - (i) Members must base their conduct on a consideration of the public interest and are individually responsible for preventing conflicts of interest.
  - (ii) Members must endeavour to arrange their private financial affairs to prevent such conflicts of interest arising and must take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.
5.
  - (i) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her office knowing that it will improperly and dishonestly further his or her private financial interest or another person’s private financial interest directly or indirectly.
  - (ii) A conflict of interest does not exist where the Member or other person benefits only as a member of the general public or a broad class of persons.

6. Members may not solicit, accept or receive any financial benefit or profit in exchange for promoting, or voting on, a Bill, a motion for a resolution or order or any question put to the Dáil or to any of its committees.
7. Members must fulfil conscientiously the requirements of the Dáil and of the law in respect of the registration and declaration of interests and, to assist them in so doing, should familiarise themselves with the relevant legislation and guidelines published from time to time by the Committee on Members' Interests and the Standards in Public Office Commission as appropriate.
8. (i) Members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their official duties.  
(ii) Members may accept incidental gifts and customary hospitality.
9. In performing their official duties, Members must apply public resources prudently and only for the purposes for which they are intended.
10. Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.
11. Members must co-operate with all Tribunals of Inquiry and other bodies inquiring into matters of public importance established by the Houses of the Oireachtas.

# Commissioner for Public Appointments Northern Ireland 10th December 2009

I am responding to the issues for consideration where I have particular experience either because of my role as Commissioner or from my experience as an independent regulator within the wider NI government.

My experience chairing the selection panel for the newly set up Independent Parliamentary Standards Authority in Westminster gives me direct and very pertinent experience regarding a potential Assembly Commissioner for Standards. I chaired the panel to select the Chair-Prof Sir Ian Kennedy, and the 4 members. The names were subsequently put to Mr Speaker Bercow for selection and consultation with the Speaker's Committee before debate on the floor of the House. See Hansard <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091202/debtext/91202-0024.htm#09120265000083> . .

I would be very happy to discuss my very recent experience of the IPSA process but in my personal capacity and not as Commissioner.

## Appointing the Assembly Commissioner for Standards

This should be done using an open transparent process following the principles laid out in my Code of Practice for Ministerial Appointments. Given the relationship of a Commissioner with the Assembly, such an appointment could not be made by a Minister. Therefore it could not be said, as things currently stand, that the appointment could be regulated by me. I can only regulate public appointments made by Ministers as laid down in various statutes. However some form of oversight might be appropriate if it could be agreed by all involved, to clearly demonstrate commitment to a fair open and transparent process.

As Commissioner for Public Appointments my position is statutory, but the founding legislation is nebulous, providing me with no clear independence from the very departments I regulate. I do not have the legal capacity to engage my own staff, have no delegated budget and until recently was located in the midst of the civil servants I regulate. Due to the vagueness of the legislation my position is not properly recognised by the 'system'. I contrast my experience at the hands of the NICs with that of the ICO – where clear legislation thought-out statute has given the Commissioner the authority to carry out his duties without fear or favour.

It is vital that the Assembly Commissioner is established by statute with all the necessary 'trappings' of independence to enable him or her to get on with the job. Having seen many different forms of appointment for regulators, ethical and otherwise I believe a one-off term of appointment of 5 years would be the most appropriate term. The Commissioner for Public Appointment for England and Wales is appointed for one term of five years only. The Police Ombudsman is appointed for one term of 7 years. This allows the appointee the opportunity to commit to a long term work plan without looking over his shoulder wondering whether a re-appointment will come.

To demonstrate true independence for the Assembly the Commissioner must be free from direction or control of the Assembly and this must be clearly demonstrated in legislation as well as in practice. The Assembly Commissioner must also have clear statutory powers to enforce his findings. Again I would draw the committee's attention to my own situation, where the Commissioner for Public Appointments has no sanction if it is discovered that the Code of Practice has been breached. The PAC has drawn attention to this – in contrast with the powers of the Scottish Commissioner for Public Appointments.

The matter of criteria for the post requires a clear definition of the duties and powers within legislation. A role specification and appropriate criteria could then be drawn up.

I believe you have spoken to my Policy Advisor and that you will be in touch shortly to arrange a meeting.

Felicity Huston

# Committee on Standards of Conduct, National Assembly for Wales 10th December 2009

Thank you for your letter of 28 October regarding the inquiry being undertaken by the Committee on Standards and Privileges on the appointment of an Assembly Commissioner for Standards. I am writing in response on behalf of the National Assembly for Wales Committee on Standards of Conduct.

The National Assembly for Wales is in the process of implementing similar proposals to those being consulted upon by the Northern Ireland Assembly Committee on Standards and Privileges. For that reason the response provided refers to the work that the National Assembly for Wales' Committee on Standards of Conduct has undertaken in bringing forward the National Assembly for Wales Commissioner for Standards Measure 2009.

The overarching purpose of the Measure is to ensure that the Commissioner for Standards is able to promote high standards of public life amongst Assembly Members, has the powers to enable him or her to investigate complaints rigorously, and, is, and is seen to be, totally independent of the Assembly and therefore able to act with complete objectivity. The Committee regards these as being of great significance to the ability of the people of Wales to have confidence in their elected representatives.

**Annex 1** to this letter provides a summary of the Purpose of the Measure and its key provisions.

**Annex 2** provides a copy of the Measure (as passed) and the Explanatory Memorandum.

Electronic versions can be found at:

(Proposed) National Assembly for Wales Commissioner for Standards Measure: [http://www.assemblywales.org/proposed\\_naw\\_sc\\_measure\\_as\\_amended\\_at\\_s3-e201009.pdf](http://www.assemblywales.org/proposed_naw_sc_measure_as_amended_at_s3-e201009.pdf)

Explanatory Memorandum:

<http://www.assemblywales.org/bus-home/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=145738&ds=10/2009>

Details of the deliberations of the Committee in working towards the proposals for legislation can be found on the Website of the National assembly for Wales at:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-std-home.htm>

The current position with regard to the role of the Commissioner for Standards, the Committee on Standards of Conduct, detail of the Code of Conduct and the Complaints Procedure can be found via the web pages of the National Assembly for Wales Commissioner for Standards:

<http://www.assemblywales.org/memhome/mem-commissioner-standards.htm>

We hope you will find this information of use in your considerations. I would like to take this opportunity to highlight that members of the Committee would be happy to discuss further the work we undertook in reaching this point if that would be of value in your work.



# Annex 1

## National Assembly or Wales Commissioner for Standards Measure 2009

### **Purpose of the Proposed Measure**

- (1) Creates a statutory Commissioner for Standards;
- (2) Ensures that the Commissioner, once appointed, is seen to be totally independent of the Assembly and therefore able to investigate complaints against Assembly Members with complete objectivity;
- (3) Provides the Commissioner with powers to enable him/her to investigate complaints rigorously, including the power to require third parties to provide relevant information; and
- (4) Contributes to the maintenance of high standards of public life in the conduct of the Assembly's business.

### Measure's key provisions

#### **Long Title**

"A Measure of the National Assembly for Wales to establish a Commissioner to investigate complaints about the conduct of Assembly Members and to report to the Assembly on the outcome of such investigation; and for connected purposes".

#### **Section 1 Commissioner**

- Appointed by NAW
- Eligibility
- Term of appointment
- Resignation / Removal
- Termination

#### **Section 2 Principal aim**

*".....to promote, encourage, and safeguard high standards of conduct in public office of Assembly Member".*

#### **Section 3 Further Provision**

- Schedule makes further provisions about
- Appointment
- Corporation Sole
- Documents
- Financial
- Staff, goods, and services
- Financial information

#### **Section 4 Appointment of Acting Commissioner**

- Office of Commissioner is vacant or unable to act
- Commissioner / Acting Commissioner can act concurrently in different cases
- Eligibility

### **Section 5 Independence of the Commissioner**

Not under the direction or control of the Assembly

### **Section 6 Functions of the Commissioner**

- To receive any complaint that the AM's conduct at a relevant time, failed to comply with a requirement of a relevant provision;
- To investigate any complaint;
- To report to Assembly the outcome of any investigation;
- Other functions contained in section 7

### **Section 7 Further Functions**

To give advice to the Assembly

- (i) on any matter of general principle relating to the relevant provisions or to standards of conduct of AM's
- (ii) on procedures for investigating complaints that AM's have failed to comply with requirements of relevant provisions
- (iii) any other matter relating to promoting, encouraging, and safeguarding high standards of conduct in public life of an AM.

### **Section 8 Ministerial Code**

Commissioner cannot express a view / comment on

- provisions of standards of conduct contained in a Welsh Ministerial Code,
- any allegation of conduct of any person was in breach of a provision of a Welsh Ministerial Code, standards of conduct in other offices,
- effectiveness of any provision contained in a Welsh Ministerial Code

### **Section 9 Duty of the Clerk of the Assembly**

Clerk under a duty to refer a matter to the Commissioner if she has reasonable grounds for suspecting AM's conduct at the relevant time failed to comply with a relevant provision **and** that conduct is relevant to the Clerks function as *the principal accounting officer* for the Commission.

### **Section 10 Investigation of Complaints**

- Must investigate complaints,
- Must report to Assembly on the outcome of investigation (subject to dismissing the complaint without reporting)
- To decide when and how to undertake an investigation and report on its outcome
- Ability to dismiss the complaint without reporting
- Reports to the Assembly on the outcome of an investigation – can not recommend sanction to impose on AM
- If becomes aware of issues or practice relevant to Clerk's function as principal accounting officer – must write notifying the Clerk

### **Section 11 Power to call witnesses and documents**

Can require any person to attend to give evidence before the Commissioner and produce documents relating to matters relevant to the investigation

**Section 12 Witnesses and documents: notice**

- Power to call triggered by Commissioner giving person notice in writing
- Time and place, nature of evidence
- Documents to be produced

**Section 13 Oaths and affirmations**

Require and administer oaths or affirmations

**Section 14 Privilege and public interest immunity**

Provides witnesses with safeguards against being compelled to disclose privileged (etc.) information.

**Section 15 Offences**

Person sent a notice commits a summary offence if:

- Refuses or fails without reasonable excuse to attend / produce documents
- Failure without reasonable excuse to take oath or affirm
- Intentionally alters, suppresses, conceals,

Fine not exceeding £5000

3months imprisonment or both

**Section 16 Restriction on disclosure of information**

Protects confidentiality of investigations.

**Section 17 Protection from defamation actions**

Provides immunity against defamation claims for the Commissioner and those making complaints.

**Section 18 Transitional Provisions**

**Section 19 Annual Reports**

**Section 20 Interpretation**

**Section 21 Short title and Commencement**

ACCOMPANYING DOCUMENTS  
Explanatory Notes and an Explanatory Memorandum are printed separately

# Proposed National Assembly for Wales Commissioner for Standards Measure

[AS PASSED]

## CONTENTS

*The National Assembly for Wales Commissioner for Standards*

1. The Commissioner
2. Principal aim of the Commissioner
3. Further provision about the Commissioner
4. Appointment of an Acting Commissioner
5. Independence of the Commissioner

*Functions of the Commissioner*

6. Functions of the Commissioner
7. Further functions of the Commissioner
8. Ministerial Code

*Functions of the Clerk*

9. Duty of the Clerk to refer a matter to the Commissioner

*Investigation of Complaints*

10. Investigation of Complaints by the Commissioner

*Investigatory Powers of the Commissioner*

11. Power to call for witnesses and documents
12. Witnesses and documents: notice
13. Oaths and affirmations
14. Privilege and public interest immunity
15. Offences

*Proposed National Assembly for Wales Commissioner for Standards Measure*

2

16. Restriction on disclosure of information
17. Protection from defamation actions
18. Transitional provision

*General*

19. Annual report
20. Interpretation
21. Short title and commencement

Schedule

# Proposed National Assembly for Wales Commissioner for Standards Measure

[AS PASSED]

A MEASURE of the National Assembly for Wales to establish a Commissioner to investigate complaints about the conduct of Assembly Members and to report to the Assembly on the outcome of such investigation; and for connected purposes.

*The National Assembly for Wales Commissioner for Standards*

## **1 The Commissioner**

- (1) There is to be a National Assembly for Wales Commissioner for Standards (in this Measure referred to as “the Commissioner”).
- (2) The Commissioner is to be appointed by the Assembly.
- (3) A person is not eligible to be appointed as the Commissioner if that person –
  - (a) is an Assembly Member,
  - (b) has been an Assembly Member at any time during the period of 2 years prior to the date when the appointment is to take effect,
  - (c) is a member of staff of the Assembly,
  - (d) has been a member of the staff of the Assembly at any time during the period of 2 years prior to the date when the appointment is to take effect,
  - (e) is a member of the staff of the Welsh Assembly Government, or
  - (f) has been a member of the staff of the Welsh Assembly Government at any time during the period of 2 years prior to the date when the appointment is to take effect.
- (4) The Commissioner is to be appointed for a term of 6 years.
- (5) A person who has held office as the Commissioner may not be appointed for a further term (whether consecutive or not).
- (6) A person who has been appointed as the Commissioner may at any time –
  - (a) resign by notice given to the Assembly, or
  - (b) be removed from office by the Assembly.
- (7) A person may not be removed from office as the Commissioner under subsection (6)(b) unless –
  - (a) the Assembly so resolves, and
  - (b) if the resolution is passed on a vote, the number of votes cast in favour of the resolution is not less than two thirds of the total number of votes cast.
- (8) The appointment of a person as Commissioner ceases if that person –

- (a) becomes a candidate to be an Assembly Member for an Assembly constituency or an Assembly electoral region,
- (b) is appointed as, or designated to exercise the functions of, the Counsel General under section 49 of the Act, or
- (c) is appointed to be a member of the staff of the Assembly or of the Welsh Assembly Government.

## **2 Principal aim of the Commissioner**

The principal aim of the Commissioner in exercising functions under this Measure is to promote, encourage and safeguard high standards of conduct in the public office of Assembly Member.

## **3 Further provision about the Commissioner**

The Schedule makes further provision about the Commissioner.

## **4 Appointment of an Acting Commissioner**

- (1) When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the Assembly may appoint a person to discharge the functions of that office either generally or in relation to such case or class of cases, and until such time, as may be specified by the terms and conditions of such appointment; and a person so appointed is referred to in this section as the “acting Commissioner”.
- (2) The Commissioner and the acting Commissioner may each discharge the functions of the office of the Commissioner at the same time but in relation to different cases.
- (3) A person who is not eligible to be appointed as the Commissioner is not eligible to be appointed as the acting Commissioner.
- (4) A person appointed as the acting Commissioner –
  - (a) may at any time resign by notice given to the Assembly,
  - (b) may at any time be removed from office by the Assembly,
  - (c) ceases to hold office in the circumstances specified in section 1(8)(a), (b) and (c),
  - (d) in other respects, holds office on such terms and conditions as the Assembly may determine, and
  - (e) while holding that appointment is to be treated for all purposes (except those of section 1) as the Commissioner.

## **5 Independence of the Commissioner**

Subject to section 19, the Commissioner is not, in the exercise of any functions, to be subject to the direction or control of the Assembly.

*Functions of the Commissioner*

**6 Functions of the Commissioner**

- (1) The functions of the Commissioner are—
  - (a) to receive any complaint that the conduct of an Assembly Member has, at a relevant time, failed to comply with a requirement of a relevant provision,
  - (b) to investigate any such complaint in accordance with the provisions of this Measure,
  - (c) to report to the Assembly the outcome of any such investigation,
  - (d) to advise Assembly Members and members of the public about the procedures for making and investigating complaints to which paragraph (a) applies, and
  - (e) the further functions conferred by section 7.
- (2) A “relevant time” means a time when the requirement in question was in force but it is irrelevant whether the conduct in question is alleged to have taken place before or after this section comes into force.
- (3) A “relevant provision” means—
  - (a) any provision of the Standing Orders relating to—
    - (i) the registration or declaration of financial or other interests,
    - (ii) the notification by Assembly Members of their membership of societies,
    - (iii) the registration or notification of any other information relating to Assembly Members or to persons connected to Assembly Members.
  - (b) any resolution of the Assembly relating to the financial or other interests of Assembly Members,
  - (c) any Code of Conduct approved by the Assembly relating to standards of conduct of Assembly Members,
  - (d) any resolution of the Assembly relating to standards of conduct of Assembly Members, and
  - (e) any provision included in the Standing Orders (or in any code or protocol made under them) in accordance with section 36(6) of the Act.
- (4) It is irrelevant whether a relevant provision came into force before or after this section comes into force.

**7 Further functions of the Commissioner**

The Commissioner may (and if requested by the Assembly to do so must) give advice to the Assembly—

- (a) on any matter of general principle relating to relevant provisions or to standards of conduct of Assembly Members generally,



- (b) on procedures for investigating complaints that Assembly Members have failed to comply with the requirements of relevant provisions,
- (c) on any other matter relating to promoting, encouraging and safeguarding high standards of conduct in the public office of Assembly Member.

## **8 Ministerial Code**

- (1) Nothing in this Measure authorises the Commissioner to express any view on—
  - (a) any provision relating to standards of conduct which is contained in a Welsh Ministerial Code,
  - (b) any provision relating to standards of conduct which could be contained in a Welsh Ministerial Code,
  - (c) any allegation that the conduct of any person was in breach of a provision relating to standards of conduct contained in a Welsh Ministerial Code, or
  - (d) the effectiveness of any provision contained in a Welsh Ministerial Code whether in relation to any specific conduct or generally.
- (2) For the purposes of this section—
  - (a) a “Welsh Ministerial Code” means any document (however that document is described) containing provisions relating to standards of conduct—
    - (i) which has been promulgated by or under the authority of the First Minister,
    - (ii) which applies to the First Minister, Welsh Ministers, Deputy Welsh Ministers and Counsel General or to any of them,
    - (iii) which relates to standards of conduct in those offices, and
    - (iv) which seeks to apply standards of conduct different from or additional to those which apply to Assembly Members generally, and
  - (b) a provision relating to standards of conduct is one which could be contained in a Welsh Ministerial Code if that provision satisfies the requirements of paragraph (a)(ii), (iii) and (iv).

### *Functions of the Clerk*

## **9 Duty of the Clerk to refer a matter to the Commissioner**

If the Clerk has reasonable grounds for suspecting—

- (a) that the conduct of an Assembly Member has, at a relevant time, failed to comply with a requirement of a relevant provision, and
- (b) that the conduct in question is relevant to the Clerk’s functions under section 138 of the Act (Clerk to be the principal accounting officer for the Commission),

the Clerk must communicate those grounds in writing to the Commissioner and the Commissioner must treat the communication as a complaint to which section 6(1)(a) applies.

*Investigation of Complaints*

**10 Investigation of Complaints by the Commissioner**

- (1) The Commissioner must investigate complaints and must, subject to subsection (3), report to the Assembly on the outcome of investigations, in accordance with—
  - (a) the provisions of the Standing Orders, and
  - (b) any rules relating to the consideration of complaints against Assembly Members which have been adopted by the Assembly under the Standing Orders.
- (2) 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.
- (3) The Commissioner may, in such circumstances as may be prescribed by rules referred to in subsection (1)(b), dismiss a complaint summarily without reporting on it to the Assembly but must instead notify in writing the Assembly Member in question and the person who made the complaint, giving reasons for the dismissal.
- (4) A report by the Commissioner to the Assembly on the outcome of an investigation may not include any recommendation as to what sanction, if any, should be imposed on the Assembly Member in question.
- (5) If, in the course of carrying out an investigation, the Commissioner becomes aware of any circumstances which—
  - (a) give rise to issues of principle or of general practice relevant to the Clerk's functions under section 138 of the Act (Clerk to be the principal accounting officer for the Commission), or
  - (b) could, upon further consideration by the Clerk, give rise to a duty on the Clerk under section 9,

the Commissioner must communicate those circumstances in writing to the Clerk.

*Investigatory Powers of the Commissioner*

**11 Power to call for witnesses and documents**

- (1) The Commissioner may, in accordance with section 12, require any person—
  - (a) to attend before the Commissioner for the purpose of giving evidence, or
  - (b) to produce to the Commissioner documents in the possession or under the control of that person,concerning any matter relevant to an investigation which the Commissioner is carrying out under this Measure.
- (2) For the purposes of this section,

- (a) a person will be taken to comply with a requirement to produce a document if that person produces a copy of the document or an extract of the relevant part of the document,
  - (b) “document” means anything in which information is recorded in any form, and
  - (c) references to producing a document are to producing the information recorded in it in a visible and legible form.
- (3) The Commissioner may pay such reasonable allowances and expenses to persons giving evidence before the Commissioner, or producing documents to the Commissioner, as the Commissioner may determine.

## **12 Witnesses and documents: notice**

- (1) A requirement under section 11 may only be imposed on a person by the Commissioner giving the person in question notice in writing specifying—
- (a) the time and place at which the person is to attend and the particular subjects concerning which the person is required to give evidence,
  - (b) the documents, or types of documents, which the person is to produce, the date by which and the person to whom they are to be produced and the particular subjects concerning which they are required.
- (2) Notice under subsection (1) is to be given—
- (a) in the case of an individual, by sending it in accordance with subsection (3) addressed to the person at the person's usual or last known address or, where the person has given an address for service of the notice, at that address, or
  - (b) in any other case, by so sending it addressed to the person at the person's registered or principal office,
- but may only be given if the address in question is in Wales or in England.
- (3) A notice is sent in accordance with this subsection if it is sent—
- (a) by a registered post service (within the meaning of the Postal Services Act 2000 (c.26)), or
  - (b) by postal service which provides for its delivery by post to be recorded.

## **13 Oaths and affirmations**

The Commissioner may—

- (a) administer an oath or affirmation to any person giving evidence to the Commissioner, and
- (b) require that person to take an oath or make an affirmation.

**14 Privilege and public interest immunity**

- (1) A person is not obliged by any requirement imposed under section 11(1) to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Wales or England.
- (2) A person acting as prosecutor in criminal proceedings is not obliged under section 11(1) to answer any question or to produce any document concerning the operation of the system of criminal prosecution in any particular case if that person (or, if subsection (3) applies, the Counsel General) considers that answering the question or producing the document might prejudice criminal proceedings in the case or would otherwise be contrary to the public interest.
- (3) This subsection applies if the proceedings were instituted by or on behalf of the Welsh Ministers, the First Minister or the Counsel General.

**15 Offences**

- (1) A person to whom a notice has been given under section 12(1) commits an offence if that person –
  - (a) refuses or fails without reasonable excuse to attend before the Commissioner as required by the notice,
  - (b) refuses or fails without reasonable excuse, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice,
  - (c) refuses or fails without reasonable excuse to produce any document required to be produced by the notice, or
  - (d) intentionally alters, suppresses, conceals or destroys any such document.
- (2) Subsection (1) is subject to section 14.
- (3) Any person who, without reasonable excuse, refuses to take an oath or make an affirmation when required to do so under section 13 commits an offence.
- (4) If a person charged with an offence under subsection (1)(a), (b) or (c) or under subsection (3) adduces evidence of a reasonable excuse for the refusal or failure, it is for the prosecution to prove that the person did not have such an excuse.
- (5) A person guilty of an offence under this section is liable on summary conviction –
  - (a) to a fine not exceeding level 5 on the standard scale,
  - (b) to imprisonment for a period not exceeding three months, or
  - (c) both.
- (6) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a director, manager, secretary or other similar officer of the body corporate, or

- (b) any person who was purporting to act in any such capacity, that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
- (7) In subsection (6) “director”, in the case of a body corporate whose affairs are managed by its members, means a member of the body corporate.

#### **16 Restriction on disclosure of information**

- (1) Except as permitted by subsection (2), the Commissioner or the staff of, or any other person appointed by, the Commissioner must not disclose any information contained in the complaint or any information which is furnished to or obtained by them in the course of, or for the purposes of, an investigation into that complaint.
- (2) Such information may be disclosed for the purpose of –
- (a) enabling or assisting the Commissioner to discharge any functions imposed or conferred on the Commissioner by virtue of any provision in this Measure,
  - (b) enabling the Commissioner to comply with any duty imposed on the Commissioner by or under any other enactment, or
  - (c) the investigation or prosecution of any offence or suspected offence.

#### **17 Protection from defamation actions**

- (1) For the purposes of the law of defamation, any statement made in pursuance of the purposes of this Measure –
- (a) by the Commissioner, or
  - (b) to the Commissioner
- is absolutely privileged.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c 31).

#### **18 Transitional provision**

- (1) The Assembly may require the Commissioner to undertake an investigation into any complaint which, on the day when this section comes into force, has been received, or is under investigation, under rules referred to in section 10(1)(b).
- (2) Any such requirement may direct the Commissioner to take into account any information in connection with the complaint which is specified in the direction.
- (3) Subject to any such requirement, any complaint which the Commissioner is directed to investigate is to be treated in the same way as any other complaint which is made to the Commissioner.

