



**Cynulliad Cenedlaethol Cymru  
The National Assembly for Wales**

**Y Pwyllgor Safonau Ymddygiad  
The Committee on Standards of Conduct**

**Dydd Mawrth, 2 Chwefror 2010  
Tuesday, 2 February 2010**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal,  
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.  
In addition, an English translation of Welsh speeches is included.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Jeff Cuthbert	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Chris Franks	Plaid Cymru The Party of Wales
Jenny Randerson	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

**Eraill yn bresennol**  
**Others in attendance**

Richard Penn	Y Comisiynydd Safonau The Commissioner for Standards
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**Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol**  
**Assembly Parliamentary Service officials in attendance**

Keith Bush	Cynghorydd Cyfreithiol Legal Adviser
John Grimes	Clerc Clerk
Catherine Hunt	Dirprwy Glerc Deputy Clerk
Gareth Rogers	Swyddfa'r Comisiynydd Safonau Office of the Commissioner for Standards

*Dechreuodd y cyfarfod am 9.30 a.m.*  
*The meeting began at 9.30 a.m.*

**Cyflwyniad ac Ymddiheuriadau**  
**Introduction and Apologies**

[1] **Jeff Cuthbert:** I welcome everyone to this meeting of the Committee on Standards of Conduct. Unfortunately, due to a technical problem, the translation service is not available this morning. I apologise to anyone who wished to speak in Welsh. This is something that we will look into, because it must not happen again. We pride ourselves on our bilingual facilities, but I did not wish to cancel the meeting because of this technical problem. Nevertheless, the headsets are available and can still be used for amplification, via channel 0. I ask everyone to switch off their mobile phones—I will quickly check mine, because I have a habit of leaving it on. If the fire alarm sounds, the ushers will lead us out through the fire exits. No drill is expected, as far as I am aware, so if the alarm sounds it will be for real.

[2] We have an apology from Brynle Williams for lateness. He has explained that he is delayed, but he anticipates being here by 10.30 a.m., if indeed we are still in session then. Nevertheless, I am pleased to say that we are quorate.

9.31 a.m.

## **Adroddiad Diweddarau gan y Comisiynydd Safonau Commissioner for Standards Update Report**

[3] **Jeff Cuthbert:** I am delighted that Richard Penn is with us, supported by Gareth Rogers. Two documents have been circulated to members of the committee—first, a letter from the commissioner dated 28 January, and then the paper itself. The report covers Richard’s activities as commissioner for the almost five years since his appointment in March 2005 until the end of last year. The covering letter points out that, formally, there is no requirement for him to prepare such a report, but it seems appropriate under the circumstances, especially given the passing of the National Assembly for Wales Commissioner for Standards Measure 2009, that we have this update. The intention is that the report will be published via the website and provided to Assembly Members and others, but Richard wished to present it to us first. I ask Richard to say something by way of introduction, and then invite Members to put questions to him.

[4] **Mr Penn:** Thank you for inviting me to present my report to committee. That was an admirable introduction, if I may say so, and leaves me with very little to explain. Just to underline the point, it is not a report for committee, technically; it is a report that I prepared and am publishing in my own right, if you like. However, I thought it only appropriate to bring it here first as a courtesy, but also in response to your invitation for me to report on my work to the committee. Thank you for that.

[5] As you said, the report covers a long period, from 15 March 2005 to the end of 2009. In the past, information about my work has been included in any reports published by the committee itself, and this is the first comprehensive report that I have written and published since I was appointed as the Assembly’s first non-statutory commissioner in 2005.

[6] I want to pick up some points in my paper, and touch on some of the statistics contained in it. It has always been my aim not just to be someone who investigates complaints, and I have said on many occasions that my role is to help individual Members and the institution as a whole to develop a standards culture. That is the contribution that I have tried to make over the years, and although much of my time has been taken up with investigation and dealing with complaints, my most rewarding work has been when suggestions about how to improve the way that the Assembly works have been taken on board. At heart, what I really want to do is to help the Assembly develop its standards framework and culture.