*General*

**19 Annual report**

- (1) The Commissioner must, as soon as possible after the end of each financial year, lay before the Assembly an annual report on the performance of the functions of the Commissioner throughout that year.
- (2) Subject to subsection (3) the report must contain a concise statement of information relating to the financial affairs and transactions of the Commissioner in the performance of those functions during that year.
- (3) The Commissioner must comply with any requirement imposed by the Assembly as to the form of the annual report and as to any specific information or class of information which it must contain.
- (4) The Commissioner must, subject to subsection (5), comply with any requirement imposed by the Committee on Standards of Conduct—
  - (a) to attend before that committee,
  - (b) to provide the committee with such information as it may reasonably require in relation to any matter contained in a report which has been laid before the Assembly under subsection (1) or which was required to be contained in such a report.
- (5) The Commissioner need not comply with a requirement under subsection (4)—
  - (a) if it is not reasonably practicable to do so, and
  - (b) except in the case of a requirement under subsection (4)(b) which is made orally to the Commissioner at a meeting of the committee, unless the requirement is in writing.

**20 Interpretation**

- (1) In this Measure—

“the Act” (*“y Ddeddf”*) means the Government of Wales Act 2006 (c.32);

“Assembly Member” (*“Aelod Cynulliad”*) includes—
    - (a) for the purposes of section 1(3)(a) and (b) only, the Counsel General even where that officer is not an Assembly Member, and
    - (b) except for the purposes of section 1(3)(a) and (b), a former Assembly Member,
- “the Clerk” (*“y Clerc”*) means the Clerk of the Assembly,
- “the Commission” (*“y Comisiwn”*) means the National Assembly for Wales Commission,
- “Counsel General” (*“Cwnsler Cyffredinol”*) means the Counsel General to the Welsh Assembly Government,
- “the Committee on Standards of Conduct” (*“y Pwyllgor Safonau Ymddygiad”*) means any committee or subcommittee of the Assembly to which there have been delegated, by or under the Standing Orders, functions relating to complaints that Assembly Members have failed to comply with the requirements of a relevant provision, and

“Standing Orders” (“*Rheolau Sefydlog*”) means the Standing Orders of the Assembly.

- (2) Any reference in this Measure to “the Assembly” is a reference to—
- (a) the National Assembly for Wales, or
  - (b) other than in sections 1, 4, 6(3)(b), (c) and (d) and the Schedule, the Committee on Standards of Conduct.

## **21 Short title and commencement**

- (1) This Measure may be referred to as the National Assembly for Wales Commissioner for Standards Measure 2009.
- (2) This Measure comes into force as follows—
- (a) this section and sections 1, 3 (including the Schedule) and 20 come into force on the day after that on which this Measure is approved by Her Majesty in Council, and
  - (b) the remaining provisions of this Measure come into force on the day after that on which notice under subsection (3) is published.
- (3) The Clerk must, as soon as is reasonably practicable after the first appointment of a Commissioner under this Measure takes effect, cause to be published, in at least one newspaper circulating in Wales, notice of—
- (a) the fact that the appointment in question has taken effect, and
  - (b) the fact that by reason of the publication of the notice all provisions of this Measure (other than those already in force) will come into force on the day after the day on which it is published.

## SCHEDULE

*(introduced by Section 3)*

### THE NATIONAL ASSEMBLY FOR WALES COMMISSIONER FOR STANDARDS

#### *Appointment*

- 1 The Assembly must make arrangements for—
  - (a) ensuring that any person to be appointed as Commissioner has been identified by fair and open competition, and
  - (b) settling the terms on which such appointment, when made, is to have effect.
- 2 Arrangements referred to in paragraph 1, (but not the appointment of the person so identified,) may be delegated by the Assembly, in whole or in part, to the Commission, to the Committee on Standards of Conduct or to the staff of the Assembly and such arrangements may include the involvement of persons independent of the Assembly.

#### *Corporation sole*

- 3 The person for the time being holding office as National Assembly for Wales Commissioner for Standards is to be, by the name of that office, a corporation sole.

#### *Documents*

- 4 (1) The application of the seal of the Commissioner is to be authenticated by the signature of—
  - (a) the Commissioner, or
  - (b) any person authorised by the Commissioner for that purpose.
- (2) A document purporting to be duly executed under the seal of the Commissioner or to be signed on the Commissioner's behalf may be received in evidence and, unless the contrary is proved, is to be taken to be so executed or signed.

#### *Financial*

- 5 (1) The Commission must—
  - (a) pay the Commissioner such salary and any such allowances, and
  - (b) make any such payments towards the provision of superannuation benefits for or in respect of the Commissioner,as may be provided for by or under the terms of the Commissioner's appointment.
- (2) The Commission must pay to or in respect of a person who has ceased to hold office as Commissioner such amounts (if any) by way of—
  - (a) pension or gratuities, or
  - (b) provision for those benefitsas may have been provided for by or under the terms of the Commissioner's appointment.



- (3) The Commission must discharge such reasonable liabilities as the Commissioner has lawfully incurred –
  - (a) in employing staff,
  - (b) in securing the provision of goods or services, and
  - (c) in relation to the allowances and expenses of persons giving evidence or producing documents.
- (4) Sums required for the making of payments under sub-paragraphs (1) and (2) are to be charged on the Welsh Consolidated Fund.

*Staff, goods and services*

- 6 (1) The Commissioner may, on such terms as the Commissioner may determine, appoint such staff or secure the provision of such goods or services as the Commissioner considers necessary for assisting in the exercise of the Commissioner's functions.
- (2) The Commissioner may enter into arrangements with any public body or office holder, upon such terms as the Commissioner and such body or office holder may agree, for the provision by that body or office holder of such services as the Commissioner considers necessary for assisting in the exercise of the Commissioner's functions.
- (3) The Commissioner must, when exercising powers under sub-paragraphs (1) and (2) or under section 11(3), have regard to the responsibilities of the Clerk, as principal accounting officer for the Commission, under section 138(3)(a) of the Act.
- (4) The Commissioner must, in relation to any liability which the Commission may be required to discharge under paragraph 5(3), consult the Clerk and must do so –
  - (a) if reasonably practicable to do so, before incurring the liability in question,
  - (b) if not, as soon thereafter as is reasonably practicable.
- (5) The Commissioner must have regard to any representations which the Clerk may make when consulted under sub-paragraph (4).
- (6) The Commissioner's duty to consult the Clerk under sub-paragraph (4) may be discharged in relation to a particular liability either –
  - (a) by providing the Clerk with particulars of the liability in question, or
  - (b) by notifying the Clerk that liabilities of a specified description up to a specified total amount may be incurred,

provided that, where (b) applies, the particular liability in question falls within the description notified and does not, when taken together with any other liabilities to which that notification relates, exceed the total amount notified.

*Financial Information*

- 7 The Commissioner must provide the Commission with such information about the Commissioner's financial affairs and transactions as the Commission may reasonably require for the purpose of enabling it to comply with any requirement imposed on the Commission by a direction given to the Commission in relation to the Commissioner under section 137(1) and (2) of the Act.

## **Proposed National Assembly for Wales Commissioner for Standards Measure**

### **Explanatory Memorandum**

This Explanatory Memorandum has been prepared by the Committee on Standards of Conduct and is laid before the National Assembly for Wales.

### **Declaration on Legislative Competence**

In my view the provisions of the *Proposed National Assembly for Wales Commissioner for Standards Measure*, introduced by me on 26 March 2009, would be within the legislative competence of the National Assembly for Wales.

Jeff Cuthbert AM

Chair, Committee on Standards of Conduct  
Member in charge of the proposed Measure

25 March 2009

CPM-09-EM-S1

## Contents

PART 1: BACKGROUND AND PURPOSE OF THE PROPOSED MEASURE	3
1    INTRODUCTION	3
2    LEGISLATIVE BACKGROUND	4
3    PURPOSE AND POLICY OBJECTIVES	5
4    THE CURRENT POLICY AND LEGISLATIVE CONTEXT	10
5    CONSULTATION	11
6    POWER TO MAKE SUBORDINATE LEGISLATION	19
7    TERRITORIAL APPLICATION	19
PART 2: REGULATORY IMPACT ASSESSMENT	20
8    OPTIONS	20
9    ESTIMATE OF COSTS	22
10   REPORT OF THE AUDITOR GENERAL	25
PART 3: EXPLANATORY NOTES	26

## **Part 1: Background and Purpose of the Proposed Measure**

### **1 Introduction**

On the 21<sup>st</sup> November 2007 the Committee on Standards of Conduct expressed a wish to prepare and introduce a Committee proposed Measure to create a statutory post of Commissioner for Standards. In June 2008, the Committee initiated a consultation exercise on the principles underpinning the Proposed Measure.

The primary purpose of the proposed Measure is to place the position of the Commissioner for Standards in the National Assembly for Wales on a statutory basis. It will ensure that the Commissioner, once appointed, is seen to be totally independent of the Assembly and therefore able to investigate complaints against AMs with complete objectivity. It will also provide the Commissioner with powers to enable him or her to investigate complaints rigorously, including the power to require third parties to provide relevant information. This will contribute to the maintenance of high standards of public life in the conduct of business in the National Assembly for Wales.

This Explanatory Memorandum has been prepared and laid in accordance with Standing Order 23.18. It explains the background to the provisions in the committee proposed Measure and its scope.

This version of the Explanatory Memorandum has been revised to reflect the amendments agreed at Stage 2.

## 2 Legislative Background

The constitutional context to this proposal is set out in the *Government of Wales Act 2006*. The Act allows the Assembly to make Measures where it has the 'legislative competence' (i.e. the power) to do so.

Assembly Standing Order 23.91 provides that a committee (other than a legislative committee) may introduce a committee proposed Measure relating to the committee's remit, where the Assembly has existing legislative competence in a policy area.

The legislative competence for this proposed Measure is provided for in Schedule 5 of the Act, which lists the Fields in which the Assembly can have legislative competence:

### Field 13: National Assembly for Wales

#### Matter 13.1:

Creation of, and conferral of functions on, an office or body for and in connection with investigating complaints about the conduct of Assembly members and reporting on the outcome of such investigations to the Assembly.

Standing Order 16.1 confers on the Committee on Standards of Conduct functions in relation to the conduct of Assembly Members. The Committee therefore has the power to prepare and introduce a Measure falling within Matter 13.1.

### 3 Purpose and Policy Objectives

In the early 1990s allegations of parliamentary “sleaze” at Westminster proliferated, for example, incidents such as the “Cash for Questions” affair, where some MPs were accused of accepting money in order to put down Parliamentary questions. Responding to public concern, the then Prime Minister, the Rt. Hon. John Major MP set up the Committee on Standards in Public Life in 1994, under the Chairmanship of Lord Nolan (“the Nolan Committee”). In its First Report, the Committee said:

We cannot say conclusively that standards of behaviour in public life have declined. We can say that conduct in public life is more rigorously scrutinised than it was in the past, that the standards which the public demands remain high, and that the great majority of people in public life meet those high standards. But there are weaknesses in the procedures for maintaining and enforcing those standards. As a result people in public life are not always as clear as they should be about where the boundaries of acceptable conduct lie. This we regard as the principal reason for public disquiet. It calls for urgent remedial action.<sup>2</sup>

The Nolan Committee developed the Seven Principles of Public Life which are :

**Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

**Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

**Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**

1.1 \_\_\_\_\_

<sup>2</sup> <http://www.archive.official-documents.co.uk/document/parlament/nolan/nolan.htm>

Holders of public office should promote and support these principles by leadership and example.

The “Nolan Principles” were very much to the fore when the foundations were being laid for the new devolved institutions in Wales, Scotland and Northern Ireland. In Wales, the National Assembly Advisory Group recommended that the new Assembly should have a Code of Practice for Members at least as rigorous as that which applied to MPs. It also recommended that a Standards of Conduct Committee be set up in the new Assembly.<sup>3</sup> In the first instance, the Assembly also had an Independent Adviser on Standards. The key features and implications of the Standing Orders in relation to the Adviser’s role in the First Assembly were that:

- the Independent Adviser was appointed by the Assembly and was therefore accountable ultimately to the Assembly as a whole;
- the Independent Adviser was obliged to advise and assist the Presiding Officer on request in respect of any matter relating to conduct of Members; the Adviser’s role in relation to the Committee was by invitation and mainly limited to the investigation of factual matters;
- any complaint to be investigated by the Committee on Standards had to be addressed in the first instance to the Presiding Officer in his role of overseeing the general standards of conduct within the Assembly.<sup>4</sup>

In the early meetings of Standards of Conduct Committee in 1999 the role of the Independent Adviser was discussed and the Adviser’s role further defined:

To provide advice and assistance to the Assembly and the Presiding Officer on matters relating to the conduct of members. Upon invitation by the Assembly Committee on Standards of Conduct to investigate factual matters arising out of any complaint referred to the Committee about the financial or other interests of Members and/or Members’ standards of conduct.<sup>5</sup>

The Adviser was not a member of Assembly staff nor a civil servant. He was employed and contracted by the Assembly for a period of three years initially on the basis of an average 2-3 days per month.<sup>6</sup>

## **The Woodhouse Review**

In 2001 the Standards of Conduct Committee commissioned Professor Diana Woodhouse of Oxford Brookes University to conduct a review of the Standards Regime in the National Assembly for Wales.<sup>7</sup>

### **1.1**

<sup>3</sup> Laffin M & Thomas A, “Designing the National Assembly for Wales”, *Parliamentary Affairs* 53 (3), July 2000. p.571

<sup>4</sup> National Assembly for Wales, *The Role of, and Access to, the Independent Adviser on Standards of Conduct*, OPO Note, 2000. <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-first/bus-committees-first-std-home/bus-committees-first-std-independant/bus-committees-first-std-independant-sub.htm>

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Professor Diana Woodhouse, Report for the Committee on Standards of Conduct, National Assembly for Wales, [http://www.assemblywales.org/diana\\_woodhouse\\_report\\_final\\_version\\_2\\_.pdf](http://www.assemblywales.org/diana_woodhouse_report_final_version_2_.pdf)



The Term of Reference of the Review were to consider:

- the effectiveness of the current complaints procedure;
- the roles of the Independent Adviser and the Presiding Officer;
- the role and jurisdiction of the Committee on Standards of Conduct;
- the Code of Conduct.

In respect of the roles of the Presiding Officer and the Independent Adviser in the complaints process, the Woodhouse Report noted that the responsibility for maintaining the Register of Members' Interests and advising on registration lay with the Presiding Officer. However, this could be flawed because he also received complaints about infringements of the Code of Conduct, including registration, and although, in practice, these were automatically referred to the Independent Adviser, the opportunity existed, in theory, for the Presiding Officer to exercise some discretion and so have a possible conflict of interest.

The Report suggested that the National Assembly follow the practice in other jurisdictions and separate giving advice from the receipt of complaints. It argued that transferring the receipt of complaints to the Independent Adviser and leaving the advisory function with the Presiding Officer would fulfil this requirement. It also expressed concerns about the Presiding Officer having an advisory responsibility, whether for the registration and declaration of interests, for conduct generally or for complaints. The Report recommended that the advisory function as it relates to the Code of Conduct, including the registration and declaration of interests, should transfer to the Registrar and Clerk to the Standards Committee, acting under the authority of the Committee and consulting with it on matters of policy.

The Report noted that the Independent Adviser had no investigative powers nor could he seek assistance from the Committee on Standards, for it similarly had no such powers. He therefore relied totally on the co-operation of those involved and on political pressure being brought to bear should an AM obstruct his inquiry. This appeared to be a weakness in comparison with other regimes.

The Report concluded that the options before the Committee were:

- maintaining the office of Independent Adviser, with a few adjustments;
- appointing a Commissioner for Standards who has increased responsibilities and a higher profile but no more power; or
- seeking primary legislation for a statutory Commissioner for Standards with increased responsibilities and the power to go with them.

In regard to appointing a Statutory Commissioner, the Report stated:

The third scenario is one in which the office not only assumes responsibility for receiving and sifting complaints and dealing with trivial matters but, in addition, has the power to investigate as he or she sees fit, to send for documents and to require the attendance of witnesses. Regardless of whether the responsibilities extended

to the promotion of standards of conduct, such a role would require a statutory Commissioner for Standards. A statutory Commissioner may seem like taking a sledgehammer to crack a nut, particularly given the lack of any serious complaints in the Assembly so far. However, the importance of having robust machinery in place in case such complaints arise in future cannot be understated and thus a statutory Commissioner would seem the best option.

In 2005, the Committee accepted the second option, as an interim measure. Putting the case for the change in Plenary, the Chair of the Standards of Conduct Committee, Kirsty Williams AM stated:

the Woodhouse review recommended that the Assembly should consider creating a statutory commissioner for standards, in line with practice in other legislatures. This would demonstrate how seriously we take standards of conduct and further embed independence from political interference into our procedures. The committee accepted this recommendation, but recognised that the change would require primary legislation. As an interim measure, the committee agreed that a non-statutory commissioner for standards should be created through our Standing Orders.<sup>8</sup>

### **Arrangements in the rest of the UK**

#### *Westminster*

The Office of the Parliamentary Commissioner for Standards was set up by the House of Commons in 1995 as a result of recommendations made by the Committee on Standards in Public Life. The Commissioner is non-statutory, and is appointed by Resolution of the House of Commons and is appointed for a six year period. The Office of the Parliamentary Commissioner for Standards is wholly funded by the House of Commons administration.

The Commissioner's main responsibilities are :

- Overseeing the maintenance and monitoring the operation of the Register of Members' Interests;
- Providing advice on a confidential basis to individual Members and to the Select Committee on Standards and Privileges about the interpretation of the Code of Conduct and Guide to the Rules relating to the Conduct of Members;
- Preparing guidance and providing training for Members on matters of conduct, propriety and ethics;
- Monitoring the operation of the Code of Conduct and Guide to the Rules and, where appropriate, proposing possible modifications of it to the Committee;
- Receiving and investigating complaints about Members who are allegedly in breach of the Code of Conduct and Guide to the Rules, and reporting his findings to the Committee.

1.1 \_\_\_\_\_  
<sup>8</sup> RoP, 2 March 2005, p.70.

In addition, the Commissioner's office is responsible for maintaining and monitoring the operation of the registers and lists; providing advice about them; and receiving and investigating complaints about them:

The Commissioner presents an annual report to the House of Commons on the work of the office.

#### *Scotland*

The Scottish Parliament's Standards Commissioner (SPSC) is a statutory post and was created by the *Scottish Parliamentary Standards Commissioner Act 2002*. The SPSC is appointed by the Scottish Parliament Corporate Body (SPCB), with the agreement of Parliament, for a five year term.<sup>9</sup> The SPSC may be removed by the SCPB on the recommendation of Parliament following a resolution supported by more than two-thirds of MSPs voting.

The Commissioner investigates complaints that an MSP has broken the Code of Conduct for MSPs. This is carried out independently of Parliament and findings are reported to Parliament. The Code of Conduct gives guidance to MSPs on how to carry out their Parliamentary duties. Breaches of the Code cover things like not being accessible enough to constituents, not making known private interests that might conflict with work as an MSP, accepting rewards in return for promoting particular issues and giving favoured access to people who use lobbying firms.

Salary, allowances and expenses are paid for by the SPCB which also determines the terms and conditions of the office. The SPSC may appoint staff with the consent of the SPCB.

In carrying out functions the SPSC must comply with directions given by the Standards and Public Appointments Committee of the Scottish Parliament. However, he or she need not take direction on how a particular investigation is conducted.

The SPSC must lay an Annual Report before Parliament and report cases of non-compliance with the Code of Conduct by MSPs to the Parliament.

#### *Northern Ireland*

In June 2000, the Committee on Standards and Privileges conducted an inquiry into the possible appointment of an Assembly Commissioner for Standards who would be responsible for investigating complaints against Members of the Assembly. It concluded that it should recommend to the Assembly that a Commissioner for Standards be appointed and that that the primary role of the Commissioner should be to investigate complaints against Members.<sup>10</sup> The model proposed that complaints should be made in the first instance to the Assembly Clerk of Standards who would pass them on to the Commissioner. The

#### 1.1

<sup>9</sup> Scottish Parliamentary Standards Commissioner website. <http://www.spsc.co.uk/index.htm>

<sup>10</sup> Northern Ireland Assembly, Committee on Standards and Privileges, *Inquiry into the Possible Appointment of an Assembly Commissioner for Standards*, 2000. <http://www.niassembly.gov.uk/standards/reports/report1-00r.htm>

Assembly Clerk of Standards would continue to advise Members on the registration of interests.<sup>11</sup> In 2001 the Standards and Privileges Committee of the Assembly asked the Assembly Ombudsman to provide an investigatory service to support the Committee in its consideration of complaints against members of the Northern Ireland Assembly.

In May 2007 the Standards Committee of the new Assembly invited the Ombudsman to fulfil the role of Interim Commissioner for Standards. In this role he investigates complaints made against Members under the Code of Conduct and submits a Report to the Committee for its consideration.

## 4 The Current Policy and Legislative Context

The National Assembly Commissioner for Standards is not at present a statutory post but the post was enhanced in response to recommendations from the Woodhouse Review. Standing Order 16 provided for the appointment of a person to act as the Commissioner for Standards. It states:

The Assembly shall appoint a person who is not an Assembly Member or a member of its staff to act as Commissioner for Standards.<sup>12</sup>

The main duties of the Commissioner are:

- to investigate factual matters arising out of any complaint against a Member;
- to advise the Committee on any matters of general principle relating to the standards of conduct of Members;
- to advise the Committee on any matters of general principle relating to the Registration of Members' Interests and the Recording of Membership of Societies; and
- otherwise render such assistance on matters relating to the standards of conduct of Members as the Assembly may from time to time decide.

The Committee on Standards of Conduct established a formal procedure for dealing with complaints against Assembly Members.

In its 2005 Annual Report, the Standards Committee outlined the role of the Commissioner:

In relation to his duties arising from complaints against Members, the Commissioner has sole responsibility for the preliminary investigation of

### 1.1

<sup>11</sup> Donovan McClelland MLA, Tom Frawley, NI Assembly Ombudsman, John MacQuarrie, Deputy Assembly Ombudsman and John Torney, Principal Assembly Clerk of Standards, Oral Evidence to Committee on Standards in Public Life, Eighth Inquiry on Standards in the House of Commons, 14 June 2002.

<sup>12</sup> Op.cit., NafW, Standing Orders, SO.16.3.



consulted on the following framework questions:

1. Is there a need for an Assembly Measure to establish a statutory role of Commissioner for Standards?
2. What should be the role of the Commissioner for Standards?
3. What fundamental principles should underpin the establishment of the Office?

*The need for legislation and fundamental principles of the status of the Commissioner*

Consultees who expressed a view supported the legislative approach. It was felt for example that, a statutory post would provide greater protection and authority and ensure that properly defined arrangements were in place. In addition the independence of the post was emphasised.

The Scottish Parliamentary Standards Commissioner (PSC) pointed to the benefits of a statutory basis for his role: in enhancing the status and the independence of the post; establishing a robust and open appointment procedure set out in the legislation; and giving the Commissioner independent powers to compel evidence and summon witnesses. He also noted that arrangements for dismissal should protect the postholder from arbitrary action by those he/she holds under scrutiny.

The Auditor General for Wales (AGW) supports the model for his office and that of the Public Service Ombudsman (PSOW) as the preferred one, in particular for the Commissioner to enjoy the same statutory protection from being removed from office.

**Role and responsibilities**

Respondents were asked if the Commissioner should have a role in:

- promoting a framework for high standards in public life
- giving general advice on standards of conduct
- advising Assembly Members on their conduct as well as investigating complaints

Responses indicated a broadly supportive view of a Commissioner having a role in the promotion of a framework for high standards in public life, and of giving general advice on standards of conduct.

Views on the question of advice given to Assembly Members on individual matters are more varied. The PSOW thought that should form a part of the duties of the Assembly Commission: *“This would fit in with the Commission’s aims of protecting the reputation of the Assembly and supporting Assembly Members in their work as elected representatives. It would also avoid conflict within the role of the Commissioner.”*

The Scottish PSC commended the arrangements for his role as an independent investigator of complaints about MSP conduct.

**Powers** Respondents were asked whether the Commissioner should have independent discretion to decide whether to investigate a complaint, and powers to call “people and papers” and conclusively agreed with both aspects.

There was general agreement that the Commissioner should have independent discretion on these matters. There was also a similar level of consensus in the consultation responses that the Commissioner should have the powers to summon persons and papers.

**Reporting** Consultees were asked whether the Commissioner should have the ability to make findings and conclusions public, and if he/she should report directly to the Assembly, or to the Standards of Conduct Committee.

The consensus of views was that unless there is a compelling reason for confidentiality in a specific case the ability to make findings public is consistent with the principle of being open and transparent.

The PSOW felt that the role should be accountable to the National Assembly as far as the use of public funds is concerned, but for administrative and practical purposes, was of the view that investigation reports should be submitted directly to the Standards of Conduct Committee.

**Appointment** Respondents were asked how the Commissioner should be appointed and for how long.

Proposals in the consultation responses varied between five and seven years.

The Scottish PSC felt strongly that appointments should not be subject to a re-appointment process but be for a single term, non-renewable.

**Resourcing** Both the PSOW and the AGW said it would be preferable for the Commissioner to be paid/funded in the same way as their posts, ie directly from the Welsh Consolidated Fund. The Auditor General was also of the opinion that enshrining the funding arrangements of the Office in legislation would help ensure it was adequately resourced.

Consultees were asked if the Standards Commissioner should have dedicated staff be able to appoint those staff, or be supported by another organisation such as the office of the Public Services Ombudsman.

The PSOW pointed out that it already possesses the skilled investigative staff and appropriate case management systems necessary to investigate alleged breaches of standards, and its existing resources could be enhanced to support the work of a statutory Standards Commissioner: *“This would avoid the expense of a new free-standing administration, especially given the likely episodic nature of the workload, and would also enhance the actual and perceived independence of the role.”*

The Auditor General also noted the merits of this approach in terms of reducing overall costs and administrative burden of a Commissioner’s office, and for example in preventing the need for separate accounts to be prepared and audited. The secretariat

of the Standards Commission in Ireland is provided by the Office of the Ombudsman, and the Commission is satisfied with the level of resource provided.

The current Commissioner for Standards is supported by APS staff who also undertake other roles.

**Other issues** Consultees were asked if the Commissioner for Standards should have the same role relating to Ministers as for other Assembly Members.

In a letter to the Committee Chair (31 January 2008), the First Minister said that “... *The Ministerial Code provides clear lines of accountability in the context of the Government of Wales Act 2006 and any Measure, which proposes to establish a Commissioner for Standards, would need to consider the implications of any conflicts that could arise between the general standards of conduct expected of Assembly Members and the standards expected of Ministers when executing their functions.*”

Other respondents saw no need to alter current arrangements in relation to the Ministerial Code and the ability for complaints to be made directly to the First Minister and suggested that “*the role of the Commissioner for Standards be confined in the first instance to the conduct of Assembly Members rather than Ministers.*”

Consultees were invited to consider the practicalities of making the system work and how the proposed Measure should make provision for these. The Auditor General’s view was that the legislation should require the Commissioner to cooperate with both the AGW and PSOW on matters that fall within their respective statutory remits.

The Scottish Parliament is prevented by legislation from directing the PSC on whether and how to investigate an individual complaint, but can give general directions about the conduct of investigations.

### **A second consultation**

A second consultation was undertaken during November and December 2008 on detail contained in the initial draft of the proposed Measure. Responses were received from Richard Penn, NAW Commissioner for Standards, the Scottish Parliamentary Standards Commissioner, Oonagh Gay and Barry K Winetrobe, Co-conveners of the UK Study of Parliament Group Public Officials of Parliament Study Group (submitted in their personal capacities), and the Auditor General’s Office.

Consultees who responded were supportive in broad terms of the key provisions set out in the proposed Measure and indicated agreement that the Measure will achieve its overall purpose and aim. The Auditor General considers that the draft includes suitable provisions for the appointment, independence safeguards, duties to investigate complaints, powers to call for witnesses and documents, and protection from defamation. The current, non-statutory, Commissioner stated a view that statutory status is not necessary to facilitate the type of work the ‘Commissioner’ has been doing for eight years, but that he understands why



there is a commitment to having this Measure. Some specific comments were received with regard to particular aspects of the draft, these are included below.

The consultation also asked if there were further provisions that consultees would like to see added to the proposed Assembly Measure and a number of specific points were made:

**Section 1(3) and 1(8)** The Committee might consider it appropriate to extend the exclusion of eligibility to include staff of the Welsh Assembly Government.

**Section 1(5)** A number of contributions were received relating to the further terms of appointment of a Commissioner, recommending further consideration of this issue. Consultees detail that examination of the position in other Commonwealth jurisdictions demonstrates clear evidence of pressure being applied to Commissioners who are seeking a second term. The UK Parliament Public Administration Select Committee (PASC) has recommended that the principle of a single fixed term be applied across the board to ethical watchdogs in its report Ethics and Standards in April 2007. The Wicks Committee (Committee on Standards in Public Life) examined this issue and decided that problems were best avoided and independence best protected by having a single term of five to seven years. In 2008 the Scottish Commission for Public Audit recommended a single 8 year term for future Auditors General in Scotland, so as to avoid any perceived or real threat to independence through pressures associated with reappointment.

**Section 1(6)(b) – removal from office**

Concern was expressed that a Commissioner could become unpopular simply by dint of doing a thorough job, and suggests that it would be desirable to state the possible grounds for removal from office on the face of the legislation, e.g. inability, neglect and misconduct to demonstrate that there is protection, over and above the voting threshold required, from arbitrary dismissal by those (Assembly Members) who are under the scrutiny of the Commissioner.

**Section 4.** Contributions were submitted about a study which indicates that independence and accountability are interdependent, reinforcing each other. They commend the clear statement of independence of the Commissioner but believe that the requirement for an annual report to the Assembly under Section 16 should be supplemented by regular appearances before the appropriate committee and would prefer some formal link to be set out in the Measure. They state, a Commissioner who is not seen as accountable to the Assembly is in danger of having their findings rejected in practice.

**Section 6(1)** One of the responses would like to see a key responsibility of the role being to promote standards generally and to help build the ethical framework of the National Assembly for Wales built in to the Measure much more overtly. He believes that the Commissioner should have the ability to provide advice on matters of general principle; and matters relating to the promotion of high standards of conduct in public life to individual Assembly Members, political parties, etc. as well as to the Assembly. Additionally there was comment there would be benefit in a requirement to include in the annual report how functions to advise the Assembly on standards of conduct included in Section 6 of the Measure have been discharged.

**Section 7.** The flexibility contained in this section received positive comment. However, one response commented that investigations of complaints should indicate the seriousness of the offence and that the statutory restriction in section 7(4) on the recommendation on the nature of the sanction thus appears rather unnecessary. In addition there was a questioning of the need to include detail in Section 7(3) in the body of the Measure given that even greater flexibility would be afforded if this were to be embedded within Standing Orders or within the rules for consideration of complaints mentioned in Section 7(1)(b).

**Section 8** The Commissioner for Standards set out that he has never experienced any problem with Members, complainants or witnesses co-operating with any of my investigations, but accepted that the proposed Measure provides the Commissioner with some 'teeth' in this regard.

**Section 13.** Restrictions on leaks of investigations are clearly required. Attention was drawn to the Scottish Parliamentary Commissioner's indication that the statutory restrictions on his powers to publicise his work has caused practical problems in highlighting his work. The current drafting of this section is closely based on section 16 of the Scottish Parliamentary Standards Commissioner Act 2002. Respondents suggested that attention is paid to the drafting of this section, to ensure that the Commissioner is not inhibited in drawing attention to the general role and also specific points arising from investigations, in turn enhancing the accountability of the Commissioner to the public. Visibility is an important element in that accountability.

**Section 15(1):** Concerns were raised about the working of this section in practice.

**Schedule Paragraph 5(3)** The Commission "must discharge such reasonable liabilities as the Commissioner has lawfully incurred...in employing staff...securing the provision of services, and in relation to the allowances and expenses of persons giving evidence or producing documents." The Auditor General details that this means that the Commissioner would potentially be able to incur very substantial expenses without any prior agreement. As drafted, the Clerk to the Assembly Commission will retain the personal 'Accounting Officer' responsibilities associated with that expenditure The AGW states he would expect, therefore, that the Clerk will wish to satisfy herself that appropriate safeguards are established from the outset over the regularity, propriety and value for money of any public expenditure incurred by or on behalf of the Standards Commissioner, and suggests that the Measure is amended to make the provision for such safeguards explicit through amendment to the draft.

**Schedule Paragraph 6** responses to the consultation indicate that the Schedule offers sufficient flexibility in staffing arrangements and the provision of services needed, for example for the Standards Commissioner to be supported by the office of the Public Service Ombudsman for assisting in the exercise of the Commissioner's functions and to be conducive to achieving good value for money in the administration of the arrangements.

There were some additional points made. Attention was drawn to the fact that the duties of the post are very unlikely to become full time, particularly as Ministers are covered by a separate Code. They flag that there are some difficulties in using Assembly staff to support the Commissioner, however, they say it is important that links are retained, as

the advice tendered by clerks on standards matters is relied upon by Members as authoritative (the Wendy Alexander case in the Scottish Parliament illustrated the dangers of too great a separation between the functions of advice and investigation). They support independent resourcing, such as access to independent, external sources of legal advice, by constitutional watchdogs. Above all, they say, the system of investigation must be comprehensible to Members and in this sense 'owned' by them.

The Auditor General considered that an amendment to section 31 of the Data Protection Act 1998 should be sought so as to provide the Commissioner with an exemption from the subject information provisions of that Act. This would prevent investigations being undermined by subject access requests. The exemption is available to the Parliamentary Commissioner for Administration and the Public Services Ombudsman for Wales. If, however, such an exemption is not sought, to avoid confusion, section 13 should make clear that the restrictions do not override the need to comply with subject access requests under the 1998 Act. (This is because, unless section 31 of the 1998 Act is amended, section 27(5) of that Act would override the restrictions in section 13 of the Proposed Measure.)

### **Changes made to the Measure as a result of the consultation**

As a result of the consultation responses the committee made a number of changes to its proposed Measure, these were:

- to extend the exclusion of eligibility to include staff of the Welsh Assembly Government
- to make the appointment limited to a single term
- to add a requirement for the commissioner to appear before the Assembly to the accountability requirements of the role
- to remove detail of grounds on which the Commissioner may dismiss the complaint summarily without reporting on it to the Assembly from the face of the Measure, instead including a requirement for such provision to be made within a complaints procedure
- to amend the drafting of the transitional provision in order to remove any possibility of misunderstanding
- to include a requirement to bring appropriate issues to the attention of the accounting officer
- to introduce a requirement for the Commissioner to consult the Accounting Officer (i.e. the Clerk) in relation to liabilities which the Commissioner proposes to incur as a safeguard to avoid the Commissioner incurring liabilities which the NAFW Commission would be bound to meet, without the Commission's accounting officer having had the opportunity to comment on the lawfulness of the proposed expenditure or to plan for it to be met.

In addition some minor drafting amendments were identified, and the Committee concluded that it would wish exploration to be undertaken with the Wales Office / Ministry of Justice the possibility of an amendment to the DPA 1998 made by the Secretary of State by Order under section 38(1) of the Data Protection Act 1998,

acknowledging that this would not impact on the committee's ability to take forward this proposed Measure.

Full detail of both consultations and the responses received can be found on the webpage of the Committee on Standards of Conduct, which is part of the website of the National Assembly for Wales.

### **Changes made to the Measure as a result of amendments at Stage 2**

At Stage 2 consideration amendments were agreed on a number of themes in the Measure.

In relation to the Principal aim of the Commissioner and Functions of the Commissioner – advice on procedures for making and investigating complaints; amendments were made to give more prominence to the Commissioner's advisory functions. The thinking behind the change is that this will help the Commissioner to promote a healthy standards culture rather than simply acting as an investigator of complaints.

In relation to a new Duty of the Clerk to refer a matter to the Commissioner; amendments introduced new requirements on both the Clerk and the Commissioner in order to strengthen safeguards against misuse of funds whilst seeking to preserve the separation between the function of initiating a complaint and the Commissioner's function of investigating complaints impartially.

In relation to Provision in relation to the office of Counsel General; The Act established the office of Counsel General, who has various legal functions. That office is currently held by an Assembly Member. But the Act enables a person who is not an Assembly Member to be appointed to this post. Other than in relation to specific requirements the Act does not impose on a Counsel General who is not an Assembly Member the disciplinary regime which applies to elected Members, although such a person would of course be subject to the Ministerial Code, which is outside the scope of this proposed Measure. The thinking behind the change is that by limiting the definition of "relevant provision" it restricts the complaints which the Commissioner will be able to investigate against a Counsel General who is not an elected Assembly Member to those which arise under the relevant provisions of section 36.

In relation to Restriction of disclosure of information; a new paragraph was inserted, into subsection (2) of Section 13, to make it clear that the duty of confidentiality imposed by subsection (1) does not override any duty to disclose information which may arise under such other statutory provisions. The aim remains to preserve, as far as possible, the confidentiality of information gathered by the Commissioner when investigating a complaint.

Finally, in relation to Interpretation; an amendment of a technical nature, aimed to make it clear that the Codes and resolutions to be enforced with the assistance of the Commissioner must all have been approved by the Assembly in plenary. Resolutions of the Committee on Standards of Conduct cannot count as “relevant provisions”.

## **6 Power to make Subordinate Legislation**

No powers to make Subordinate Legislation arise from this Measure

## **7 Territorial Application**

This proposed Measure will apply in relation to Wales.

## Part 2: Regulatory Impact Assessment

### 8 Options

The importance of an independent role to maintain and promote high standards of conduct amongst elected members, to support confidence in democracy, is widely recognised across the different levels of government, key stakeholders and the public. The independent nature of the referral and investigative process is vital for member, officer and public confidence in the system. Bodies involved in this role across the UK tend to believe that they should be proactive, aiming to create and maintain organisations with high ethical standards

As a result of the *Government of Wales Act 2006*, there is an opportunity in Wales to use the new legislative powers of the National Assembly for Wales to create through primary legislation an independent office or body with a role to investigate and report on complaints about the conduct of Assembly Members.

The current options are:

**Option 1:** Do nothing maintain the role of the non-statutory Commissioner for Standards

**Option 2:** Introduce a proposed Measure.

#### **Option 1: Do nothing – maintain the role of the non-statutory Commissioner for Standards**

The Woodhouse Review, back in 2002, noted that the lack of serious complaints suggested that the standards system was, in many respects, working well. The six intervening years, which saw many of the Woodhouse recommendations implemented, including the re-definition of the Independent Standards Adviser as a non-statutory Commissioner of Standards, have not seen an increase in the level of significant complaints. It could, therefore, be argued that the volume and level of the complaints received in the past suggests that that status quo is working effectively and changes are not needed.

However, this would ignore the risk of serious complaints arising in the future which would test the system. As it stands the current complaints procedures is, in effect an internal complaints procedure which does not have the full force of law. The current, non-statutory Commissioner for Standards, lacks the power to call for documents or witnesses and an occasion might arise when a Member is reluctant to co-operate. There might also be an occasion when the facts are uncertain or disputed, in which case the current Commissioner would be ill-equipped to determine the truth. In the case of a serious complaint arising in which the Commissioner was hampered in his investigations, or the process was

not perceived by the public to be open and independent would damage the reputation of the National Assembly for Wales and create distrust in the democratic process in Wales. This point was summed up by Professor Woodhouse in her report:

A statutory Commissioner may seem like taking a sledgehammer to crack a nut, particularly given the lack of any serious complaints in the Assembly so far. However, the importance of having robust machinery in place in case such complaints arise in future cannot be understated and thus a statutory Commissioner would seem the best option.

Professor Woodhouse also made the point that there would be an expectation that someone entitled “Commissioner for Standards”, as the current non-statutory position is, would have the same powers as the position of Commissioner in other institutions and his or her authority could be undermined when the expectation is not realised.

However, one advantage a non-statutory scheme of the kind operated by the Assembly is flexibility. Since the Committee on Standards of Conduct can, at present, revise the Complaints Procedure, over which it has total control, it is possible to respond rapidly to lessons learned from experience in dealing with individual complaints. Any provision contained in legislation can only be amended in accordance with the full procedures for making legislation.

However this could be mitigated by the way in which the legislation is drafted.

The Woodhouse Review posited three options to the Assembly:

- maintaining the office of Independent Adviser, with a few adjustments;
- appointing a Commissioner for Standards who has increased responsibilities and a higher profile but no more power; or
- seeking primary legislation for a statutory Commissioner for Standards with increased responsibilities and the power to go with them.

The Assembly has already implemented the second option so there is little scope to further enhance the position of the non-statutory Commissioner.

### **Option 2: Introduce a proposed Measure**

The second option, as proposed in this Measure, would enshrine in legislation a more robust role backed up by the full force of law. This change would mean that the role would have similar powers to those held by the position of Commissioner in other institutions, strengthening the authority and credibility of the role and better enabling expectations of the ability of a Commissioner to act to be realised.

A statutory Commissioner for Standards would have the power to call for documents or witnesses ensuring that the Commissioner would be fully equipped to determine the truth if an occasion should arise when the facts are uncertain or disputed, or a Member was reluctant to co-operate. In the case of a serious complaint arising the Commissioner would not be hampered in his investigations, and the process would be perceived by the public to be open and independent. This would in turn avoid damage to the reputation of the National Assembly for Wales and help to create trust in the democratic process in Wales.

In addition, adding to roles similar to those currently fulfilled by the existing Commissioner for Standards, the Measure is drafted to include the ability to give advice to the Assembly on any matter relating to the promotion of high standards of conduct in public life.

The advantage of a non-statutory scheme, of the kind currently operated by the Assembly, is flexibility. Any provision contained in legislation can only be amended in accordance with the full procedures for making legislation. However, the Director of Legal Services, Keith Bush assured the Committee of Standards for Conduct that this could be mitigated by the way in which the legislation is drafted. The proposed Measure has been drafted accordingly.

## 9 Estimate of Costs

### **Estimate of Costs: Option 1 – do nothing – maintain the role of the non-statutory Commissioner for Standards**

The appointment to the current role of Commissioner for Standards is made by the National Assembly for Wales in accordance with arrangements made by the Presiding Officer. The Commissioner is not a member of the staff of the Assembly as defined by Schedule 2 Paragraph 3 of the Government of Wales Act 2006.

**Remuneration** – Remuneration is currently provided on a per diem basis at £320 per day plus a “retainer” annual sum of £4,500. Travel & subsistence is paid in accordance with National Assembly staff rates.

**Time commitment** - The post holder is required to work such hours as may be necessary to enable the efficient discharge of the duties of the post. It was envisaged that the average time commitment would be around 5 days per month but this could vary depending on any advice requested by the Presiding Officer or the Committee. On the basis of 8hr days the Commissioner has averaged just over 4 full days per month in the last eighteen months



**Resources** – A permanent office for the post is located in the National Assembly building Cardiff Bay. The post-holder is linked to Assembly’s IT network and can therefore by agreement, work from home, or from other National Assembly offices linked to the network. Staff from the Assembly Parliamentary Service (APS) support the post-holder. However, this is not dedicated support; rather it is provided within the responsibilities of several staff members, and the estimate based on a proportional split of those staff costs is included in the table below.

During 2007-08 costs associated with the office of the Commissioner for standards were as follows:

	2007-08
	£
Staff Costs	10,250
Accommodation Costs	3,062
Commissioner (inc NI)	<u>22,929</u>
Totals	36,241

These costs are actual costs for the 12 month period. The accommodation costs have been calculated according to method agreed with Wales Audit Office in respect of the audit of the Members' Pension Scheme and are therefore considered robust.

Further, as detailed in earlier sections this has been a period which has not had significant numbers of complaints received.

### **Estimate of Costs: Option 2 – Introduce a Measure**

The estimates of costs for the current Commissioner for Standards provide a general idea of the likely costs of a statutory post. However, the majority of the costs derive from the level of activity needed to undertake investigations into complaints received.

As a result it is not possible to make a reasonable estimate of costs; however, there is no reason to expect substantial change. There are aspects of the Measure which may incur some additional costs as they are different from the current position eg the payment of reasonable allowances to witnesses. New functions, described in section “8 Options” above, could lead to increased levels of activity; however this is not likely to be significant.

A statutory role exists in Scotland. The detail of resources provided for the role are detailed below

### **Scottish Parliamentary Commissioner:**

The Scottish Parliamentary Standards Commissioner Act 2002 provides that the Commissioner will be appointed by the SPCB with the agreement of the Parliament. The SPCB sets the Commissioner's term and conditions of appointment.

**Time commitment** - their present Commissioner's annual salary is £40,820 for 5-10 days per month. The nature of the Commissioner's work is entirely demand led. He is required to attend for such hours as may be reasonable and necessary for the efficient performance of his duties with a substantial inquiry requiring him to work on a full time basis for a period of several weeks.

**Remuneration** – total salary costs for the Scottish Commissioner in 2007/08 were £54,665. These were met from the Commissioner's budget of £90k. Given the workload is entirely demand led, we recommend that the post be advertised on a part-time basis of 5-10 days per month on the existing salary plus access to the Principal Civil Service Pension Schemes;

**Location** – the Commissioner currently works from home

The Auditor General was provided with the detail of costs included in this document and in his consultation response expressed the view that the estimate of costs appear to give a reasonable indication of the likely range of costs of running the arrangements provided for in the proposed Measure.

If accounting requirements were such that a new, and distinct, system was required there would be a significant cost involved in establishing such a system. However, as drafted, the Measure does not require the establishment of such a system, but rather provides requirement in the '*Financial Information*' section of the Schedule, that the Commissioner must provide the Commission with such information about the Commissioner's financial affairs and transactions as the Commission may reasonably require.

In conclusion, there is little reason to believe that the creation of a statutory Commissioner for Standards would in itself create a significant increase in cost. The most significant influence on the cost is the level of activity, which will vary year on year whether the role is statutory or not.

Amendments at Stage 2 give more prominence to the Commissioner's advisory functions. These are intended to help the Commissioner to promote a healthy standards culture rather than simply acting as an investigator of complaints. This could give rise to a higher level of active time spent on functions other than those directly related to the investigation of specific complaints. The most significant influence on the cost remains the level of activity, a significant part of which will remain the undertaking of investigations into complaints received.

## 10 Report of the Auditor General

As Standing Order 23.18 (viii) requires that the Explanatory Memorandum, must, where the proposed Measure contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate, the Chair of the Committee on Standards of Conduct wrote to the Auditor General for Wales to seek his views on the specific issue of the appropriateness of the charge being made on the Welsh Consolidated Fund.

**On 14 January 2009 Jeremy Colman, Auditor General for Wales, wrote stating “I have reviewed the content of the draft proposed Measure and its Explanatory Memorandum. I can confirm that it would be appropriate for the expenditure associated with the salary, allowances, superannuation benefits, pension, gratuities and other expenses incurred by (or on behalf of) the Standards Commissioner to be charged to the Welsh Consolidated Fund.” The document letter is referenced: JC/0785/fgb, and is attached at Annex 2.**

## **Part 3: Explanatory Notes**

### **General scheme of the Measure**

1. The Measure consists of 20 sections and a Schedule<sup>13</sup>. Sections 1 to 4, together with the Schedule, contain provisions about the office of National Assembly for Wales Standards Commissioner (“the Commissioner”). Sections 5 and 6 deal with the Commissioner’s functions. Sections 7 to 15 provide the Commissioner with the powers to discharge those functions effectively. Finally, sections 16 to 18 contain general provisions.

### **Section 1: The Commissioner**

2. This section establishes the post of Commissioner, who is to be appointed by the Assembly (although see the explanation of paragraph 1 of the Schedule below). In order to minimise the risk of conflicts of interest, certain persons are disqualified from being appointed, namely Assembly Members (“AMs”) or those who have been AMs within the previous 2 years and, similarly, Assembly or Welsh Assembly Government staff, or those who have been members of the Assembly’s or Welsh Assembly Government’s staff within the previous 2 years. A person appointed Commissioner automatically ceases to hold that office if he or she becomes a candidate for election to the Assembly or joins the staff of the Assembly or Welsh Assembly Government.

3. The Commissioner is to be appointed for a fixed term of 6 years. The Commissioner may not be appointed for a further term or terms (whether consecutive or not).

4. The Commissioner may, before the end of a term, resign or be removed by resolution of the Assembly provided the resolution is passed with a two-thirds majority.

### **Section 1A: Principal aim of the Commissioner**

5. This section explicitly sets out the principal aim of the Commissioner, which is to promote, encourage and safeguard high standards of conduct in the public office of Assembly Members.

### **Section 2: Further provision about the Commissioner**

6. This introduces the Schedule (see below).

### **Section 3: Appointment of an Acting Commissioner**

1.1 \_\_\_\_\_

<sup>13</sup> Two new sections, currently numbered 1A and 6A, were added at Stage 2. Renumbering of the sections will take place following Stage 3 consideration.

7. This section enables an Acting Commissioner to be appointed by the Assembly if the Commissioner is unable to act. The Acting Commissioner may be appointed to act in place of the Commissioner generally (for example if the Commissioner is ill) or in relation to certain cases (for example if there was some conflict of interest which made it inappropriate for the Commissioner to act in relation to a particular complaint). Persons who are disqualified from appointment as Commissioner are also disqualified from appointment as Acting Commissioner and an Acting Commissioner automatically ceases to hold office in the same circumstances as does the Commissioner. An Acting Commissioner may resign or may be removed from office by resolution of the Assembly although in the case of an Acting Commissioner a simple majority in support of the resolution will suffice.

#### **Section 4: Independence of the Commissioner**

8. Section 4 makes clear the independence of the Commissioner. It provides that the Commissioner is not subject to the direction or control of the Assembly except for complying with section 16 (see below).

#### **Section 5: Functions of the Commissioner**

9. Section 5 sets out the functions of the Commissioner.

10. One set of functions is to receive complaints of breaches by AMs of “relevant provisions”, to investigate those complaints, to report on them to the Assembly and to advise AMs and members of the public on the relevant procedures for making and investigating complaints. “Assembly” is defined in the Measure so as to include (other than in relation to the appointment, resignation and removal of a Commissioner or Acting Commissioner) any committee or sub-committee to which functions relating to the investigation of complaints against AMs have been delegated. So, under the Assembly’s current Standing Orders, the Commissioner would report to the Assembly’s Committee on Standards of Conduct.

11. The Commissioner is to have the further functions set out in section 6 (see below).

12. “Relevant provisions” are rules about the conduct of AMs, defined in a way which is based on the functions delegated to the Committee on Standards of Conduct by the current Standing Order 16.1, but with sufficient flexibility to enable extensions to those rules to fall within the Commissioner’s jurisdiction. These rules only apply to the Counsel General when that person is also an elected AM (the Counsel General does not have to be an elected AM), or where they relate to the registration, declaration and promotion of

interests covered by section 36 of the Government of Wales Act 2006 (“the Act”).

### **Section 6: Further functions of the Commissioner**

13. The further functions of the Commissioner referred to in paragraph 11 are set out in section 6. They include advising the Assembly on matters of general principle relating to the conduct of AMs, on procedures relating to the investigation of complaints and on matters relating to promoting, encouraging and safeguarding high standards of conduct by AMs generally.

14. The Commissioner may also advise AMs and the public on procedures for making complaints and for investigating them.

### **Section 6A: Duty of the Clerk to refer a matter to the Commissioner**

15. The Clerk of the Assembly undertakes a number of functions including that of being the principal accounting officer of the Assembly Commission. This section requires the Clerk to report in writing to the Commissioner failure by AMs to comply with any of the relevant provisions (described in paragraph 12 above) that relate to this accounting function (such as misuse of funds). The Commissioner must treat any such referral as a formal complaint under section 5 of the Measure and act accordingly.

### **Section 7: Investigation of Complaints by the Commissioner**

16. This section requires the Commissioner to investigate complaints, and to report on them to the Assembly (i.e. in practice to the Committee on Standards of Conduct) in accordance with Standing Orders and the Assembly’s procedures for investigating complaints. So, the Assembly retains control of laying down the basic rules relating to the handling of complaints. The application of those rules to individual cases will be entirely under the control of the Commissioner. Subject to the provisions of subsection (3) the Commissioner is to report on an investigation to the Assembly (i.e. to the Committee on Standards of Conduct). The Commissioner’s report is not to include any recommendation as to what sanction should be imposed on an AM against whom a complaint is upheld. That will remain the province of the Committee on Standards of Conduct and of the Assembly.

17. 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 that may be relevant to the functions of the Clerk as principal accounting officer to the Commission, then the Commissioner must communicate those circumstances in writing to the Clerk. An example would be if an investigation by the Commissioner were to identify some systemic weakness in the controls which applied to the payment of

allowances to AMs, or some lack of clarity in the rules relating to such payments.

18. The Commissioner must also communicate to the Clerk in writing any circumstances which, upon further consideration by the Clerk, could require the Clerk to take action under section 6(A). This safeguard preserves the Commissioner's independence by ensuring the Commissioner is never required to instigate an investigation without first receiving a formal complaint under section 5 of the Measure.

19. The Commissioner may, in circumstances which will need to be prescribed in rules made under the Assembly's Standing Orders, dismiss a complaint summarily, in which case the Commissioner will not report to the Committee but will, instead, notify the complainant and the AM in question, giving reasons for the dismissal. The current rules (National Assembly for Wales Procedure for Dealing with Complaints against Assembly Members) empower the present non-statutory Commissioner to dismiss a complaint which the Commissioner considers to be inadmissible (paragraph 2.3 of the Procedure), for example if it is not made within a year of the date when the complainant could reasonably have become aware of the conduct complained about or if there is insufficient evidence to support a complaint.

**Section 8: Power to call for witnesses and documents and Section 9: Witnesses and documents: notice**

20. These sections, which follow the pattern of sections 37 and 38 of the Act, provide machinery whereby the Commissioner may require any person whom the Commissioner believes may have information relevant to an investigation to attend before the Commissioner to give oral evidence or to produce documentary evidence. In order to impose such a requirement the Commissioner must give the person in question written notice.

21. These are key provisions of the Measure. They provide the Commissioner with the powers to carry out rigorous investigation of complaints. The powers to be conferred on the Commissioner are in some respects wider than those which can be exercised by the Assembly (and Assembly Committees) under the Act. The Assembly's powers can only be exercised in support of their scrutiny of the Welsh Ministers and in relation to persons involved in the exercise of functions or the carrying on of activities in relation to Wales. Other than the restriction mentioned in paragraph 23 the only limit on the persons who can be required to give or produce evidence is that evidence must be relevant to an investigation being carried out by the Commissioner.

22. The existence of the power under section 8 (and of the complementary power under section 10) does not mean that the powers in question are likely to be used routinely. The Commissioner will only need to compel a witness to

give evidence or to produce documents if that person refuses to do so voluntarily.

23. Subsection 9(2) provides that notice requiring a person to attend or to produce documents may only be given to a person at an address in Wales or England, since an Assembly Measure may not contain provisions whose legal effect extends outside the England and Wales jurisdiction.

### **Section 10: Oaths and affirmations**

24. Section 10 (which parallels section 40(1) of the Act) enables the Commissioner to require a person who attends to give evidence (whether voluntarily or not) to take an oath or make an affirmation. The importance of this power is that it further strengthens the Commissioner's investigatory power. A witness who, having taken an oath or made an affirmation, gives false evidence, commits the offence of perjury under section 2 of the Perjury Act 1911 (currently punishable by a fine and up to two years imprisonment).

### **Section 11: Privilege and public interest immunity**

25. This section (compare section 37, subsections (8), (9) and (10) of the Act) provides protection for witnesses against being compelled to give the Commissioner certain kinds of evidence. Subsection (1) enables a witness to claim the same privileges as a witness giving evidence in a court of law (for example the privilege against self-incrimination and the privilege against disclosing privileged legal advice). Subsection (2) protects prosecuting authorities from having to disclose information relating to criminal prosecutions (since to do so would be likely to prejudice such prosecutions).

### **Section 12: Offences**

26. This section creates a number of sanctions in support of the Commissioner's powers under sections 8, 9 and 10. The comparable provision of the Act is section 39.

27. It will be a criminal offence punishable by a fine of up to level 5 on the standard scale (currently £5000) and up to 3 months imprisonment for a person who has been required by the Commissioner to give evidence or to produce a document to refuse or to fail to do so without reasonable excuse, to refuse or fail (again without reasonable excuse) to answer a question or to intentionally alter, suppress, conceal or destroy a document which was required to be produced.



28. Subsection (3) makes it an offence (punishable in the same way) to refuse to take an oath or make an affirmation when required to do so by the Commissioner.

### **Section 13: Restriction on disclosure of information**

29. This section restricts the disclosure of information provided by a complainant or any other person to the Commissioner in relation to a complaint. Neither the Commissioner nor anyone working for the Commissioner may disclose such information except to the extent that this is necessary to enable to the Commissioner to discharge his or her functions under the Measure (for example as part of the Commissioner's report to the Committee on Standards of Conduct), comply with any other statutory obligation (such as under the Data Protection Act 1998) or the investigation of any criminal offence. No specific sanction is prescribed but unauthorised disclosure would expose the culprit to civil action in a number of ways (see for example paragraph 30).

### **Section 14: Protection from defamation actions**

30. In order to enable the Commissioner to investigate complaints rigorously, those who provide information to the Commissioner in relation to an investigation need to be protected against defamation claims in relation to that information. Section 14 provides this protection. Unauthorised disclosure by the Commissioner (or those working for the Commissioner), contrary to section 13, would mean that the person making that disclosure would lose this protection.

### **Section 15: Transitional provision**

31. This section enables the Commissioner, when appointed, to take over or continue, if directed to do so by the Assembly (i.e. by the Committee on Standards of Conduct), an investigation which has already been commenced under the present non-statutory arrangements.

### **Section 16: Annual report**

32. This section requires the Commissioner to report annually to the Assembly. The Assembly may give directions as to the form of the report and the nature of the information it must contain but the report must in any event include information relating to the financial affairs of the office. (See also paragraph 7 of the schedule below). The Commissioner must also, if reasonably practicable to do so, comply with any requirement by the Committee on Standards of Conduct to attend before the Committee and to

provide information about the matters which are required to be included in the annual report.

### **Section 17: Interpretation**

33. Section 17 defines terms used in the Measure.

### **Section 18: Short title and commencement**

34. The provisions establishing the office of Commissioner and enabling a Commissioner to be appointed are to come into force on the day after the Measure is approved by Her Majesty in Council. The remaining provisions, dealing with the powers of the Commissioner, are to come into force in accordance with the procedure set out in subsection (3) which will be triggered by the appointment of the first Commissioner under the Measure.

### **The Schedule**

35. The Schedule contains a number of detailed administrative matters relating to the Commissioner.

### **Paragraphs 1 and 2**

36. These paragraphs require the process for identifying the person whose name is to be submitted to the Assembly for appointment to involve a fair and open competition. Arrangements for identifying the best candidate and for settling the detail of the terms of the proposed appointment (for example remuneration) may be delegated to the Assembly Commission, to a committee (e.g. the Committee on Standards of Conduct) or to staff (or a combination of these) and allow for an independent element to be included in the selection process.

### **Paragraphs 3 and 4**

37. The Commissioner is to be a corporation sole. Changes in the identity of the person who holds the office will not, therefore, affect legal rights, duties and liabilities associated with the office. Provision is made for the authentication of formal documents.

### **Paragraph 5**

38. This paragraph requires the Commission to pay the Commissioner the salary and other benefits, including any pension, which have been agreed

upon appointment. The Commission must also discharge reasonable liabilities lawfully incurred by the Commissioner in employing staff or purchasing services or in making payments to persons required to attend to give evidence or to produce documents. Payments in respect of the Commissioner's salary and allowances and any pension payments are charged on the Welsh Consolidated Fund and can therefore be made out of the Welsh Consolidated Fund without the need for further legal authority.

### **Paragraph 6**

39. This paragraph enables the Commissioner to employ staff or purchase services and to make arrangements with other public bodies or office holders (e.g. an ombudsman) for that person to provide services to the Commissioner. So, the Commissioner could arrange with an ombudsman or similar official for the supply of the administrative back-up needed by the Commissioner.

40. However, when using these powers, the Commissioner must have regard to the responsibilities of the Clerk, as principal accounting officer for the Commission.

41. The Commissioner must also consult with the Clerk in relation to any financial liability the Commission will be required to discharge (e.g. in relation to the employment of staff, securing provisions of goods and services or in relation to allowances and expenses of persons called to give evidence or produce documents), and must have regard to any representations made by the Clerk in response. This consultation may take place in one of three ways. The Commissioner may agree a budget in advance in relation to particular kinds of expenditure, or may notify the Clerk in advance of a proposal to incur a particular item of expenditure or, in an urgent case may incur the liability without notifying the Clerk in advance but must then do so as soon after as is reasonably practicable.

42. These provisions are intended to preserve a balance between the independence of the Commissioner and the need for the Commissioner to have access to sufficient resources to carry out the functions of the office effectively and the duty of the Clerk to ensure that public funds, provided through the Commission, are expended lawfully.

### **Paragraph 7**

43. In view of the limited scope of the Commissioner's activities the Measure does not require the Commissioner to prepare annual estimates or to produce formal annual accounts. It is anticipated that, instead, the Commission, through whom all payments to or on behalf of the Commissioner will be made, will include information as to the Commissioner's financial affairs as a separate section of the Commission's accounts. This paragraph requires the

Commissioner to provide the Commission with the information necessary to enable this to be done.

## Annex 1: Consultation Questions

1. The proposed Measure relates to establishing a statutory Commissioner for Standards. Would it be better for the Assembly to tackle the issue in an alternative way?
2. The Auditor-General for Wales and the Public Service Ombudsman for Wales are “watchdog” bodies which are independent of the National Assembly for Wales and established in law. Should the status of the Commissioner for Standards be established in law in the same way?
3. The Auditor-General for Wales and the Public Service Ombudsman for Wales are currently appointed by the Monarch on the recommendation of the Assembly. How should the Commissioner for Standards be appointed?
4. The Commissioner for Standards is currently appointed for a 4 year period. The Auditor-General for Wales is appointed for 5 years and the Public Service Ombudsman for Wales for 7 years. The Scottish Standards Commissioner is appointed for 6 years and the Parliamentary Standards Commissioner of 5 years. How long should the Commissioner for Standards be appointed for?
5. The current Commissioner for Standards is paid an annual retainer and receives fees on a basis of days worked. The posts of Auditor-General for Wales and the Public Services Ombudsman for Wales are funded from the Welsh Consolidated Fund. How should the post of Commissioner for Standards be funded?
6. The Commissioner for Standards is currently supported by Assembly Parliamentary Service staff who are not appointed exclusively to support his work. Should the Standards Commissioner have dedicated staff and should he or she be able to appoint his/her own staff, or be supported by another organisation such as the office of the Public Services Ombudsman?
7. Should the Commissioner for Standards have a role in promoting a framework for high standards in public life?
8. Should the Commissioner for Standards be able to give general advice on standards of conduct?
9. Should the Commissioner for Standards advise Assembly Members on their conduct as well as investigating complaints?
10. Should the Commissioner for Standards have independent discretion to decide whether or not a complaint merits investigation or to initiate an investigation?
11. Should the Commissioner for Standards have the powers to be able to summon persons, and require papers and records to be provided?
12. Should the Commissioner for Standards have the ability to make findings and conclusions public?
13. Should the Commissioner for Standards report directly to the Assembly, or to the Standards of Conduct Committee?
14. Should the Commissioner for Standards have the same role relating to Ministers as for other Assembly Members?
15. What will be the practicalities of making the system work and how should the proposed Measure make provision for these?

In the first instance the following consultees were contacted:

- Scottish Parliamentary Standards Commissioner
- Scottish Parliament Committee on Standards, Procedures and Public Appointments
- Standards in Public Office Commission – Ireland
- Houses of the Oireachtas - Ireland
- Public Services Ombudsman for Wales
- Auditor General for Wales
- Commissioner for Standards for Wales
- First Minister of the Welsh Assembly Government
- Assembly Commissioners
- Party Leaders in the Assembly
- WLGA
- Northern Ireland Assembly
- House Of Commons
- Study of Parliament Group
- Professor Diana Woodhouse
- The Law Society Office for Wales
- Cymru Yfory - Tomorrow's Wales
- Committee for Standards in Public Life

Annex 2



WALES AUDIT OFFICE  
SWYDDFA ARCHWILIO CYMRU

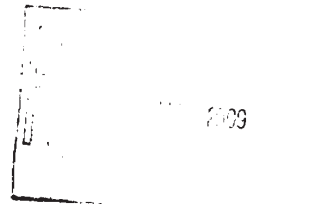
Wales Audit Office / Swyddfa Archwilio Cymru

Date: 14<sup>th</sup> January 2009  
Our ref: JC/0785/fgb  
Your ref:  
Pages: 1 of 2

24 Cathedral Road / Heol y Catedral  
Cardiff / Caerdydd  
CF11 9GJ  
Tel / Ffôn: 029 20 320511  
Fax / Ffacs: 029 20 320555  
www.wao.gov.uk

Email / E-bost: jeremy.coaman@wao.gov.uk  
PA / CP Fiona Bashford: fiona.bashford@wao.gov.uk

Mr Jeff Cuthbert AM  
Chair, Committee on Standards of Conduct  
National Assembly for Wales  
Cardiff Bay  
Cardiff CF99 1NA



**DRAFT PROPOSED NATIONAL ASSEMBLY FOR WALES  
STANDARDS COMMISSIONER MEASURE**

Thank you for your letter of 6 January 2009 concerning the draft proposed Measure to establish a National Assembly for Wales Standards Commissioner.

I have reviewed the content of the draft proposed Measure and its Explanatory Memorandum. I can confirm that it would be appropriate for the expenditure associated with the salary, allowances, superannuation benefits, pension, gratuities and other expenses incurred by (or on behalf of) the Standards Commissioner to be charged to the Welsh Consolidated Fund.

As I understand the current draft proposals, all such expenditure is likely to be met by the National Assembly for Wales Commission (the Assembly Commission) on behalf of the Standards Commissioner, and reported in the Assembly Commission's annual accounts. As a result, the Clerk to the Assembly Commission will retain the personal 'Accounting Officer' responsibilities associated with that expenditure.

I would expect, therefore, that the Clerk will wish to satisfy herself that appropriate safeguards are established from the outset over the regularity, propriety and value for money of any public expenditure incurred by or on behalf of the Standards Commissioner. However (and as I suggested in my consultation response of 22 December 2008), I do consider that it would be appropriate to make the provision for such safeguards explicit through amendment of paragraph 5 of the draft Schedule.

Page 2 of 2  
Our reference: JC/0785/fgb  
Date: 14<sup>th</sup> January 2009

I hope that this confirmation is helpful to your Committee's consideration of the draft proposed Measure.

I am copying this letter to Claire Clancy, Clerk to the National Assembly for Wales Commission.

A handwritten signature in black ink, appearing to read 'Jeremy Colman', with a horizontal line extending to the right.

**JEREMY COLMAN**  
**AUDITOR GENERAL FOR WALES**

cc Ms Claire Clancy



## Women's Forum 11th December 2009

Women's Forum Northern Ireland would like to make the following comments on the proposed appointment of a Commissioner for Standards:

Members of this organisation are of the opinion that the points made in the document seem to be sensible.

Our view is that self regulation is no longer tenable.

Women's Forum Northern Ireland is strongly in favour of an independent Commissioner with sufficient powers to investigate and take action when there are breaches of the Code of Conduct.

Women's Forum wishes to place on record that the work carried out by the present Committee on Standards and Privileges has been invaluable and has set in place excellent groundwork to be built upon by an Independent Commissioner.

# Interim Assembly Commissioner for Standards

## 17th December 2009

1. I welcome the opportunity to contribute to the Committee's Inquiry on the Appointment of an Assembly Commissioner for Standards, on maintaining the Northern Ireland Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members (the Code of Conduct), and on handling alleged breaches in relation to the Code of Conduct.
2. The matters that arise under the purview of the Committee's Inquiry are, by their very nature, regulatory in nature. Therefore, it is important at the outset to define what I believe the purpose of any regulatory system should be. Having set out the requirements of a/for a regulatory system, I have offered a perspective of the different options available to the Committee, for the appointment of a Commissioner, ending the submission with a number of concluding comments.

### The Purpose of a Regulatory System

3. Firstly, in addressing the purpose of any regulatory system, and before moving onto substantive issues of detail, whatever structure the Committee decides to implement, the system should demonstrate the following characteristics:
  - a commitment to systematic process;
  - easy to access;
  - responsive to users of the system, ensuring that issues of complaint be investigated effectively, proportionately and impartially;
  - effective, in that individual complaints can be dealt with and the information used to develop the Code of Conduct if that is appropriate; and
  - open, transparent and accountable, so that it is open to scrutiny and amenable to being judged by users.
4. Moreover, it has been contended<sup>1</sup> that an important objective of regulation consists of preventing, pre-empting and mitigating problems. Applying this framework to the work of the current Inquiry, it could be further argued that, regardless of whatever option the Committee settles on, these varying purposes of regulation are given expression by the following characteristics:
  - acknowledgement of the minimum standards of behaviour expected of Members by the public;
  - articulation of how Members ought to conduct themselves in their dealings with other Members; and
  - clear and transparent disclosure of the processes that deal with situations when these standards are not met.
5. In supporting a standards system that is transparent in its disclosure processes and is fit for the purposes noted above, it is important to restate the principles upon which any future system should be based, regardless of structure, namely the Nolan Principles of Public Life. These are:
  - Selflessness
  - Integrity
  - Objectivity

---

1 Regulator accountability: Anonymous. International Financial Law Review. London: May 2009

- Accountability
- Openness
- Honesty
- Leadership

## Substantive Issues of Detail

6. The context, therefore, within which the Committee is conducting its inquiry is significantly informed by the now well established Seven Principles of Public Life. Those Principles underpin many aspects of public administration and governance arrangements including the revised Code of Conduct for Members of the Northern Ireland Assembly adopted with effect from 12 October 2009.
7. The appointment of a Commissioner for Standards is the next key step in establishing a system of oversight and investigation with the objective of achieving the effective functioning of the arrangements through which Members' conduct, actions and their compliance with the Code of Conduct can be examined.
8. In taking this review forward the Committee has decided to focus its Inquiry on three matters:
  - the appointment of an Assembly Commissioner for Standards;
  - the maintenance of the Northern Ireland's Assembly's Code of Conduct and related Guide; and
  - the handling of alleged breaches in relation to the Code of Conduct.
9. In submitting comment on these matters, my views are substantially informed by the experience and insights I have developed in fulfilling the role of the Assembly's Interim Commissioner for Standards, a role I have undertaken since October 2001. I have also relied on the investigative experience gained from my role as Assembly Ombudsman and Commissioner for Complaints.
10. Fundamental to the appointment of a Commissioner for Standards is the need to agree a process and appointment that will secure a broad consensus and cross party endorsement built on a critical requirement that the public perceives the role to be independent and impartial.
11. In 2001, the then Standards Committee accepted the need to ensure that the appointee did not have any interest or affiliation that could be perceived as prejudicing that essential independence and impartiality. In my view, this requirement remains absolutely fundamental. It is also important that the process and model adopted should be proportionate to the size and scale of the Northern Ireland Assembly. Finally, the Committee for Standards must be central to any decisions taken both in relation to the appointment of a Standards Commissioner and in respect of decisions resulting from the investigations of complaints against Members undertaken by a Standards Commissioner once appointed.

## The Appointment

12. In deciding on the form of appointment, there are a number of models which could be adopted.

### **Full Independent Office**

First, the Assembly could decide to appoint a Commissioner through an open recruitment competition, informed by the Appointments Procedure that is used for appointments made by the Assembly and the wider public service.

### **Shared Appointment**

A second model builds on a recognition that the appointment is not full time. This approach could involve inviting an individual already undertaking an equivalent role from, for example, the Scottish Parliament or the Welsh Assembly, to undertake a similar role for the Northern Ireland Assembly.

### **A Separate Titled Office alongside another Independent Body**

A third model would involve developing the post as a role alongside, but separate from, an existing office. Essentially formalising and building on the arrangements which have supported the role of the Interim Commissioner appointment since 2001.

13. Each model outlined above has strengths and weaknesses. I will examine each.

### **Full Independent Office**

A new and separate appointment would have the advantage of being clearly identified with and dedicated to the Assembly. This would provide a strong signal that the Assembly was serious in addressing the matter of governance for its Members. This model also has the advantage of broadly mirroring the approach in Westminster, Scotland and Wales with the resultant benefits of building on the established processes and experience in those jurisdictions.

However, it is also possible that the developing response to the recent expenses scandal at Westminster will lead to a changed role and responsibilities for the Commissioner at Westminster which may or may not be consistent and relevant to the Northern Ireland situation. Additionally, what is also clear from the experience of the Interim Commissioner is that there is not sufficient workload to warrant a full time appointment in Northern Ireland, so the post would be part-time.

A further difficulty with a part-time appointment is the clear imperative within the procedure prescribed by the Standards Committee for the Standards Commissioner to receive all complaints, acknowledge receipt of the complaint and make a judgement whether there is a case to answer without reference to the Committee or its Clerk. This procedure clearly requires administrative support to be available on an ongoing basis, certainly across the working week. If that support is provided by the Committee Clerk's Office, a situation would be created where staff who service the Committee would have to interface directly with Members against whom allegations have been made whilst providing support to the Commissioner.

Finally, an approach using a separate appointment could represent what the public might perceive as 'yet another Commissioner' at a time of serious resource pressure on the public finances. This would run counter to the Assembly's important message of the pressing need to reduce administrative costs and making best use of scarce public funds.

### **Shared Appointment**

The second model would involve developing a shared resource with a sister Parliament or Assembly. This approach has the potential to create real synergies, and a more uniform approach across legislatures in the UK. This model has the advantage of engaging an individual with a track record and recognised expertise who already would be familiar with systems that are well developed and therefore based on procedures and methodologies that could inform and develop the approach to the Commissioner's role in Northern Ireland. The model additionally would represent a proportionate and cost effective approach to the workload within Northern Ireland.

A disadvantage would be that a Commissioner already committed to another Assembly or Parliament might not be available to support the work of the Committee at a level of immediacy that would be acceptable to the Committee. It is also clear that the work of the

Commissioner does involve being available to engage with the Committee beyond complaints investigation. He clearly needs to be available to advise on the review of systems and examine change when that is considered appropriate.

Therefore with a shared appointment it should be recognised, depending on commitments and where the individual resides, it may not always be practical to secure the personal attendance of the individual when the Committee requires evidence or advice. The Assembly might have a concern at being perceived as having to rely on a resource from outside Northern Ireland from whom to secure independent and impartial advice to meet its responsibilities to the Assembly, its Members and the wider public.

### **A Separate Titled Office alongside another Independent Body**

The primary advantage of this third model of a Commissioner for Standards alongside an existing office is that it is proportionate to the Northern Ireland situation, cost effective and accessible. It would utilise an existing Office whose independence and impartiality is acknowledged and which also had sufficient capacity to create a separate and autonomous administrative support structure from within the resource that already supports its core functions. A disadvantage of the model is that the Office that would undertake the Standards role could find its core purpose overshadowed by the inevitable publicity around the media focus on complaints against Assembly Members.

The Committee is aware that the Office of the Ombudsman has fulfilled the role of Interim Commissioner for Standards since 2001, when it was invited to do so by the then Speaker, Lord Cadogan. At that time, it was judged that an interim arrangement would allow the Committee the opportunity to develop an informed assessment of the nature and volume of the work involved in the role. It would also allow a judgement to be made about the competencies, capacities, skills and experience that the Commissioner would need and the level of dedicated support staff that would be required to support a Standards Commissioner's Office. From the perspective of the Ombudsman, the interim arrangements provided his Office with an important opportunity to examine whether the responsibilities involved in undertaking this interim role conflicted with or impeded the Office in meeting his core responsibilities of Assembly Ombudsman and Commissioner for Complaints.

That experience to date demonstrates and confirms that the incidence of complaints to the Standards Commissioner is not regular and the investigation therefore of complaints, by their very nature is, of necessity, marked by periodic activity. Examples of periodic activity can involve waiting for Members to respond to queries, scheduling meetings, identifying and interviewing experts, identifying documentation and collating responses. During 2008/09 the relevant Director and the Ombudsman spent some 200 hours on the evaluation of complaints, collating and considering evidence, drafting reports and presenting conclusions to the Committee. During the current year to the end of November, the time committed to supporting the Committee has amounted to some 160 hours. Clearly the experience of the Interim Commissioner supports a conclusion that the role of the Standards Commissioner is not full time. The experience also demonstrates that an administration separate from the Assembly is important in supporting the reality and, importantly, the perception that the Commissioner is independent of the Assembly and its Members.

A further important aspect of the experience of fulfilling the role of Interim Commissioner is the parallel role of the Ombudsman's Office. The investigation of complaints about public bodies, government departments, public servants and civil servants ensures that critical investigative skills and familiarity with legislation is maintained and developed. Equally, the role of investigating Assembly Members secures a consistency of approach in examining complaints against elected Members and the bodies and staff working in public services and government departments.

I am satisfied that the responsibility has not impeded the carrying out of the responsibilities of Assembly Ombudsman and Commissioner for Complaints. Importantly, as indicated above,

the interim model ensures Assembly Members are subject to the same Standards tests and processes as are applied to the scrutiny of departments, public bodies, and civil and public servants when complaints are submitted.

Members will be aware that the original Standards Committee had already initiated the preparation of legislation to place the arrangement of engaging the Office of the Assembly Ombudsman as Commissioner for Standards on a statutory footing. This process was terminated when the Assembly was suspended. Of course it is now for the current Standards Committee, composed as it is of a significantly different membership, following the completion of the consultation process to decide which arrangement represents the right solution in the current circumstances and also informed by the Committee's experience to date.

## Some Further Considerations

14. A factor which could influence that judgement would be if the Committee decided that the Clerk should have a reduced role in advising Members in respect of the Code and the Registration of Interests. While the interim model works effectively in relation to the investigating of complaints, the Ombudsman's Office has had a very limited and marginal role in relation to the Register of Interests. The current approach has on one level worked well because of the physical separation of the Ombudsman from Parliament Buildings which has emphasised the interim Commissioner's separation from the day to day operation of the Assembly business; this underscores the independence from the Assembly and its membership.
15. However, if the Committee was to decide following the consultation process to move responsibility for advising Members on issues relating to the Code and the Registration of Interests to the Standards Commissioner, a very different set of circumstances would be created. A former Commissioner of Standards at Westminster has indicated that some 70% of her time was taken up in providing advice to Members about the Code and the Register. More importantly however, there is another important perspective which requires that an individual who has a responsibility for the investigation of complaints should not also have had a responsibility for providing advice or information to the individuals he may be asked to investigate. Such prior involvement creates a conflict of interest in terms of inhibiting an independent and impartial examination of a complaint. The complainant, the person under investigation and, most importantly, the public would clearly see the independence of the investigation at best compromised and at worst conflicted.

## Maintenance of the Assembly Code of Conduct

16. The Code and its associated Guide should be 'living documents' in that they should be kept under regular review to ensure that the requirements and arrangements reflect developments in governance standards in addition to any specific issue which might emerge.
17. In general responsibility for such a proactive review should lie with the Committee, and the Clerk and his staff on the Committee's behalf, which in turn would keep itself abreast of developments in best practice across all other Legislatures both in the United Kingdom and beyond. However, the Commissioner for Standards would also have a responsibility to identify the need for revision both through information emerging from an investigation or as a result of an identified trend in investigations. There would also be a clear responsibility on the Commissioner of Standards to draw such issues to the Committee's attention both in reporting on individual cases and in his periodic reports.

## Handling of Alleged Breaches in relation to the Code of Conduct

18. The Assembly has put in place a process whereby any complaint is subject to impartial investigation by an independent authority. The Committee receives a report and can test the investigator, the evidence and the standard against which the complaint and the member complained of is judged. Crucially it falls to the Committee to determine whether the complaint is upheld and, if so, what sanction if any is to be imposed.
19. Under the present interim arrangements the Commissioner reports the facts of the case but does not recommend any sanction even if he concludes the Code has been breached. The only departure from that position is that the Committee has indicated that the Commissioner can recommend use of the Rectification Procedure in cases of Registration of Interests if it is considered that approach is proportionate to a particular circumstance. It remains with the Committee however as to whether that recommendation is accepted.
20. The Committee has also adopted the practice of appending the Interim Commissioner for Standards investigation to its final report on a case. This practice is clearly consistent with the key principles of transparency and openness. Whatever process or model the Committee decides to recommend to the Assembly for the future it should continue to demonstrate adherence to these principles and therefore the publication of the Commissioner's Report as an appendix to the Committee's final report on a complaint is a practice which should be retained.
21. This brief paper reflects the view that the Committee, and through it the Assembly, should continue to have primacy in the handling of allegations of breaches of the Code and the present arrangements fulfill that requirement. The question of sanction in serious cases which are considered to warrant suspension of a Member must lie with the Assembly itself.
22. An important factor in whatever arrangements are used is that of the rights of the Member accused of an infringement or breach to make representations directly to the investigator, the Committee and, if necessary, to the Assembly. Present arrangements make provision for that representation and this right must be protected and preserved.

## Concluding Comments

23. In recent reviews of governance codes , it has been noted that the quality of systems of governance ultimately depends on behavior, not process, with the result that there is a limit to the extent to which any regulatory framework can deliver good governance. This fact notwithstanding, and whatever arrangements the Committee finally decide upon, I feel that any standards oversight system can only be strengthened by adhering to the following principles in guiding your deliberations. These are: a **commitment** to provide the best possible outcome, at every stage of the system's operation; **fairness** in the provision of a transparent, impartial, confidential system capable of offering appropriate outcomes; **access**, in making sure it can be easily used; **responsiveness** in what the Committee does with a complaint once received and, furthermore, what action is taken on complaints about the complaint process itself; **effectiveness**, in that ongoing attention should be paid to ensuring that the complaint system is credible and effective, for all parties in the process; and, ultimately, the system should provide **accountability**, thereby ensuring that the complaint system is open to scrutiny by all.

# Committee on Standards and Privileges

## House of Commons

### 6 January 2010

Thank you for your letter of 28 October, inviting me to submit written evidence to your Committee's Inquiry. I am grateful for the extension to your deadline. This evidence is submitted in a personal capacity. It has been approved by the Committee on Standards and Privileges but it does not necessarily represent the views of the Committee or of its Chairman.

I comment in turn on each of the issues identified by the Assembly Committee.

In terms of modifying and maintaining the Code of Conduct:

**Are the current respective roles and duties of the Committee on Standards and Privileges and the Assembly appropriate?**

**Should there be any formal role for others in terms of maintaining and modifying the Code of Conduct?**

1. In the House of Commons, the independent Parliamentary Commissioner for Standards is responsible under Standing Order No 150 for advising the Committee on Standards and Privileges, its sub-committees and MPs generally on interpretation of the Code of Conduct. The Commissioner is also required to monitor the operation of the Code and to make recommendations to the Committee.
2. Following a recommendation made in the Eighth Report from the Committee on Standards in Public Life in 2002, the Commissioner reviews the Code of Conduct in the course of each Parliament. In carrying out the only such review to date, in 2004, the Commissioner wrote to all MPs and to 24 other organisations or individuals who had an interest, inviting their views. Wider consultation was carried out through the Parliamentary website. The Committee on Standards in Public Life welcomed the review process, noting that it was "completely in line" with the recommendation made in its Eighth Report.
3. At the conclusion of his 2004 review, the Commissioner made a report to the Committee, setting out his proposals for changes to the Code. The Committee then made a Report to the House, endorsing all the Commissioner's recommendations and adding some of its own (with one exception, the Committee's additional recommendations related to the complaints-handling process, rather than to the form of the Code itself).<sup>1</sup>
4. The House debated the Committee's Report early in the new Parliament, on 13 July 2005, when it approved the revised Code in full. The three-stage process—involving consultation then a report by the independent Commissioner, followed by a Report from the Committee on Standards and Privileges, followed by a debate and (potentially) a vote on the floor of the House—is a model that has served the House and the public interest well. If there is scope for improvement in future reviews of the Code, it may lie in taking advantage of web-based opportunities for wider consultation than has previously been attempted.
5. The review in the present Parliament was postponed when the Committee on Standards in Public Life announced its 2009 inquiry into MPs' expenses and allowances and remains on hold pending full implementation of the CSPL's Twelfth Report (which is expected to take place in the new Parliament).

---

1 Fourth Report from the Committee on Standards and Privileges, Session 2004–05



## In terms of handling alleged breaches of the Code of Conduct:

### **Are the current respective roles and duties of the Commissioner for Standards, the Committee on Standards and Privileges and the Assembly appropriate?**

#### **Should there be any formal role for others in terms of handling alleged breaches of the Code of Conduct?**

6. In the House of Commons, the independent Commissioner decides whether a complainant has provided sufficient evidence to justify an inquiry into whether a named Member has breached the rules of the House. He does not consult the Committee on whether he should accept a complaint, except in cases where the complaint meets the criteria but relates to events that took place more than seven years ago, or where a Member has sought to refer himself. The Commissioner provides the Committee with statistical information only on the number of complaints he does not accept. The Committee is content with this arrangement, which has been reflected in the new arrangements for complaints-handling agreed by the House in passing the Parliamentary Standards Act 2009.
7. The Commissioner always informs the Committee when he rectifies or dismisses a complaint following an inquiry, but without making a formal report to it.
8. The principle that it is for the Committee—on the advice of the Commissioner—to determine whether a complaint that has not been dismissed or rectified should be upheld has been fundamental to the Westminster model. In practice, the Committee has sometimes recommended ‘informal’ sanctions such as repayment or a written apology, which may be complied with by the Member concerned without the need for the matter to go to the House. Any formal Parliamentary sanction, such as suspension from the House or withholding of a Member’s salary, requires a decision of the House.
9. There is presently no external element involved in the complaints-handling process in the House of Commons. However, the CSPL has recommended and the Committee on Standards and Privileges has agreed that there should be two external, lay members of the Committee.<sup>2</sup> These lay members will be appointed following a process similar to that followed for other public appointments. They will have full voting rights on all standards matters. The Committee has proposed that at least one lay member should be present whenever a standards issue is discussed.
10. Separately, Parliament has legislated to create an Independent Parliamentary Standards Authority, with power to investigate breaches of the rules relating to expenses and allowances. If the CSPL’s recommendations are accepted, the IPSA will be able to require Members to repay sums wrongly claimed, to recover costs and to impose fines, but it will have no power to recommend or impose a Parliamentary sanction. In cases where repayment is considered to be an insufficient remedy, the Commissioner will be able to make his own investigation, which will then follow the usual course.
11. An earlier proposal to make the IPSA responsible for drawing up and policing the Code of Conduct was rejected by the House, largely for reasons involving privilege. The House was concerned that a statutory Code of Conduct would be justiciable in the courts.

#### **Should consideration be given to introducing any sort of appeals procedure in relation to decisions reached by the Committee?**

12. In any case in relation to which he is minded to make a report to the Commons Committee on Standards and Privileges, the Commissioner invites the Member who is the subject of the complaint to comment on the factual accuracy of his report before it is submitted. The Member is also able to submit his views in writing at any point in the process and these are summarised in the Commissioner’s report as well as being reproduced *in extenso*

---

<sup>2</sup> Second Report, Session 2009–10

among the appendices. The Commissioner may also interview the Member, at the request of either, in which case a full summary is included in the report. Following completion of the Commissioner's investigation, the Committee offers Members an opportunity to submit written evidence or to appear in person to give oral evidence. Finally, in serious cases involving a possible Parliamentary sanction which can only be imposed by the House, the Member is able to speak in his defence during the debate in the Chamber.

13. It is the Committee's view that the opportunity for a Member who is the subject of an investigation to put a case at each stage of the process provides sufficient safeguards and for this reason no separate right of appeal has been thought necessary. However, the Assembly Committee may wish to note that the Joint Committee on Human Rights has taken the view that Article 6(1) ECHR applies to the disciplining of Members by the House of Commons.<sup>3</sup>
14. Because the Commissioner is an Officer of the House and his work is covered by Parliamentary privilege, there can be no appeal to a court of law. However, on 10 December, the Government announced that it would legislate to provide Members who are penalised by the IPSA (which as an external, statutory body will not be covered by privilege) to appeal to the First Tier Tribunal. This will not apply to a Member who is the subject of a sanction imposed by the House.

## In terms of appointing an Assembly Commissioner for Standards

### **What should the role, responsibilities and powers of an Assembly Commissioner for Standards be?**

**Existing Standing Orders state that the Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly. Is this appropriate?**

**Existing Standing Orders say that the Commissioner shall not be dismissed unless—(a) the Assembly so resolves; and (b) the resolution is passed with the support of a number of members which equals or exceeds two-thirds of the total number of seats in the Assembly. Is this appropriate?**

**Should the position of an Assembly Commissioner for Standards be placed on a statutory basis?**

**Should an Assembly Commissioner for Standards have statutory powers? How should an Assembly Commissioner for Standards be appointed?**

**What should be the eligibility criteria of any such appointment?**

**What should be the terms and conditions of any appointment?**

15. It has been the view of the Committee on Standards and Privileges—shared by the House as a whole—that the Commissioner's independence is key to the integrity of the complaints-handling process and that it must not be compromised. The Commissioner reports to the House each year on the exercise of his functions and regularly provides the Committee on Standards and Privileges with summary information on the progress of his inquiries. The Commissioner is an officer of the House, but this is in order to extend the protection of Parliamentary privilege to his work. The Commissioner works within an overall procedural framework that has been agreed by the House, but he is not subject to the direction or control of the Committee or of the House.
16. The House legislated in the Parliamentary Standards Act 2009 to create a new Commissioner for Parliamentary Investigations, who would have had a more arms-length relationship

---

3 Nineteenth Report from the JCHR, 2008–09, para 1.14

with Parliament. The Government announced on 10 December that it would repeal this provision in favour of requiring the IPSA to appoint its own compliance officer, in line with a recommendation of the CSPL.

17. The Assembly Committee will wish to consider the exposure of the Commissioner to judicial review which would be a consequence of placing his office and/or his powers on a statutory footing. Such considerations have influenced the House of Commons in its decision to appoint the Commissioner under its Standing Orders.
18. The House of Commons is increasingly moving towards appointments being made through *ad-hoc* panels established for the purpose. Such panels tend to include people with considerable experience of recruiting to senior appointments; people with experience relevant to the post on offer; a qualified independent assessor; and one or more MPs. The panel runs the advertisement, search, sift, assessment and interview phases, before making a recommendation to the appropriate committee of the House. The final decision remains one for the House. Use of these panels is felt to increase confidence in the impartiality and professionalism of the process.
19. Procedures are in place to protect the Commissioner from political pressure and to preserve his independence. The Commissioner is appointed for a single, non-renewable five-year term. His hours of work and rate of pay were announced by the House at the time of his appointment. He is removable only by decision of the House, which must be on the basis of a motion moved by a member of the House of Commons Commission. This in turn must follow a Report from the Committee on Standards and Privileges, setting out the reasons why in its opinion the Commissioner is either unfit to hold office or unable to carry out his functions.

# The Children's Law Centre

## December 2009

### **1. The Children's Law Centre**

1.1 The Children's Law Centre (CLC) is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and every child can achieve their full potential.

1.2 We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run an advice/ information/ representation service. We have a dedicated free phone advice line for children and young people and their parents called CHALKY and a youth advisory group called Youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and children and young people from ethnic minority backgrounds, including Traveller children. We also produce a series of leaflets, written in conjunction with children and young people in youth@clc, for children and young people detailing children's rights and the law in a number of areas, one of which is with regard to looked after children.

1.3 Our organisation is founded on the principles enshrined in The United Nations Convention on the Rights of the Child, in particular:

- Children shall not be discriminated against and shall have equal access to protection.
- All decisions taken which affect children's lives should be taken in the child's best interests.
- Children have the right to have their voices heard in all matters concerning them.

1.4 The CLC believes that it is absolutely fundamental to upholding the standards of public office that all Members of the Northern Ireland Assembly are governed by a stringent enforceable *Code of Conduct and Guide to the Rules Relating to the Conduct of Members* (the Code of Conduct) to ensure that they act at all times with the integrity the position of MLA demands and that they do not compromise the integrity of, or public confidence in, the Northern Ireland Assembly. From its perspective as an organisation, which works closely with Government, with and on behalf of children, both directly and indirectly, the CLC is grateful for the opportunity to make this submission, to the Committee on Standards and Privileges' Inquiry on the Appointment of an Assembly Commissioner for Standards, on Maintaining the Northern Ireland Assembly's Code of Conduct and Guide to Rules Relating to the Conduct of Members (the Code of Conduct) and on Handling Alleged Breaches in Relation to the Code of Conduct.

### **2. Inquiry on the Appointment of an Assembly Commissioner for Standards, on Maintaining the Northern Ireland Assembly's Code of Conduct and Guide to Rules Relating to the Conduct of Members (the Code of Conduct) and on Handling Alleged Breaches in Relation to the Code of Conduct**

2.1 We do not wish to comment on the detail regarding the role, responsibilities, appointments process, including terms and conditions of appointment and powers of an Assembly Commissioner for Standards in this submission to the Committee on Standards and Privileges. We do however wish to state our support for the implementation of an extremely robust system of accountability for all Members of the Northern Ireland Assembly. We also wish to emphasise the need for any system of accountability for Members of the Northern

- 
- Ireland Assembly to be wholly independent from the Executive, the Assembly and from Members of the Assembly including in respect of budgets and reporting.
- 2.2 We believe that an Assembly Commissioner for Standards should have sufficient power to impose sanctions on Members of the Assembly independently of the support of the Assembly where there is a breach of the Code of Conduct on Standards and Privileges. While we believe that it will be necessary for an Assembly Commissioner for Standards to have adequate support by way of a Committee for Standards; we do not believe that it is appropriate for the current Committee on Standards and Privileges, which is made up of Members of the Assembly or the Northern Ireland Assembly, to have responsibility for recommending or imposing sanctions on Assembly members, given political party loyalties and the inappropriate proximity of Members of the Committee on Standards and Privileges to other Members of the Assembly. We would therefore be very supportive of the introduction of a system of accountability for Members of the Assembly which is totally independent of the Northern Ireland Assembly.
- 2.3 It is fundamental to the fair and effective operation of the complaints procedure that the Assembly Commissioner and any structures to support the work of the Commissioner are wholly independent from Members of the Assembly. This is of particular importance given the degree of power vested both in the Assembly Commissioner and the Committee for Standards and Privileges with regard to complaints. In addition, presently there does not appear to be recourse to any appeal mechanism where the Assembly Commissioner or the Committee for Standards and Privileges decides that a complaint is inadmissible. We believe that the failure to have access to an appeals mechanism to appeal decisions reached by the Assembly Commissioner or the Committee for Standards and Privileges is contrary to the principles of natural justice. We wish to see the introduction of an appeal mechanism which should include the consideration of the appeal by different independent members of the Committee for Standards and Privileges than the members who made the original decision.
- 2.4 We have serious concerns with regard to the current role of the Committee for Standards and Privileges in making decisions about complaints. It appears from the Code that the Committee has the final decision making power and may or may not agree with the decision of the Assembly Commissioner in relation to a complaint. We do not believe that this is sufficiently independent given that the Committee is comprised of other Members of the Assembly, some of which may be party colleagues of the Member being complained about. It is central to the integrity of the complaints process that it operates totally independently from all other work of the Assembly. Allowing the Committee for Standards and Privileges to overrule the decision of the Assembly Commissioner seriously undermines the integrity of this process.
- 2.5 The CLC is an organisation which has and continues to work tirelessly to ensure the protection, promotion and realisation of the rights of all children in Northern Ireland. We have previously engaged with the Committee on Standards and Privileges in its consultation exercise on its Code of Conduct on Standards and Privileges in August 2008. A copy of our response in that instance is attached for ease of reference. We wish to reiterate a fundamental concern with regard to the rules which govern the conduct of Assembly Members as dictated by the Code of Conduct on Standards and Privileges namely their apparent failure to extend beyond matters solely of financial concern to the conduct and behaviour of Members of the Northern Ireland Assembly.
- 2.6 While we appreciate the importance of and the necessity for stringent rules which govern the conduct of Assembly Members with regard to their financial interests, there have been a number of instances which we believe have brought the Assembly into disrepute which would not be prevented from reoccurring as a result of the application of the Assembly's Code of Conduct on Standards and Privileges. We perceive this failure as a fundamental omission and strongly urge the Committee on Standards and Privileges to further revise the Code and Guide in the context of this Inquiry to ensure that if a Member of the Assembly acts inappropriately
-

and in a manner which is not reflective of the standards of the public office which they hold that they can and will be held to account and subject to enforceable sanctions as set out in a revised Code of Conduct on Standards and Privileges.

- 2.7 On the 15th October 2007, a number of NGO's and individuals, including the Children's Law Centre were the victims of slanderous, untrue, damaging and dangerous statements made on the floor of the Assembly by MLA's. More recently, on the 19th May 2009, the Children's Law Centre again found itself misrepresented by statements made by an MLA on the floor of the Assembly. By virtue of section 50 of the Northern Ireland Act 1998, the Parliamentary Privilege conferred on Members of the Assembly when making a statement in the proceedings of the Assembly, the Centre and others were prevented from recourse to effective redress of any kind. CLC is concerned that such attacks on civil society organisations and individuals will silence and intimidate some NGOs from legitimate engagement with the body politic in the best interests of their clients.
- 2.8 In addition, we have witnessed repeated and dangerous homophobic statements being made in Assembly proceedings by Members of the Assembly which have undermined the constitutional and fundamental principle of equality of opportunity which were seen by the signatories to the Good Friday Agreement as a particular priority and were intended by the signatories to apply to all the functions of such public authorities. The case of *Robinson v Secretary of State for Northern Ireland & others*<sup>1</sup>, confirmed the importance of the Agreement in relation to the Northern Ireland Act 1998, and clarified the constitutional status of the 1998 Act, thus enshrining the principles of equality and human rights for all within the Northern Ireland constitution. However under the guise of Parliamentary Privilege, effective redress was again denied in respect of these homophobic outbursts and we believe that the role of public office was once again been undermined.
- 2.9 The CLC believes that the continued failure by the Code of Conduct on Standards and Privileges to provide sanctions for dealing with Members of the Assembly when they abuse both the processes and privilege which exists by virtue of their position seriously damages the democratic process, thus undermining both the public regard for and confidence in MLA's and the Assembly. We wish to see the role of an Assembly Commissioner for Standards encompassing access to effective redress where such incidents occur in future, including having responsibility for receiving complaints and imposing sanctions where misrepresentation and damaging statements are made by MLA's, within the context of a revised, robust Code of Conduct on Standards and Privileges.
- 2.10 **The CLC believes that it is vital that the Committee on Standards and Privileges takes the opportunity of this Inquiry on the Appointment of an Assembly Commissioner for Standards, on Maintaining the Northern Ireland Assembly's Code of Conduct and on Handling Alleged Breaches in Relation to the Code of Conduct to revise the Code and Rules.** We believe that this is necessary both to ensure that the Principles of Conduct are extended to the conduct of MLA's in all aspects of their professional life and in order to protect some of the most vulnerable members of our society, such as homosexual young people, as well as individuals and organisations from unprovoked, slanderous and extremely dangerous attacks by Members of the Assembly who do so under the cloak of Parliamentary Privilege and with apparent disregard for the safety of these citizens whom they have been elected to serve.
- 2.11 On the 9th January 2008 the Committee on Procedures held a Committee debate dealing with the issues which arose from the slanderous attacks by MLA's in the Assembly on the 15th October 2007. In the course of this debate it was agreed that the Committee on Procedures would examine additional options for redress, such as a suitable complaints processes and/or consideration of the position in Australia, where the Hansard record can incorporate a response by an organisation or individual who has been the victim of such an attack. In addition, it was agreed that Committee members would, in a planned

---

1 [2002] UKHL 32

visit to the Dail in Dublin, ask specifically about their experience with such problems and obtain information on how these matters have been handled there. During the Committee debate alternative suggestions were offered, such as vesting authority in the Speaker of the Assembly to deal with complaints and to develop guidance on how this discretion might be exercised. It was also proposed that MLA's should be subject to sanctions by the Speaker, or a Committee, for using unacceptable, racist or homophobic language. It was agreed that the Committee on Procedures would begin a process of consultation with the Committee on Standards and Privileges to develop an options paper on the issue of redress in such circumstances and on an effective "right to reply".

- 2.12 CLC, as one of the organisations directly impacted upon by a slanderous attack and misrepresentation by MLA's in the course of Assembly proceedings, is therefore extremely disappointed, that despite the Committee on Procedures debate, the Code and Rules continue to make no attempt to provide redress for individuals or organisations or sanctions for MLA's who abuse their position and the Parliamentary Privilege which they enjoy, nor do the terms of this Inquiry. We do not believe that the Assembly can, whilst failing to provide any redress for individuals and organisations subject to attack on the floor of the Assembly such as those aforementioned instances, demonstrate a convincing commitment to the principles of respect, equality, accountability or integrity - principles which go to the heart of democracy. The absence of such procedures undermines the work of the Assembly and its Members and calls into question the commitment of the Assembly to effectively police MLA's conduct.
- 2.13 **We strongly urge the Committee on Standards and Privileges to further revise the Northern Ireland Assembly's Code of Conduct and Guide to Rules Relating to the Conduct of Members as a result of this Inquiry to ensure that if a Member of the Assembly acts unacceptably and in a manner which is not reflective of the standards of the public office which they hold, such as those outlined above, that they can and will be held to account and subject to enforceable sanctions as set out in a revised, comprehensive and robust Code of Conduct on Standards and Privileges.**

# Northern Ireland Human Rights Commission

## December 2009

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to contribute its views to the inquiry by the Committee on Standards and Privileges (the Committee) on maintaining the Northern Ireland Assembly's Code of Conduct and Guide to the Rules relating to the Conduct of Members (the Code), on handling alleged breaches of the Code and on the appointment of an Assembly Commissioner for Standards. The Commission has always regarded the governance of the Assembly as a matter engaging important human rights principles. It provided advice in May 2001 on the Assembly's Standing Orders and human rights protection; in July 2002, it responded to your Committee's report on the Code, and gave oral evidence to your Committee in October 2002; in May 2008, it provided a brief submission on proposed amendments to the Code.

### Modifying and maintaining the Code of Conduct

3. The Commission's only concern in these matters has been to ensure that the regulatory framework is in accordance with the relevant human rights standards, both in relation to the rights and responsibilities of individual Members and in relation to the function of the Assembly as an organ of democratic governance. It is important that the Code be reviewed from time to time and that it be open to modification. The respective roles of the Committee (in recommending modifications to the Code) and of the Assembly (in agreeing modifications to the Code) appear to us to be broadly in line with how other democratic legislatures regulate their ethical codes.
4. The Committee asks whether a formal role should be given to others in terms of maintaining and modifying the Code. The Commission does not perceive any such need: the Assembly has the statutory power and democratic mandate to regulate the conduct of MLAs, and has delegated relevant functions and authority to the Committee. The Committee's practice of consulting periodically and transparently on possible modifications is sufficient to ensure that interested parties outside the Assembly can contribute their ideas and perspectives to the Committee and the Assembly. The Committee's obligations (from Standing Order 57(1)(c) and (d)) to consider any matter relating to the conduct of members, and to recommend any modifications to the Code of Conduct, contain an implied duty on it to seek out and remain open to the advice of others, and to keep itself apprised of developments in ethical standards and best practice.

---

1 Northern Ireland Act 1998, s.69(1).

2 Ibid, s.69(3).

3 Ibid, s.69(4).

4 Ibid, s.69(6).



---

## Handling alleged breaches

5. The Commission's main concern in relation to enforcement is that there should be the maximum clarity as to the requirements of the Code, procedural fairness and the degree of transparency required to ensure public confidence – including confidentiality as appropriate in the investigative and deliberative phases. The Code as adopted in June 2009, with effect from 12 October 2009, comprises (i) the substantive Code of Conduct for Members of the Northern Ireland Assembly, (ii) the Guide to the Rules Relating to the Conduct of Members and (iii) the Complaints Procedure. The Guide provides adequate detail as to the registration and declaration of interests, and the prohibition on paid advocacy. The Complaints Procedure defines with clarity the respective roles of the Commissioner for Standards (in receiving and investigating complaints, reporting to the Committee, etc.), the Committee and the Assembly. It sets out each stage in the handling of admissible and inadmissible complaints, giving reasonable discretion to the Commissioner in disposing of trivial and vexatious complaints, providing the Committee with the option of overruling the Commissioner's preliminary view on admissibility, and providing a fair process for investigation and Committee consideration.
6. The Committee asks whether a formal role should be given to others in terms of handling alleged breaches where those breaches fall within the scope of the Code of Conduct. The Commission sees no need for that. The decision making role of the Commissioner for Standards is exercised independently and is appropriately supervised by the Committee, with the Committee having a range of options in terms of upholding, dismissing or requiring further investigation of a complaint, and deciding on any further action, with sanctions to be determined and imposed only by the Assembly.
7. The Commission, and others, have previously raised with the Committee the matter of how to respond to statements in the Chamber of the Assembly while it is sitting that could, if made in other circumstances, breach the Code. The Code refers at several points to the desirability of members having regard to the Principles of Conduct and conducting themselves with respect and consideration for others. The Committee should be empowered – indeed, on our reading of Standing Order 57, may already have the power – to inquire into and report to the Assembly on conduct that, while falling outside what might be termed the disciplinary reach of the Code, nevertheless may conflict with the Principles of Conduct and may tend to bring the Assembly into disrepute; this should in particular enable it to assess complaints of behaviour that allegedly contravenes the principles of equality and non-discrimination. In such instances, while the Committee would not be able to propose a sanction, a report to the Assembly could be effective in promoting higher standards of conduct.
8. One area where greater clarity would seem necessary is in paragraph 25 of the Complaints Procedure, which does not make it clear whether a complaint will be reported to the Assembly when it has been (a) upheld, but the Committee decides that it “should be dismissed” as “trivial or inconsequential”, or (b) upheld, but the Committee decides that “no further action should be taken”. These possible outcomes are listed with a third, where the Committee decides that “a complaint has been upheld and that a report should be made to the Assembly which may include a recommendation for a sanction”.
9. Under Standing Order 69B (Sanctions), the Committee would appear to have discretion as to whether to report upheld complaints falling under (a) or (b): the relevant wording merely provides that “the Committee may make a report to the Assembly” [emphasis added]. In the interests of transparency and to remove uncertainty, it would be preferable to stipulate that all upheld complaints, including those that the Committee regards as requiring no further action, shall be reported to the Assembly; by the time any complaint has reached that stage, an amount of effort and public resources will have been expended on it, and the Assembly, the public, and not least the complainant, should be entitled to know the result. The Assembly is unlikely to detain itself with any discussion of reported complaints where no sanction or rectification is recommended.

10. In the same context, the Commission would propose that para. 25 of the Complaints Procedure should be revised to merge the first two categories set out as (a) and (b) above. A decision that “no further action should be taken” is sufficient to indicate that the breach was not an especially serious one, whereas a decision that a complaint is so “trivial or inconsequential” that, although upheld, it “should be dismissed”, is likely to cause some offence to the complainant. It would allow the offending member to claim that the “dismissal” of what was found to be a valid complaint vindicated the conduct, and may undermine confidence in the Code of Conduct itself (in that a truly trivial matter should not be capable of breaching the Code) and/or damage the credibility of the Commissioner and/or the Committee. A genuinely trivial, inconsequential, vexatious or repetitive matter should be caught at first instance by the Commissioner (para. 10 of the Procedure) and reported as such to the Committee, which should not then proceed with the complaint. If the Committee disagrees on the information before it that the matter is trivial (etc.) and instructs the Commissioner to investigate it, the Commissioner must investigate, and on full investigation s/he will establish either that a breach has occurred or that it has not. Thus, for the Committee to reach the stage (under the present rules) of decision (a), either it or the Commissioner will have erred in failing to recognise the complaint as trivial (etc.) at the outset.
11. There is no provision at present for any appeal against the finding of the Committee as to whether or not a breach has occurred. The consultation specifically asks whether provision should be made for an appeal. It appears to the Human Rights Commission that, as the Code is operated by the Assembly under specific authority given to it by Parliament (in s.43 Northern Ireland Act 1998), there can be no appeal from the Committee unless to the full Assembly; however, the Assembly having devolved the enforcement role to the Committee, no practical purpose would be served by the Assembly giving itself an appellate role which would deprive the Committee of its *raison d’être*.
12. The Committee is thus under a very grave obligation to deliver just and reasoned findings. Likewise, the Commissioner, sending complaints into a jurisdiction from which there is no appeal, is under the same heavy duty. It is to be hoped that, in those circumstances, everyone concerned would behave with the utmost integrity so that it would be unlikely that any trivial complaint should proceed so far through the system as to be simultaneously upheld and dismissed. Nevertheless that possibility exists under the present procedure.
13. Some of the worst cases that could present under the present procedure include:
  - The Commissioner considers that a complaint is inadmissible, the Committee disagrees and orders him/her to investigate, the Commissioner concludes that no breach has occurred, the Committee disagrees and requires the Commissioner to investigate further, the Commissioner remains of the same view, but the Committee upholds the complaint and recommends a significant sanction;
  - The Commissioner considers a complaint admissible but trivial and advises no further action, the Committee disagrees and requires the Commissioner to investigate further, the Commissioner remains of the same view, but the Committee upholds the complaint and recommends a significant sanction;
  - The Commissioner considers a complaint admissible and advises the Committee of his/her intention to investigate and proceeds to do so, the Committee (which has no power to stop the investigation) receives his/her report finding a breach of the Code, but disagrees and dismisses the complaint altogether, or upholds it but dismisses it as trivial or inconsequential.
14. In any of those, however unlikely, scenarios it would be unsurprising if the Commissioner felt that he/she had lost the confidence of the Committee, and in any event, public confidence in the Commissioner, the Committee and/or the Assembly could be harmed.
15. The Commission is not, however, suggesting that the Committee should refrain from questioning and if needs be overturning a finding of the Commissioner merely to avoid

the potential (political or personal) embarrassment that might ensue should it challenge the Commissioner. On the contrary, just as the Commissioner is obliged to consider and investigate complaints with rigour and integrity, so the Committee has to be robust in assessing and interrogating the information put to it by the Commissioner.

16. The Committee should therefore be mindful of the potential impact on confidence in the regulatory regime of option (a), that is, dismissing an upheld complaint as trivial or inconsequential. When next reviewing the Code it should consider restricting its options in respect of upheld complaints to reporting to the Assembly with a recommendation for sanction, or reporting to the Assembly with a statement that no further action is required.

## Appointment of an Assembly Commissioner for Standards

17. The role, responsibilities and powers of the Assembly Commissioner for Standards as set out in the revised Standing Orders (new Standing Order 69A) should be defined in greater detail and would best be set out in statute, or in the interim with a more detailed Standing Order and slight revisions to the Complaints Procedure.
18. It is provided at Standing Order 69A(4) that “The Commissioner shall not, in the exercise of any function, be subject to the direction or control of the Assembly”. This requires some qualification in that the Commissioner is required to act on a referral from the Clerk of Standards (69A(1)(b)), may be “instructed” by the Committee to investigate a complaint that he/she has determined as inadmissible (Complaints Procedure para. 9), may be “instructed” by the Committee to further investigate a complaint that he/she has determined as admissible but trivial, vexatious or repetitive (Procedure, para. 12), and may be “asked” by the Committee to further investigate a complaint following the Committee’s consideration of his/her report (Procedure, para. 21). (In the last instance the word may not have been intended to convey, as it presently does, the possibility of the Commissioner’s declining to act.) Clarification could be provided by inserting after “function” or “Assembly” wording to the effect “except as provided for in relation to referrals from the Clerk of Standards or the Committee”.
19. The principle that the Commissioner should, aside from these procedural matters, be independent of direction or control from the Assembly is an important one. In that respect the office should have a status comparable to that of the Assembly Ombudsman, the holder of which office currently holds the Commissioner appointment on an interim basis. The Human Rights Commission has no objection to the post of Assembly Commissioner for Standards being held concurrently with the Ombudsman appointment, provided only that the workload attached to the standards role does not impinge on the effectiveness of the other office. On the evidence provided by Mr Tom Frawley in his June 2008 Periodic Report to the Committee as Interim Commissioner for Standards, the volume of work involved can readily be accommodated within the office of Assembly Ombudsman. The simplest and lowest-cost solution in terms of providing a statutory basis for the Commissioner may therefore lie in adding that title to those of Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints, amending the Ombudsman legislation accordingly.
20. If, however, it is decided to establish a wholly separate statutory office of Assembly Commissioner for Standards, one useful means of enhancing its independence would be the institution of a fixed-term appointment of reasonable duration, say five or seven years, with the current protection (in Standing Order 69A(5)) against removal from office other than by a two-thirds majority vote of the Assembly. A fixed term would be preferable to a permanent appointment, such as is provided for in the Ombudsman (Northern Ireland) Order 1996, so that the Assembly in making an appointment does not unduly fetter the discretion of successive legislatures which may wish to revise the arrangements. As also provided for in the 1996 Order, the Commissioner should of course be able to resign and should be relieved of office in case of incapacity, but an age limit as provided in the 1996 Order should not be imposed.

21. The Commissioner should have the same powers as the Ombudsman in relation to obtaining such information and making such inquiries as he/she thinks fit, including the capacity to require the attendance of witnesses and the production of documents, subject to such exemptions, privilege and offences as apply under the Ombudsman's statute.
22. The Commissioner ought to be amenable to judicial review, as is the Ombudsman. As any sanctions for breaches of the Code would be recommended by the Committee and imposed by the Assembly under the authority of primary legislation (s.43 Northern Ireland Act 1998), and thus beyond judicial review, the only opportunity for an impugned member, or dissatisfied complainant, to seek review of the investigative process would be by challenging the Commissioner's decision making. The Committee has the power to remit a matter to the Commissioner if it disagrees with all or part of his/her findings, but it would not necessarily do so on the same basis as the Court. Access to judicial review would go towards ensuring the overall fairness of the complaints process.
23. The consultation asks how a Commissioner should be appointed. Standing Order 69A is silent on how the Commissioner should be appointed, yet it does stipulate that the Commissioner is "an officer of the Assembly" and makes provision for his/her dismissal in a manner that indicates the intention to ensure that the Commissioner enjoys the confidence of the Assembly. If the role is not to be permanently added to the remit of the Assembly Ombudsman, there should be an open advertisement with published criteria (which should include demonstrable expertise in the exercise of investigative and/or regulatory functions), a shortlisting process involving expertise from outside the Assembly, and perhaps a public confirmation hearing, as is now done by Parliament with certain comparable public offices. The formal appointment might be made either by the Assembly itself, possibly on the basis of the two-thirds majority that is stipulated for the Commissioner's removal from office, or by the Presiding Officer (or indeed, as for the Ombudsman, the Crown) on foot of an Assembly resolution.
24. The Committee also seeks views on the terms and conditions of appointment. The Commission has no views on these matters save that the terms on which the Commissioner serves should be broadly aligned with comparable public offices, and that the Commissioner should be able to appoint and direct his/her own staff subject to normal rules as to approval of their numbers and conditions of service. The Commission recognises the public interest in avoiding unnecessary expenditure and again notes the Interim Commissioner's account of the minimal costs incurred in accommodating that appointment within the institution of the Assembly Ombudsman.

---

# Northern Ireland Assembly Commission

## 26 January 2010

### Inquiry into the appointment of an Assembly Commissioner for Standards

I welcomed the opportunity to meet with you on Thursday 14 January 2010 to discuss the issues raised within your Committee's consultation paper on the appointment of an Assembly Commissioner for Standards and other matters arising from your inquiry into the revised Code of Conduct for Members. On 21 January 2010 the Commission considered the issues raised in the course of our meeting. I have set out below a formal response from the Commission:

#### Modifying the Code of Conduct

The Commission has not taken a formal view in relation to the current roles and duties of the Committee on Standards and Privileges in this area.

#### Handling alleged breaches of the Code of Conduct

The Commission welcomes the new Code of Conduct for Members and the arrangements for investigations and sanctions in respect of breaches of the Code. The Commission has suggested that the Clerk/Director General, as Accounting Officer, should consider any potential breaches of the rules set out in legislation and the new Member's Financial Services Handbook and, where concern exists, that the Clerk/Director General may refer a matter to the Assembly Commissioner for Standards. The Commission has no formal view on the matter of introducing any sort of appeals procedure in relation to decisions reached by the Committee on Standards and Privileges.

#### The appointment of an Assembly Commissioner for Standards

The Commission has not formally expressed a view on the role, responsibilities and powers of the Assembly Commissioner for Standards. However, the Commission believes that further consideration would be required on the method of appointment and the accountability mechanisms. In relation to the appointment process for an Assembly Commissioner for Standards, the Commission suggested that the Committee consider the process used for the appointment of the Comptroller and Auditor General. The papers setting out the process for the appointment of the Comptroller and Auditor General will be forwarded directly to your Committee Clerk. The Commission has not considered the issues in relation to the eligibility criteria used for the appointment but suggest that the appointment should be part-time and for a fixed term.

The Commission also suggested that consideration could be given in the future to the role of the Independent Statutory Body in this process, when established. The Commission suggested that the office of Assembly Commissioner for Standards should be funded directly by the Assembly through the Assembly Commission. The Commission noted that an increase in costs was inevitable under any future free standing arrangements but that such costs could be lower if administrative support was provided from an appropriate part of the Assembly Secretariat.

The Commission is of the view that the question of accountability would need further exploration and that additional work would be required on reporting processes e.g. to the Standards and Privileges Committee in respect of investigations; the Commission in respect

of budget/governance and the Assembly in Plenary with regard to an Annual Report from the Commissioner.

The Commission believes that the position of an Assembly Commissioner for Standards should be placed on a statutory basis and that the position should have statutory powers.

The Commission has also suggested that the Clerk/Director General could attend a meeting of the Committee to explore these issues and those raised in the context of the Report on Pay, Pensions and Financial Support, if this would be of assistance to the Committee.

I would be happy to deal with any further issues should you require any further clarification.

Yours sincerely,

**Mr William Hay MLA**

Chair of the Assembly Commission

# Additional Written Submission from the Assembly Commission 22 March 2010

## Inquiry into the appointment of an Assembly Commissioner for Standards and matters relating to the Code of Conduct

Thank you for the opportunity to attend the meeting of the Committee on Standards and Privileges on 24 February 2010 further to the Speaker's letter dated 26 January 2010 which set out the Assembly Commission's (the Commission) views on a number of issues relating to the Committee's Inquiry. I undertook to follow up in writing summarising a number of points which arose during my presentation and my answers to subsequent questions.

### **1. Modifying the Code of Conduct**

The Commission has not taken a formal view in relation to the current roles and duties of the Committee on Standards and Privileges.

### **2. Handling alleged breaches of the Code of Conduct**

The Commission has no formal view on the issue of introducing an appeals procedure in relation to decisions reached by the Committee on Standards and Privileges, other than a desire to see any such procedures being open, transparent and supporting increased public confidence in the Assembly and its Members.

The Commission has proposed that the Clerk/Director General, as Accounting Officer, should consider any potential breaches of the rules set out in determinations under s47 of the NI Act 1998 and of the rules set out in a new Member's Financial Services Handbook; and that where concern exists that any such breaches might also represent a breach of the Code of Conduct, he/she may as Clerk/Director General and chief adviser to the Assembly, refer a matter to the Assembly Commissioner for Standards.

### **3. The appointment an Assembly Commissioner for Standards**

The Commission believes that the position of an Assembly Commissioner for Standards should be placed on a statutory basis and that the position should have statutory powers.

However, the Commission has not expressed any detailed views on the role, responsibilities and powers of the Assembly Commissioner for Standards.

In relation to the appointment process for an Assembly Commissioner for Standards, the Commission proposed that the Committee consider a similar process to that used for the appointment of the Comptroller and Auditor General. The Commission proposed that the terms of the appointment should be part-time, proportionate to the expected workload, and for a fixed term.

The Commission also suggested that consideration might be given in the future to the role of the proposed Independent Statutory Body in this process, when it is established. The Commission is of the view that the question of accountability would need further exploration and that additional work would be required on reporting processes (e.g. to the Standards and Privileges Committee in respect of investigations; to the Assembly Commission in respect of budget and good corporate governance; and to the Assembly in Plenary with regard to an Annual Report).

#### **4. Initiation of Investigations**

As proposed by the Commission, the Committee may wish to consider explicitly referring in its report to the Clerk/Director General of the Assembly independently referring breaches of the Members Financial Services Handbook to the Commissioner for Standards for formal investigation (paragraph 2 above refers).

#### **5. Breaches and Sanctions**

The identification of breaches of the rules is likely to remain the responsibility of the Commissioner for Standards. However, the Committee may wish to consider recommending that the Commissioner for Standards should make a deliberation on the seriousness of any breaches of the Code and make recommendations with regard to the level of sanction he/she considers appropriate in the circumstances.

The Commission will also make provision in the next Salaries Determination to enable a sanction of salary deduction to be given effect consistent with the revised Code.

#### **6. Resourcing and Administrative Support**

The Commission proposed that the Office of the Assembly Commissioner for Standards could be funded through the Assembly Commission, rather than requiring an additional Committee of the Assembly to be established. The model of the Scottish Parliamentary Standards Commissioner and the Scottish Parliamentary Corporate Body may be of interest in this regard.

The level of resources required for the Office of the Commissioner for Standards will need to be assessed so that a bid can be made within the wider Assembly budget for the necessary funding and for other facilities such as office accommodation; IT systems; and information security. I would expect that the costs may increase from the current notional amount and that the Committee will wish to give that some consideration in its Inquiry.

The Committee may wish to consider the administrative and other support (eg. funding for technical investigative capacity) arrangements for the Commissioner for Standards. For example, it may not be economic or efficient to set up an entirely independent office for the Commissioner for Standards but that the provision of administrative support could come from within the Assembly Secretariat. If this was to be considered an option, it would need to be structurally located where there was sufficient "separation" from the rest of the Secretariat including the team supporting the Committee on Standards and Privileges. The Secretariat's Internal Audit team, which of necessity operates independently of the rest of the Secretariat which it audits, is an example of how this can effectively be achieved within one organisation.

#### **7. Legislative Framework**

The Committee may wish to consider the on-going work being undertaken by the Commission to establish an Independent Statutory Body (ISB) for the determination of pay, pension and financial support for Members of the Assembly. As part of that consultation process, views are being sought on a number of policy issues and a copy of the consultation paper has been forwarded for the Committee's attention. Paragraph 2.3 of that consultation paper relates to possible linkages between the work of the Commission and the Committee's inquiry and whether the ISB should have an investigatory function. In this regard both the Committee and the Commission might usefully examine the independent investigatory role to be set up within the Westminster Independent Parliamentary Standards Authority (IPSA) and its linkages with the Westminster authorities.

#### **8. Lay Involvement**

In response to a question regarding the potential for the work of the Committee to be unduly influenced by party political views, I referred to ideas being put forward in other places that Standards Committees might have lay members. I also highlighted the Assembly Commission's recently established Secretariat Audit and Risk Committee which has three members: an



independent Chair, one independent Member and one Member of the Commission. Either the independent Chair or the independent Member attends meetings of the Commission as an observer but may be invited to contribute to discussion on relevant issues.

I trust the Commission's submission and these additional comments are helpful to the Committee in its Inquiry. I am happy to provide any further information which may be of assistance.

**TREVOR REANEY**

**Clerk to the Assembly/Director General**





Northern Ireland  
Assembly

Appendix 4

# Other Evidence Considered by the Committee



# Research Paper NIAR 638/09

## 7 January 2010

### Investigating Parliamentary Standards a Comparison

- (1) To provide a description of the investigatory mechanisms in place in the House of Commons, the Scottish Parliament, the National Assembly for Wales and the Dáil Éireann in relation to the registration of Members' financial interests and alleged breaches of relevant codes of conduct.

Library Research Papers are compiled for the benefit of Members of The Assembly and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

## Summary Of key points

### **The main findings of this paper are:**

- (1) There is great similarity in the role and functions of the Scottish Parliamentary Standards Commissioner and the National Assembly for Wales Commissioner for Standards. Both investigate matters relating to the register of Members' financial interests and alleged breaches of the code of conduct within the relevant jurisdiction. Each Commissioner is provided with powers to call for witnesses and evidential documentation as part of the investigation process. Neither Commissioner can recommend sanctions against a Member and must report only findings of fact to the relevant Committee. The Commissioners do not investigate matters in relation to Member's allowances instead this is handled by the Scottish Parliamentary Corporate Body and the Chief Executive and Clerk to the National Assembly for Wales.
- (2) The recently established Independent Parliamentary Standards Authority (IPSA) will, in respect of the House of Commons, pay salaries and allowances to Members and be responsible for drafting both a code of conduct for Members' financial interests and an allowances scheme. A Commissioner for Parliamentary Investigations will investigate the overpayment or misuse of allowances and alleged breaches relating to the registration of Members' financial interests. The role of this Commissioner differs from the provisions in other jurisdictions in that it is the only one that can investigate matters relating to Member allowances. The Parliamentary Commissioner for Standards retains responsibility for handling matters of conduct, propriety and ethics in relation to the code of conduct and will investigate complaints on these matters and report the findings to the Committee on Standards and Privileges.
- (3) The role of the Standards in Public Office Commission in the Republic of Ireland is broader than the comparative bodies in the House of Commons, the Scottish Parliament and the National Assembly for Wales. The Commission exercises certain functions that are applicable to office holders, public servants and Members whereas the other bodies concentrate solely on the actions of Members. The Commission, subject to certain conditions, may conduct investigations into alleged breaches of the Ethics Acts however it also plays a supervisory role under the Electoral Acts and the Party Leaders' Allowance Act 2001. This includes reporting on election expenses, the disclosure and acceptance of donations to parties, Members and election candidates, and reporting to the Minister for Finance on statements of expenditure submitted to it by party leaders.
- (4) The Committee on Members' Interests of Dáil Éireann draws up guidelines for Members on the registration of interests and a code of conduct for non-office holders. It also investigates alleged breaches of the Ethics Act, in particular those relating to statements of interest. Complaints in relation to specified acts are handled by the Standards in Public Office Commission.
- (5) The National Assembly for Wales Commissioner for Standards is not subject to the direction or control of the Assembly. This is the only Commissioner for which the corresponding legislation specifically states this is the case. For example, the Scottish Parliamentary Standards Commissioner works independently but must comply with directions given by the Scottish Parliament.
- (6) The Committee on Standards and Conduct for the National Assembly for Wales appears to be the only Committee which has a formal appeals process in which a Member can appeal a Committee decision. The House of Lords comments that the lack of an appeals system in the House of Commons for decisions taken by the Committee on Standards and Privileges has been argued to be a possible contravention of European human rights.

# Contents

1. Introduction
  2. House of Commons
  3. Scotland
  4. Wales
  5. Dáil Éireann
- Annex 1
- Annex 2

## 1. Introduction

This paper outlines the procedures and mechanisms in place which oversee the parliamentary standards of the House of Commons, the Scottish Parliament, the National Assembly for Wales and the Dáil Éireann. The paper notes relevant legislation, responsibilities and powers of the bodies in place, investigative procedures to be followed, and procedures for appointment including terms of office for the Commissioner for Standards in each jurisdiction.

The following table outlines the mechanisms for investigating complaints and alleged breaches of Member codes relating to financial interests, expenses and conduct. It should be noted that the House of Commons procedures are provided for in the Parliamentary Standards Act 2009 but are yet to be fully implemented. See Annex 1 for further information on the relevant codes of conduct and guidelines.

	<b>Register of Members' financial interests</b>	<b>Allowances</b>	<b>Code of conduct (ethics)</b>
House of Commons	Commissioner for Parliamentary Investigations	Commissioner for Parliamentary Investigations	Parliamentary Commissioner for Standards
Scotland	Scottish Parliamentary Standards Commissioner	Scottish Parliamentary Corporate Body	Scottish Parliamentary Standards Commissioner
Wales	National Assembly for Wales Commissioner for Standards	Chief Executive and Clerk to the National Assembly for Wales	National Assembly for Wales Commissioner for Standards
Dáil Éireann	Committee on Members' Interests of Dáil Éireann		Committee on Members' Interests of Dáil Éireann/ Standards in Public Office Commission



## 2. House of Commons

Established in 1995 the Office of the Parliamentary Commissioner for Standards was responsible for the regulation of Members' financial interests, maintenance of the code of conduct and the investigation of complaints made against Members for alleged breaches of the code within the House of Commons (House). The Parliamentary Commissioner for Standards is an Officer of the House, who is appointed and wholly funded by the House. However, the main responsibilities and functions of the Office are now being passed to the newly established Independent Parliamentary Standards Authority (IPSA).

### **Independent Parliamentary Standards Authority**

The Parliamentary Standards Act 2009 (Chapter 13)<sup>1</sup> which received Royal Assent on 21 July 2009 put in place arrangements for the IPSA to replace the non-statutory Office of the Parliamentary Commissioner for Standards.<sup>2</sup> The IPSA is a completely independent permanent body which is anticipated to be fully operational by April 2010.

### **Appointment of the IPSA and Commissioner For Parliamentary Investigations Roles, Responsibilities and Powers**

The 2009 Act establishes the following functions as responsibilities of the IPSA in relation to Members:

- Drafting an allowances scheme.
- Authorising and making payments under the allowances scheme.
- Paying Member salaries.
- Drawing up a code of conduct that includes the register of financial interests (superseding the previous register) and a ban on paid advocacy.

The code of conduct relating to Members' financial interests must be laid before the House for approval before it is to have effect. The IPSA will also be required to provide information and guidance to Members on relevant matters of taxation.

The 2009 Act establishes a separate Commissioner for Parliamentary Investigations and provides them with the power to conduct investigations into the overpayment or misuse of allowances, or alleged breaches of the code of conduct relating to the registration of Members' financial interests. The Commissioner will operate on behalf of the IPSA and in a supervisory role the IPSA must ensure adequate resources are provided to support the Commissioners investigations because the Commissioner is not awarded the authority to employ staff. The Commissioner may undertake an investigation "under his/her own initiative, or in response to a complaint, or at the request of the IPSA."<sup>3</sup>

### **Subject to the Direction or Control of Parliament**

The code of conduct prepared by the IPSA will require consultation with a number of elements within the House and will be subject to approval by the House before coming into effect.

The Speaker may consult with the IPSA and the Committee on Standards and Privileges in relation to appointing further functions to the IPSA however these will not come into effect until approved by a resolution of the House. The Speaker may also consult with the Commissioner and the Committee on Standards and Privileges with regards to appointing further functions to the Commissioner.

1 The Parliamentary Standards Act 2009 (Chapter 13) is available at [http://www.opsi.gov.uk/acts/acts2009/ukpga\\_20090013\\_en\\_1](http://www.opsi.gov.uk/acts/acts2009/ukpga_20090013_en_1)

2 House of Lords, *Parliamentary Standards Bill: implications for Parliament and the courts Report (2009)*, p3, retrieved 10 December 2009 <http://www.publication.parliament.uk/pa/ld200809/ldselect/ldconst/134/134.pdf>

3 House of Commons Library, *Parliamentary Standards Bill Research Paper 09/61 (25 June 2009)*, p25, retrieved 23 December 2009

### **Is the Position on a Statutory Basis? Statutory Powers?**

The IPSA and Commissioner for Parliamentary Investigations operate on an independent and statutory basis. The IPSA has a statutory responsibility for preparing the register of Members' financial interests and determining the procedures to be used in the investigation and complaint process.

The responsibilities of both the IPSA and Commissioner are not regarded as proceedings in Parliament and therefore do not have parliamentary privilege.<sup>4</sup>

### **How is the IPSA/Commissioner Appointed? Eligibility Criteria, Terms and Conditions of Appointment**

The IPSA consists of five members (Chair and four ordinary members). The Chair and four ordinary members were appointed following an independent and open competition chaired by the Commissioner for Public Appointments for Northern Ireland.<sup>5</sup> The 2009 Act requires that one member have accountancy experience (qualified to be an auditor for the National Audit Office), one should have experience of being an MP (but is no longer an MP), and another should have held high judicial office (though no longer be holding this post).<sup>6</sup> The Chair and ordinary members are appointed for a fixed term not exceeding five years. Re-appointment as a member can only occur once and for no longer than a term of three years.

In November 2009 suitable applicants were put forward to the Speaker who proceeded to forward the names to the Speaker's Committee for approval. The Speaker's Committee is a new statutory Committee which consists of:

- The Speaker of the House of Commons.
- The Leader of the House of Commons.
- The Chair of the Standards and Privileges Committee.
- Five backbench MPs, appointed by the House of Commons.<sup>7</sup>

The Chair has been agreed as Sir Ian Kennedy and the four ordinary members are Jackie Ballard, the Rt Hon Lord Justice Scott Baker, Ken Olisa, and Professor Isobel Sharp (Annex 2 for further information on each member).

The 2009 Act provides for the Commissioner for Parliamentary Investigations to be selected by the Speaker through an open and fair competition and with the agreement of the Speaker's Committee. The Commissioner can be appointed for a fixed term of no longer than five years and cannot be re-appointed.<sup>8</sup>

### **Rules/Guidelines for Dismissal**

The Chair and ordinary members of the IPSA can resign from their positions by giving written notice to the Speaker. Section 5 (schedule 1) of the 2009 Act states that Her Majesty can remove either the Chair or an ordinary member from office through an address of both Houses of Parliament. The 2009 Act provides for the same rules to apply to the resignation or removal from office of the Commissioner for Parliamentary Investigations.

---

4 House of Commons Library, *Parliamentary Standards Bill Research Paper 09/61 (25 June 2009)*, p5, retrieved 23 December 2009

5 Independent Parliamentary Standards Authority appointment information is available at <http://www.parliamentarystandards.org.uk/faqs.html>

6 Parliamentary Standards Act, *Explanatory Notes (2009)*, p9, retrieved 10 December 2009 [http://www.opsi.gov.uk/acts/acts2009/en/ukpgaen\\_20090013\\_en.pdf](http://www.opsi.gov.uk/acts/acts2009/en/ukpgaen_20090013_en.pdf)

7 House of Commons Library, *Parliamentary Standards Bill Research Paper 09/61 (25 June 2009)*, p34, retrieved 23 December 2009

8 Parliamentary Standards Act 2009 (Chapter 13) s 2 (3)

---

## Handling alleged breaches

The Commissioner will have the power to investigate overpayments or the misuse of allowances, or alleged breaches of the code of conduct relating to the registration of Members' financial interests. This can be triggered in response to a complaint by an individual, at the request of a Member, or on the Commissioner's own initiative.<sup>9</sup> To assist the Commissioner with the investigation process both the IPSA and Members must provide any reasonably required information. The specific procedures to be followed by the Commissioner will be decided upon by the IPSA. The 2009 Act, however, provides general information on the investigation process and actions which may be taken. It states that if, following an investigation, the Commissioner finds fault with an allowance that has been paid or if the code of conduct relating to financial interests has been breached they must report this to the Committee on Standards and Privileges. Exceptions to this are if the Member under investigation accepts the Commissioner's findings and takes steps to repay an agreed amount to the IPSA or takes steps to correct the register of financial interests as advised by the Commissioner.<sup>10</sup>

As part of the investigation process the Member who is the subject of the investigation must be allowed to represent before the Commissioner to discuss the details of the investigation and/or the Commissioner's findings before the case is referred to the Committee on Standards and Privileges. The Member must be allowed to call and examine witnesses where deemed appropriate by the Commissioner.<sup>11</sup>

## Committee on Standards and Privileges

### Role of the Committee when Handling Breaches

Should the Commissioner find that a Member has been overpaid an allowance or has failed to comply with the code and has not taken steps to rectify matters with the IPSA a report of fact detailing the Commissioner's findings will be presented to the Committee on Standards and Privileges. The Commissioner will not include in the report any recommendations on sanctions against a Member. Such a decision is the responsibility of the Committee. The Committee retains discretion to accept, modify or reject the Commissioner's findings. The guide to the rules relating to the conduct of Members (approved 9 February 2009) states that if the Committee decides that a Member has committed a breach it can make recommendations to the House on further actions required against a Member.<sup>12</sup> The 2009 Act does not contain any provision to suggest that this function of the Committee has changed.

### Is there an Appeals Procedure in Place Regarding Decisions Reached by Committee?

There is no current mechanism in place in which to appeal a decision taken by the Committee on Standards and Privileges. The House of Lords report into the Parliamentary Standards Bill comments that the issue of the right to appeal Committee decisions is a long-standing and live issue.<sup>13</sup> The Committee can recommend sanctions against a Member which can as a result have serious implications on a Member's reputation and, if the sanction involves suspension, hinder the Member's ability to represent their constituents.

The report quotes the Joint Committee on Human Rights who suggested that under European human rights law a Member's right to a fair hearing could be violated if there is no appeal

9 Parliamentary Standards Act 2009 (Chapter 13) s 9 (2)

10 Parliamentary Standards Act 2009 (Chapter 13) s 9 (4) to (8)

11 Parliamentary Standards Act 2009 (Chapter 13) s 9 (11) and (12)

12 The House of Commons, *The Code of Conduct together with The Guide to the Rules relating to the conduct of Members*, p41, retrieved 15 December 2009 <http://www.publications.parliament.uk/pa/cm200809/cmcode/735/735.pdf>

13 House of Lords, *Parliamentary Standards Bill: implications for Parliament and the courts Report (2009)*, p10, retrieved 10 December 2009 <http://www.publication.parliament.uk/pa/ld200809/ldselect/ldconst/134/134.pdf>

mechanism for a decision taken by a parliamentary Committee. The report concludes that there is advantage to be gained in establishing a domestic appeal body for Committee decisions but recognises:

That such an appeal would have profound implications for parliamentary privilege if the appellate body were to be a judicial tribunal outwith Parliament.<sup>14</sup>

## Modifying and Maintaining the Code of Conduct

### **Current Roles and Duties of the Committee**

The Committee can review and modify the code of conduct at any time as it appears necessary to do so. The role of the Committee on Standards and Privileges is set out in Standing Order 149 and includes:

- To consider matters relating to privileges.
- To oversee the work of the Parliamentary Commissioner for Standards.
- To examine the compilation, maintenance and accessibility of the register for Members' financial interests and other relevant registers.
- The review of the registers.
- To consider complaints brought to the Committee's attention by the Parliamentary Commissioner for Standards in relation to the registering or declaring of interests and alleged breaches of any code of conduct approved by the House.
- To recommend modifications to the code of conduct as necessary.<sup>15</sup>

---

14 House of Lords, *Parliamentary Standards Bill: implications for Parliament and the courts Report (2009)*, p12, retrieved 10 December 2009 <http://www.publication.parliament.uk/pa/ld200809/ldselect/ldconst/134/134.pdf>

15 House of Commons, Standing Order 149 Committee on Standards and Privileges is available at <http://www.publications.parliament.uk/pa/cm200607/cmstords/405/40523.htm>

---

### 3. Scotland

The Scottish Parliamentary Standards Commissioner investigates complaints made against MSPs in relation to alleged breaches of the code of conduct for MSPs. The misuse of the Expenses Scheme and of Parliamentary facilities and services is investigated by the Scottish Parliamentary Corporate Body which can refer such complaints to the Standards, Procedures and Public Appointments Committee along with a recommendation for “the removal of all or part of the member’s entitlement to reimbursement of expenses under the Scheme for such period and to such extent as the SPCB may specify.”<sup>16</sup>

#### Scottish Parliamentary Standards Commissioner

The Scottish Parliamentary Standards Commissioner Act 2002 establishes a Scottish Parliamentary Standards Commissioner (Commissioner) who will investigate complaints into the conduct of Members of the Scottish Parliament as defined in the Code of Conduct for MSPs.<sup>17</sup> This does not include complaints about the misuse of the Members’ Expenses Scheme or of Parliamentary facilities and services. Complaints arising from these matters are handled by the Scottish Parliamentary Corporate Body.<sup>18</sup>

#### Appointment of the Standards Commissioner

##### **Role, Responsibilities and Powers**

The Commissioner receives complaints in relation to the conduct of Members and under the 2002 Act is duty bound to “investigate whether the member has committed the conduct complained about and has, as a result of that conduct, breached a relevant provision; and report upon the outcome of that investigation to the Parliament.”<sup>19</sup> The Commissioner will not normally conduct investigations into complaints classified as excluded complaints (those referred to as excluded complaints within the 2002 Act, excluded from the remit of the Commissioner by any provision of the standing orders or the code of conduct) unless directed to do so by the Standards, Procedures and Public Appointments Committee.

An investigation by the Commissioner will seek to determine if the Member has actually done what has been alleged and if the code of conduct has been broken. The Commissioner will report on the findings of the investigation but will not decide upon or recommend sanctions against a Member. This is the responsibility of the Committee.

##### **Subject to the Direction or Control of Parliament**

The Commissioner carries out the functions of the role independently but will “comply with any directions given by the Parliament”<sup>20</sup> (in practice this translates as the Standards, Procedures and Public Appointments Committee). For example, Section 4 (2) of the 2002 Act states that the Parliament may make provision as to the procedure the Commissioner should follow when investigating complaints or require the Commissioner to provide a report to the Parliament with regards to the exercise of the Commissioners functions. Any direction given by the Parliament under Section 4 “shall not direct the Commissioner as to whether or how any particular investigation is to be carried out.”<sup>21</sup>

16 The Code of Conduct for MSPs is available at <http://www.scottish.parliament.uk/msp/conduct/coc-v2-2.htm#top>

17 The Scottish Parliamentary Standards Commissioner Act 2002 is available at [http://www.opsi.gov.uk/legislation/scotland/acts2002/asp\\_20020016\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2002/asp_20020016_en_1)

18 The Scottish Parliamentary Standards Commissioner information is available at <http://www.spac.co.uk/who.htm>

19 Scottish Parliamentary Standards Commissioner Act 2002 s 3 (1)

20 Scottish Parliamentary Standards Commissioner Act 2002 s 4 (1)

21 Scottish Parliamentary Standards Commissioner Act 2002 s 4 (3)

Section 10 of the 2002 Act states that although the Commissioner will present a report detailing the investigation findings to the Committee it is not bound by any facts or conclusions reached by the Commissioner. The Committee can direct the Commissioner to conduct further investigations as deemed appropriate. It can also direct the Commissioner to undertake an investigation into a complaint that is classified as an excluded complaint.

### **Is the Position on a Statutory Basis? Statutory Powers?**

The Commissioner operates on a statutory basis with statutory powers provided by the 2002 Act.

### **How is the Commissioner Appointed? Eligibility Criteria, Terms and Conditions of Appointment**

An open recruitment administered by the Scottish Parliament Corporate Body is used to appoint the Commissioner. In each instance the decision of the Corporate Body requires the agreement of the Scottish Parliament. Members of Parliament or staff of the Parliament cannot be appointed as Commissioner nor can individuals who have held either of these positions during the two years prior to appointment. The Commissioner will be appointed for a term of no longer than five years and can be re-appointed once only.<sup>22</sup> The Corporate Body determine the terms and conditions of the appointment and will pay the salary and allowances of the Commissioner including any expenses incurred while exercising the functions of the office. The 2002 Act also provides that the Corporate Body provide pensions, allowances or gratuities to any person who has held the office of Commissioner.

The current Scottish Parliamentary Standards Commissioner, Stuart Allen, was appointed in April 2009 for a two year term.

### **Rules/Guidelines for Dismissal**

Section 1 (6) of the 2002 Act states that at any time the Commissioner may resign by giving notice to the Corporate Body. The Corporate Body is afforded power under the 2002 Act to remove the Commissioner from office however this cannot happen unless “the Parliament so resolves; and if the resolution is passed on a division, the number of votes cast in favour of it is not less than two thirds of the total number of votes cast in the division.”<sup>23</sup>

## **Handling Alleged Breaches**

The 2002 Act contains general provisions for the investigation process which is split into two possible stages. Initially, the Commissioner will investigate and determine if a complaint is admissible (Stage 1), if it is admissible then the Commissioner will investigate further and report the findings to the Standards, Procedures and Public Appointments Committee (Stage 2).<sup>24</sup> For a complaint to be deemed admissible at Stage 1 the Commissioner will administer three tests to determine: if it is relevant; if the complaint meets the specified requirements; and if it warrants further investigation. Section 6 (4) of the 2002 Act states that a complaint is relevant if it concerns the conduct of a Member of Parliament, if it is not an excluded complaint unless it is an excluded complaint that the Commissioner has been directed to investigate by the Committee, and if it appears at first sight that all or part of the conduct complained about has been committed by the Member. The complaint must meet specified requirements:

- (a) is made in writing to the Commissioner.
- (b) is made by an individual person, is signed by that person and states that person's name and address.

---

22 Scottish Parliamentary Standards Commissioner Act 2002 s 1 (2) to (5)

23 Scottish Parliamentary Standards Commissioner Act 2002 s 7

24 Scottish Parliamentary Standards Commissioner Act 2002 s 5 (1)

---

- (c) names the member of Parliament concerned.
- (d) sets out the facts relevant to the conduct complained about and is accompanied by any supporting evidence which the complainer wishes to submit.
- (e) is made within one year from the date when the complainer could reasonably have become aware of the conduct complained about.<sup>25</sup>

Upon receipt of a complaint the Commissioner will notify the relevant Member that a complaint has been made about their conduct and will provide them with an outline of it along with the name of the complainant unless the Commissioner decides that to name the complainant would be inappropriate.

The final test of Stage 1 is to decide if it appears that there is sufficient evidence to suggest the conduct which forms the basis of the complaint may actually have taken place. Once the Commissioner has decided that the complaint is admissible a report will be made to the Committee to advise that the complaint is to be investigated further. The Commissioner will also advise the complainant and the Member named in the complaint of the decision to investigate the complaint fully.

The Commissioner will undertake Stage 2 to determine if in fact the Member has committed the alleged conduct described by the complainant and if this is deemed a breach of the code of conduct. A report will be prepared for the Committee outlining the investigation and the conclusions reached by the Commissioner. The findings of the report will state the facts of the case and whether the Member has breached the code or not. The report will not recommend any form of sanction or action to be taken.

If the Commissioner deems that the Member has breached the code of conduct, prior to presentation to Committee, the investigation report will be given to the Member and they will be afforded an opportunity to comment. The Member's comments will be recorded and added to the final report presented to the Committee.<sup>26</sup>

Section 13 of the 2002 Act provides power for the Commissioner to call for witnesses and documents. It also lists the exceptions to which these powers can be extended, for example, an individual has the same rights to refuse to answer any question or produce any document requested by the Commissioner as they would have under proceedings in a Scottish court of law. In certain circumstances failing to present before the Commissioner can lead to being found guilty of an offence.

## Standards, Procedures and Public Appointments Committee

### **Role of the Committee when Handling Breaches**

The Committee will consider the report prepared by the Commissioner and can accept or reject the conclusions reached. The Clerk of the Committee will ask the Member who is the subject of the complaint whether they agree with the Commissioner's report or wish to appear before the Committee to discuss the findings or conclusions of the report. The Committee can also request that the Commissioner conduct further investigations into the complaint. Once the Committee has made its recommendations it will present the report before Parliament. Standing Orders of the Scottish Parliament Rule 6.4 provide the Committee with the power to propose a motion to recommend a Member's rights and privileges be withdrawn.<sup>27</sup>

25 Scottish Parliamentary Standards Commissioner Act 2002 s 6 (5)

26 Scottish Parliamentary Standards Commissioner Act 2002 s 9 (3)

27 Standing Orders of the Scottish Parliament, Rule 6.4 is available at <http://www.scottish.parliament.uk/business/so/sto-3.htm>

### **Is there an Appeals Procedure in place Regarding Decisions Reached by Committee?**

The Member who is the subject of the complaint can make a representation to the Committee with regards to the decision but there is no formal independent appeal process in place.

## **Modifying and Maintaining the Code of Conduct**

### **Current Roles and Duties of the Committee**

The Standards, Procedures and Public Appointments Committee review and report on:

- (a) the practice and procedures of the Parliament in relation to its business;
- (b) whether a member's conduct is in accordance with these Rules and any code of conduct for members, matters relating to members' interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
- (c) the adoption, amendment and application of any code of conduct for members; and
- (d) matters relating to public appointments in Scotland.<sup>28</sup>

Within the Committee's current work programme it is holding an inquiry into the review of Section 2 of the code of conduct concerning categories of registerable interests which Members must register. The Committee will attempt to provide guidance on each of the categories.

---

28 The remit and responsibilities of the Standards, Procedures and Public Appointments Committee is available at <http://www.scottish.parliament.uk/s3/committees/stanproc/responsibilities.htm>



## 4. Wales

The monitoring and investigation of the conduct of Assembly Members and issues relating to the register of financial interests rests primarily with the National Assembly for Wales Commissioner for Standards (Commissioner) and the Committee on Standards of Conduct. The National Assembly for Wales Commissioner for Standards Measure 2009 outlines the role and functions of the Commissioner and the process for the investigation of complaints. The Measure states that the principal aim of the Commissioner is:

To promote, encourage and safeguard high standards of conduct in the public office of Assembly Member.<sup>29</sup>

### Appointment of the Commissioner for Standards

#### Role, Responsibilities and Powers

The role of the Commissioner is to receive and investigate complaints with regards to alleged Member breaches of relevant provisions and to report the findings to the Assembly. Relevant provisions include the registration of financial interests, membership of societies, and any code of conduct relating to Assembly Members.<sup>30</sup> The Commissioner will provide advice to Assembly Members and members of the public in relation to lodging a complaint and the investigation process that follows. Further to this the Commissioner can be asked to advise the Assembly on “matters of general principle relating to the conduct of AMs, on procedures relating to the investigation of complaints and on matters relating to promoting high standards in public life generally.”<sup>31</sup>

The 2009 Measure makes it clear that the Commissioner will exercise the role solely with regards to Assembly Members and the provisions and code of conduct which apply to them.

#### Subject to the Direction or Control of Assembly

Section 5 of the 2009 Measure provides that the Commissioner, subject to section 19, “is not, in the exercise of any functions, to be subject to the direction or control of the Assembly.”<sup>32</sup> Section 19 provides that the Commissioner must attend before the Committee on Standards of Conduct at their request and provide them with an annual report and any reasonably required information.

#### Is The Position on a Statutory Basis? Statutory Powers?

The role and functions of the Commissioner have been made statutory and independent of the National Assembly by the 2009 Measure. The Measure was proposed by the Committee on Standards of Conduct with the overall objective of contributing to the “maintenance of high standards of public life.”<sup>33</sup>

29 The National Assembly for Wales Commissioner for Standards Measure 2009 s 2 [http://www.opsi.gov.uk/legislation/wales/mwa2009/pdf/mwa\\_20090004\\_en.pdf](http://www.opsi.gov.uk/legislation/wales/mwa2009/pdf/mwa_20090004_en.pdf)

30 The National Assembly for Wales Commissioner for Standards Measure 2009 s 6 (3)

31 National Assembly for Wales, *Draft Proposed Measure on Commissioner for Standards – Explanatory Memorandum*, p 25, retrieved 15 December 2009 [http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-std-home/bus-committees-third-soc-project/soc\\_3\\_-sc2.htm](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-std-home/bus-committees-third-soc-project/soc_3_-sc2.htm)

32 The National Assembly for Wales Commissioner for Standards Measure 2009 s 5

33 National Assembly for Wales, *Draft Proposed Measure on Commissioner for Standards – Explanatory Memorandum*, p 3, retrieved 15 December 2009 [http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-std-home/bus-committees-third-soc-project/soc\\_3\\_-sc2.htm](http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-std-home/bus-committees-third-soc-project/soc_3_-sc2.htm)

### **How is the Commissioner Appointed? Eligibility Criteria, Terms and Conditions of Appointment**

The 2009 Measure provides that the appointment of the Commissioner be made by the Assembly following an open and fair competition. Ineligible applicants for the position include:

- Assembly Members (current or an Assembly Member during the two years prior to appointment).
- Staff of the National Assembly for Wales or a staff member during the two years prior to appointment.
- Staff of the Welsh Assembly Government or a staff member during the two years prior to appointment.<sup>34</sup>

The Commissioner can be appointed for a six year term and any individual who has already held the office of Commissioner cannot be re-appointed to the position.

### **Rules/Guidelines for Dismissal**

The Commissioner may resign at any time by giving notice to the Assembly or can be removed from the position by the Assembly. Should the Assembly seek to remove the Commissioner from office the 2009 Measure provides that this can only occur if:

- (a) the assembly so resolves, and
- (b) if the resolution is passed on a vote, the number of votes cast in favour of the resolution is not less than two thirds of the total number of votes cast.<sup>35</sup>

Further to this, the Commissioner's appointment will cease if the individual:

- Becomes an Assembly Member candidate.
- Is appointed or designated the functions of the Counsel General (under section 49 of the Act).
- Is appointed as a staff member of the National Assembly for Wales or the Welsh Assembly Government.<sup>36</sup>

## **Handling Alleged Breaches**

The Clerk of the Assembly will refer a matter in writing to the Commissioner if there are reasonable grounds for suspecting that a Member's conduct is in breach of a relevant provision and is also relevant to the Clerk's functions under section 138 of the Government of Wales Act 2006.<sup>37</sup> The Commissioner will investigate the complaint and report the findings to the Assembly through the Committee on Standards of Conduct. The report must be an outcome of fact and should not make recommendations for sanctions against a Member. It is the responsibility of the Committee to determine appropriate sanctions. The Committee will also be responsible for supervising "the compilation, maintenance and accessibility of the Register of Members' Interests and the Record of Membership of Societies and the form and content of the Register and the Record."<sup>38</sup>

To assist with the investigation procedure the Commissioner has the power to call for witnesses and documents deemed relevant to the investigation and if necessary "administer an oath or affirmation to any person giving evidence to the Commissioner, and require that

---

34 The National Assembly for Wales Commissioner for Standards Measure 2009 s 1 (3)

35 The National Assembly for Wales Commissioner for Standards Measure 2009 s 1 (7)

36 The National Assembly for Wales Commissioner for Standards Measure 2009 s 1 (8)

37 The National Assembly for Wales Commissioner for Standards Measure 2009 s 9

38 Committee on Standards of Conduct information is available at <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-other-committees/bus-committees-third-std-home.htm>

person to take an oath or make an affirmation.”<sup>39</sup> Witnesses who are called to present as part of an investigation are entitled to the same privileges as that of a witness giving evidence in a court of law in Wales or England. Section 15 of the 2009 Measure outlines the offences and penalties for individuals who fail or refuse to present themselves or a document at the request of the Commissioner.

## Committee on Standards of Conduct

### **Role of the Committee when Handling Breaches**

The Committee on Standards and Conduct will investigate and recommend action on any complaint referred by the Commissioner. The procedure for dealing with complaints against Assembly Members outlines the process the Committee must follow. Initially, the Committee will meet in private to consider the details of the complaint and whether witnesses need to be called to the oral hearing and if the complaint should be considered in private or public. The Committee will then proceed to an oral hearing to clarify the facts of the complaint and/or to question relevant witnesses. Following the hearing the Committee will meet again in private to consider whether the Member has breached the code of conduct and what action or sanction should be recommended. The Committee will prepare a report and along with the Commissioner's accompanying report will table a motion calling on the Assembly to endorse the Committee's recommendations. The Member who is the subject of the complaint will also receive a copy of the Committee's report.

### **Is there an Appeals Procedure in place Regarding Decisions Reached by Committee?**

Should the Member who is the subject of the complaint be found by the Committee to be in breach of the code of conduct they have 10 working days after receiving the Committee's report to appeal to the Presiding Officer. The Presiding Officer will arrange for an appeal panel to be gathered consisting of four Assembly Members from different political groups and an independent legally qualified person (this person must not be an Assembly Member or a staff member of the Assembly).<sup>40</sup> A number of individuals are prohibited from sitting on the appeal panel, they include: Standards of Conduct Committee Members; Presiding Officer and Deputy; First Minister; leaders of political groups; the complainant or witnesses. The panel will consider the reports prepared by the Commissioner, the Committee and any other written documents submitted by the appellant but will not hold any oral hearings. The conclusion of the appeal panel can be either to uphold or dismiss the appeal.

## Modifying and Maintaining the Code of Conduct

### **Current Roles and Duties of the Committee**

The Committee on Standards and Conduct is conferred power under Standing Order 16 and has five main functions to perform:

- To investigate, report and recommend action with regards to complaints referred to it by the Commissioner for Standards.
- To review matters of principle regarding the conduct of Members.
- Supervise the compilation, maintenance and accessibility of the register of Members' interests and Membership of Societies.

39 The National Assembly for Wales Commissioner for Standards Measure 2009 s 13

40 The National Assembly for Wales, *Procedure for Dealing with Complaints against Assembly Members (2008)*, p8, retrieved 31 December 2009 <http://www.assemblywales.org/memhome/mem-commissioner-standards/mem-complaint-procedure.htm>

- Report annually to the Assembly in relation to complaints made, any actions taken and conclusions on the standards of conduct of Assembly business.
- To establish procedures for investigating complaints under Standing Order 16.1 (i).<sup>41</sup>

The Standing Order makes no specific mention of the Committee's role in modifying the code of conduct. Committee meeting papers and transcripts submitted on the National Assembly for Wales website show that the Standards Committee Secretariat propose amendments or revisions to the code of conduct and invite the Committee to consider and agree these proposals.

---

41 National Assembly for Wales, Standing Order 16 Committee on Standards of Conduct is available at <http://www.assemblywales.org/bus-docs-third-standingorders.pdf>

---

## 5. Dáil Éireann

The Standards in Public Office Commission (Standards Commission) was established under the Standards in Public Office Act 2001 and assumed the functions of the Public Offices Commission. The Standards Commission has a much broader scope of work in comparison to the bodies established in the House of Commons, the Scottish Parliament and the National Assembly for Wales. The Standards Commission plays a broad supervisory role in relation to the following Acts:

- Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001 (Ethics Acts).
- Electoral Act 1997, as amended (Electoral Acts).
- Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act 2001 (Party Leaders' Allowance Act).<sup>42</sup>

Under the Electoral Acts the Standards Commission has a duty to monitor and where appropriate report to the Chairman of the Dáil Éireann on issues such as election expenses and the disclosure of donations.<sup>43</sup> With regards to the Party Leaders' Allowance Act 2001 it considers statements of expenditure submitted by party leaders and prepares reports the Minister for Finance indicating the disclosure of unauthorised expenditure and if the statement is adequate or inappropriate.<sup>44</sup>

## Appointment of the Standards Commission

### **Role, Responsibilities and Powers**

The role of the Standards Commission in relation to the Ethics Acts is to provide advice on compliance with the Acts, to administer a register of interests and tax compliance measures, and to investigate complaints made under Section 22 of the Ethics in Public Office Act 1995 or section 4 of the Standards in Public Office Act 2001. Complaints made under either of these sections fall to the Standards Commission to investigate rather than the Committee on Members' Interests of Dáil Éireann.

Section 22 of the Ethics Act 1995 details the type of person who can make a complaint to the Standards Commission about alleged breaches of the disclosure provisions of the Act. Section 4 of the Ethics Act 2001 provides that an individual can make a complaint about a specified person who has allegedly committed a specified act (defined in the 2001 Act) or breached a provision of the Act.<sup>45</sup>

### **Subject to the Direction or Control of the Houses**

The Committee on Members' Interests of Dáil Éireann or other relevant Committee can request the Standards Commission to investigate a particular complaint. At least twice each year the Standards Commission will consult with the Committees with regards to the operation of the 2001 Act and other relevant matters and legislation.

42 Standards in Public Office Commission information is available at <http://www.sipo.gov.ie/en/AboutUs/>

43 Information on the functions of the Standards Commission under the Electoral Acts is available at <http://www.sipo.gov.ie/en/AboutUs/Functions/>

44 Information on the functions of the Standards Commission under the Party Leaders Allowance Act is available at <http://www.sipo.gov.ie/en/AboutUs/Functions/>

45 The Standards in Public Office Commission investigation of complaints under the Ethics Acts <http://www.sipo.gov.ie/en/Complaints/ComplaintsProcedures/InvestigationofcomplaintsundertheEthicsActsandElectoralActs/>

### **Is the Position an a Statutory Basis? Statutory Powers?**

The Standards Commission and its functions are provided for on a statutory basis by the Standards in Public Office Act 2001.<sup>46</sup> However, the Standards Commission has “no coercive or punitive power.”<sup>47</sup>

### **How is the Commission Appointed? Eligibility Criteria, Terms and Conditions of Appointment**

The Standards Commission is comprised of six members (one Chairperson and five ordinary members). Section 2 of the 2001 Act states that the Chairperson must be a judge (or former judge) of the Supreme Court or the High Court and will be appointed by the President following resolutions passed by both Houses. The appointment of the Chairperson is for a six year term and re-appointment for another term is provided for within the 2001 Act.

The ordinary members consist of “the Comptroller and Auditor General, the Ombudsman, the Clerk of the Dáil Éireann, the Clerk of the Seanad Éireann, and a person who (i) is appointed to be such a member by the Government following resolutions passed by each House approving the proposed appointment, and (ii) is a former member of one of the Houses and is not a representative in the European Parliament.”<sup>48</sup> The ordinary members are appointed for a six year term and can be re-appointed for a subsequent term. However, an ordinary member will cease to hold their position should they be nominated as a member of Seanad Éireann, are nominated for election for either House or the European Parliament, or have been elected to the European Parliament.<sup>49</sup>

The members of the current Standards Commission are Mr Justice Matthew P Smith (Chairman and former judge of the High Court), John Buckley (Comptroller and Auditor General), Ms Emily O’Reilly (Ombudsman), Mr Kieran Coughlan (Clerk of Dáil Éireann), Ms Deirdre Lane (Clerk of the Seanad Éireann), and Mr Michael Smith.

### **Rules/Guidelines for Dismissal**

The Chairperson of the Standards Commission can request to be removed from office or can be removed from office by the President if there is evidence of misbehaviour, incapacity or bankruptcy and resolutions are passed by both Houses in support of the removal.

An ordinary member can resign by giving written notice to the Minister or can be removed from office if there is evidence of misbehaviour, incapacity or bankruptcy and following resolutions passed by both Houses in support of the removal.

## **Handling Alleged Breaches**

A complaint can be made to the Standards Commission under provisions set out in Section 22 of the Ethics in Public Office Act 1995 and Section 4 of the Standards in Public Office Act 2001.

The Statement of Intended Procedures describes the process the Standards Commission intend to follow when carrying out an investigation under the Ethics Acts. While the Standards Commission generally investigate office holders or specified persons (under Section 4 of the Standards Act):

---

46 The Standards in Public Office Act 2001 is available at <http://www.irishstatutebook.ie/2001/en/act/pub/0031/index.html>

47 Standards in Public Office Commission, *Investigations under the Ethics in Public Office Acts 1995 and 2001 and the Local Government Act 2001 Statement of Intended Procedures (2006)*, p4, retrieved 21 December 2009 <http://www.sipo.gov.ie/en/GeneralPublications/InvestigationProtocol/>

48 The Standards in Public Office Act 2001 s 2 (2)

49 The Standards in Public Office Act 2001 s 2 (2H)

---

*section 22 (5) of the Ethics Act, as amended, provides that complaints in relation to members of the Oireachtas may fall to be investigated by the Commission where the complaint is one made to the Commission by the chairman of the relevant Committee on Members' Interests itself or where, in the case of a third party complaint, the complaint is referred to the Commission by the chairman of the Committee concerned.<sup>50</sup>*

Complaints must be made to the Standards Commission in writing and should contain as much detail as possible to enable it to decide whether a formal investigation is required. Section 8 of the 2001 Act provides that the Standards Commission shall not investigate a complaint unless the complainant discloses their identity. The Commission also has the right to contact the person that is the subject of the complaint to seek information which may have a bearing on whether or not to begin an investigation.

Section 6 of the 2001 Act allows the Standards Commission to appoint Inquiry Officers to carry out a preliminary inquiry into a complaint. Initially the Officer will request a statement of evidence from the complainant or anyone else deemed relevant to the inquiry. They will then provide the person who is the subject of the complaint with the particulars of the complaint including the statement submitted by the complainant. The Officer will request a statement of the evidence that would be given to the Standards Commission from the person who is the subject of the complaint and will conduct interviews as appropriate with both parties. The Officer is also permitted to request any documents which may be relevant to the inquiry.

The Inquiry Officer is required to prepare a report for the Standards Commission detailing the results of the inquiry and must include any statements or documents provided to the Officer as part of the preliminary inquiry. The 2001 Act states that the report must not contain any determinations or findings but will at the request of the Standards Commission contain "an opinion of the officer as to whether there is *prima facie* evidence to sustain the complaint concerned."<sup>51</sup> The Statement of Intended Procedures notes that in cases where the facts are clear and not the subject of dispute it may not be necessary to conduct a preliminary inquiry. However, the general view of the Standards Commission is that the use of an Inquiry Officer is beneficial in most cases.

The Standards Commission will hold sittings for the purposes of investigation at which it will hear evidence and receive submissions relevant to the case. The Commission can call for witnesses and will allow the person who is the subject of the complaint to present their case to them and also cross examine witnesses called by the Commission and present their own witnesses. A witness is entitled to:

*The same privileges and immunities as a witness in a court, save that such witness cannot refuse to answer a question or refuse to produce a document on the ground that the answer or document might incriminate him or her.<sup>52</sup>*

If the witness provides false evidence, fails or refuses to attend before the Commission, refuses to take the oath, refuses to answer any question to which the Commission is legally entitled an answer, or refuses to produce any document which the Commission legally requires they can be found to be committing an offence. To obstruct the Commission, a Committee or an Inquiry Officer "by act or omission"<sup>53</sup> can also be considered an offence.

50 Standards in Public Office Commission, *Investigations under the Ethics in Public Office Acts 1995 and 2001 and the Local Government Act 2001 Statement of Intended Procedures* (2006), p4, retrieved 21 December 2009 <http://www.sipo.gov.ie/en/GeneralPublications/InvestigationProtocol/>

51 The Standards in Public Office Act 2001 s 6 (3)

52 Standards in Public Office Commission, *Investigations under the Ethics in Public Office Acts 1995 and 2001 and the Local Government Act 2001 Statement of Intended Procedures* (2006), p12, retrieved 21 December 2009 <http://www.sipo.gov.ie/en/GeneralPublications/InvestigationProtocol/>

53 The Standards in Public Office Act 2001 s 17

The Standards Commission will submit a report outlining the results of the investigation to the person who is the subject of the complaint, the complainant (if the complaint was made under section 22 of the 1995 Act), and:

*(c) (i) in case the person the subject of the investigation is or was an office holder and the Commission has determined that he or she has contravened Part II, III, IV, the Committee, and*

*(ii) in any other case – (I) the Minister, or (II) if, at the time of the alleged contravention concerned, the person occupied a position in a Department of State or office administered by a Minister of the Government other than the Minister, that Minister of the Government.<sup>54</sup>*

If the subject of the complaint is a Member of either of the Houses of the Oireachtas it is the responsibility of the relevant Committee to recommend if action against the Member should be taken. If the subject is not a Member of either House it will still be outside the remit of the Standards Commission to recommend sanctions and they will have no further input in the process.

## Committee on Members' Interests of Dáil Éireann

### **Role of the Committee when Handling Breaches**

The Committee on Members' Interests of Dáil Éireann conducts investigations into alleged breaches of provisions contained within the Ethics Acts. The Clerk of the Dáil Éireann may refer complaints from non Members while complaints from Members will go directly to the Committee. For investigation purposes the Committee holds sittings at which it can receive submissions and relevant evidence. The sittings may be conducted in private. The Chairman of the Committee can call the Member concerned or any other relevant person to attend the sitting to provide evidence. They will be afforded the same privileges and immunities as they would be in a court of law. The Chairman may also request any relevant documents pertaining to the alleged breach to be presented before the Committee. Failure to present before the Committee, answer questions or provide relevant documents can be found to be an offence.

A report of the proceedings will be produced by the Committee and issued to the Member named in the complaint and the complainant. If it concludes that the Member has breached the Ethics Acts it will also lay the report before the Dáil Éireann. The Committee can propose a motion to censure, suspend or financially penalise a Member.

## Modifying and Maintaining the Code of Conduct

### **Current Roles and Duties of the Committee**

The Committee is responsible for drafting compliance guidelines for Members in relation to the Ethics Acts (in consultation with the Standards Commission and the Committee on Members' Interests of the Seanad Éireann), drawing up a code of conduct for non-office holders (following consultation with the Standards Commission) and conducting investigations into alleged breaches of statements of interest. The Committee also provides Members with advice in relation to the Ethics Acts. The code of conduct drawn up by the Committee focuses on the standards of conduct and integrity that must be upheld by each Member of the Dáil Éireann and it provides an advisory role to Members in this regard.

---

54 The Ethics in Public Office Act 1995 s 24 (1)



## Annex 1

## Relevant Codes of Conduct and Guidelines

**House of Commons**

Register of financial interests – Register of Members' Financial Interests – 10 December 2009 (Part 1 and Part 2) <http://www.publications.parliament.uk/pa/cm/cmregmem/memi02.htm>

New code of conduct relating to Members' financial interests to be prepared by the IPSA

Allowances – The Green Book July 2009: A guide to Members' allowances <http://www.parliament.uk/documents/upload/GreenBook.pdf>

New allowances scheme to be prepared by the IPSA

Code of conduct (ethics) – The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members <http://www.publications.parliament.uk/pa/cm/cm pocrules.htm>

**Scottish Parliament**

Register of financial interests – Code of Conduct for MSPs <http://www.scottish.parliament.uk/msp/conduct/index.htm>

Allowances – Members Expenses Scheme <http://www.scottish.parliament.uk/msp/MSPAllowances/index.htm>

Code of conduct (ethics) - Code of Conduct for MSPs <http://www.scottish.parliament.uk/msp/conduct/index.htm>

**National Assembly for Wales**

Register of financial interests – National Assembly for Wales Code of Conduct for Assembly Members

<http://www.assemblywales.org/memhome/mem-commissioner-standards/cod-yydddygiad.htm>

Allowances – subject to a set of rules known as 'The Determination' (updated annually)

[http://www.assemblywales.org/nafw\\_members\\_officers\\_salaries\\_allowances\\_determination\\_2009.pdf](http://www.assemblywales.org/nafw_members_officers_salaries_allowances_determination_2009.pdf)

Code of conduct (ethics) - National Assembly for Wales Code of Conduct for Assembly Members

<http://www.assemblywales.org/memhome/mem-commissioner-standards/cod-yydddygiad.htm>

**Dáil Éireann**

Register of financial interests – Guidelines on compliance with the provisions of the Ethics in Public Office Acts, 1995 and 2001 (office holders)

<http://www.sipo.gov.ie/en/Guidelines/EthicsActs/OfficeHolders/>

Allowances

Code of conduct (ethics) – Code of conduct for Members of the Dáil Éireann other than office holders

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/press/codeofconduct.htm>

## Annex 2

Independent Parliamentary Standards Authority Chair and members (<http://www.parliamentarystandards.org.uk/index.html>)

### **Chair**

#### **Professor Sir Ian Kennedy LLD**

Professor Sir Ian Kennedy is a lawyer who has also lectured and written on the law and ethics of healthcare. He is Emeritus Professor of Health Law, Ethics and Policy at the School of Public Policy, University College of London and Visiting Professor at the London School of Economics. He was Chairman of the Healthcare Commission, the public watchdog in health services provision, and was the leader of the public enquiry into the deaths in children's heart surgery at the Bristol Royal Infirmary (1998-2001). He also chaired the Nuffield Council on Bioethics and is currently Chair of the UK Research Integrity Office.

### **Members**

#### **Rt Hon Lord Justice Scott Baker**

A High Court Judge in the Family Division (1988-92) before transferring to the Queen's Bench Division in 1992. He became a Lord Justice of Appeal in 2002 and has been a member of the Government Committee of Inquiry into Human Fertilisation (the Warnock Committee) and a member of the Parole Board. He sat as coroner for the inquests into the deaths of Diana, Princess of Wales and Dodi Fayed in 2007 and 2008.

#### **Professor Isobel Sharp CBE**

Professor Isobel Sharp CBE is a partner at Deloitte LLP and a Visiting Professor at the University of Edinburgh Business School. She was President of The Institute of Chartered Accountants of Scotland for 2007/8 and has served on the UK Accounting Standards Board and the Financial Reporting Review Panel. Professor Sharp was awarded a CBE in 2009 for services to the accountancy profession. She was a member of the Independent Review of Parliamentary Allowances group which reported in March 2008 on the Reimbursement of Expenses for Members of the Scottish Parliament.

#### **Jackie Ballard**

The Liberal Democrat MP for Taunton from 1997-2001. Between 2002 and 2007 she was Director General of the Royal Society for the Prevention of Cruelty to Animals. In 2007 she took up the post as CEO of the Royal National Institute for the Deaf.

#### **Ken Olisa**

A businessman who worked at IBM (UK) and Wang Laboratories before founding technology merchant bank Interregnum. He now leads Restoration Partners. He serves on the boards of Thomson Reuters, Eurasian Natural Resources Corporation (ENRC). He is Chairman of Thames Reach, a charity focused on ending street homelessness in London by 2012. He is a Warden of the Worshipful Company of Information Technologists, a Vice President of the British Computer Society and a member of the Government's Women's Enterprise Task Force. He was an inaugural member of the Postal Services Commission from 2000-2004, a board member with Open Text, and a Governor of the Peabody Trust.





Published by Authority of the Northern Ireland Assembly,  
Belfast: The Stationery Office

and available from:

**Online**

[www.tsoshop.co.uk](http://www.tsoshop.co.uk)

**Mail, Telephone, Fax & E-mail**

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: [customer.services@tso.co.uk](mailto:customer.services@tso.co.uk)

Textphone 0870 240 3701

**TSO@Blackwell and other Accredited Agents**

**Customers can also order publications from:**

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

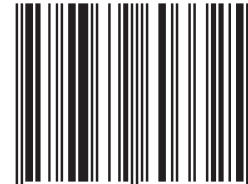
Telephone: 028 9023 8451

Fax: 028 9023 5401

£20.00

Printed in Northern Ireland by The Stationery Office Limited  
© Copyright Northern Ireland Assembly Commission 2010

ISBN 978-0-339-60332-5



9 780339 603325