[7] How have I done that? Paragraph 5 of my report states that—I have been doing this now for over 10 years, which is a surprise to me—I have done it by establishing a presence in the Assembly. I am not full-time, as Members know, but I have tried to be as visible as required, and to be seen as a part of the Assembly. I am not an employee of the Assembly, but I feel very much a part of it. I have certainly tried to engage with Assembly Members; I know most Assembly Members to some extent, and I have particularly tried to engage with new Members when they have been elected, to give them the opportunity to know about my work, the expectations of them and, as I put it, some of the danger areas that we have discovered might emerge during the course of my work. I have met formally with leading Members, other stakeholders and people such as the Permanent Secretary, the previous Clerk to the Assembly, and the current Chief Executive and Clerk to the Assembly. It is my role to ensure that I understand some of the issues to do with the Assembly, and, on the other hand, to ensure that people understand the sort of approach that I take and my objectives.

[8] I am sure that you know this already, Chair, but I should make the point that I am well supported by Gareth Rogers and Kath Thomas. They have day jobs as well, but they support me very well and I could not do what I do without them. One thing that Gareth and

Kath have done is to help me with the development of a website for my office. I have also made my contributions to the House Committee, as it was—now the Assembly Commission—when issues have emerged from investigations or complaints that we have received about which I have felt something could be done to improve the clarity of understanding and interpretation of the various guidance available to Assembly Members.

[9] Moving on to the subject of complaints themselves, I remind Members in paragraph 6 that in 2005 the Assembly adopted a new complaints procedure for dealing with complaints against Assembly Members, which I think is much more transparent and robust. As paragraph 7 states, since then, we have taken the opportunity to conduct a comprehensive review of the process. Indeed, that has been an ongoing review, and there have been a number of changes made to the code of conduct and the procedure for dealing with complaints over the years. At the top of page 6, I set out some examples of the way in which the code has been changed and the procedure amended to deal with new and emerging issues that come out of my work.

[10] Paragraph 8 refers to annex B, which is attached to my report. It gives a summary of the complaints received and dealt with between March 2005 and December 2009. You will see that there were 39 complaints in total, two of which were still undergoing preliminary investigation at the end of 2009, 30 of which were ruled inadmissible, one of which was discontinued as no further evidence was provided, three of which were dealt with under section 10 of the procedure—which I will remind Members of in a moment—and three of which were referred to your committee following formal investigation. You will remember that I do a preliminary investigation and conclude whether, on the basis of the evidence I have, on the face of it, it looks as though there may have been a breach of the code of conduct. If that is the case, I will carry out a formal investigation, which is then the subject of a hearing by the Committee on Standards of Conduct. There have been three such hearings over that four-and-a-half-year period. Of those three hearings, the committee found two Members to have been in breach of the code of conduct and the other complaint was dismissed by the committee. Those are the statistics, but I will go into a little more detail in a moment.

[11] Some issues have arisen as a result of my work, and I set those out in paragraph 9. I have tried to break down what the complaints I have dealt with have been about. Eleven of the 39 complaints related to the use of Assembly resources. Nineteen complaints have been under paragraph 4b of the code of conduct, which relates to integrity and/or bringing the Assembly into disrepute. There have been two or three, possibly more, complaints about the use of Members' websites and blogs. I have touched on one example where the publication of one blog entry resulted in the receipt of 149 e-mails, of which 63 were requesting to make a formal complaint. You may remember that that was one of the issues that reached the committee. As a result of that, trying to be proactive, some action was taken, which I think Keith was involved in, to remind Members of some of the danger areas associated with the use of blogs. That was in no way intended to stop the use of blogs, but simply to advise and remind Members about some of the dangers that could result.

9.40 a.m.

[12] Paragraph 10 deals with section 10 complaints. Members will remember that there is an important part of the procedure, which is a new development, that allows me, in relation to complaints that are of a minor nature, with the agreement of the Chair, where the facts are undisputed and the Member accepts some fault on his or her part and immediately rectifies it or apologises—so there are many caveats—to not proceed to a formal investigation. Instead, I inform the Member and the complainant that, although there has been a breach, no further action will be taken against the Member. In my view, that is a positive development, because many of the matters with which I dealt, and some that came to committee before your time, Chair, were of a minor nature, and, to be blunt, were not important. I do not think that the

committee really needed to deal with those, and they could have been left to me. Indeed, that is what section 10 now says, and it is a very important development. It has helped to streamline the process, and allows complaints of a minor nature to be dealt with expeditiously.

[13] I want to touch on potential complaints as well, in case you think that 39 complaints over five years represent a lot of complaints—they do, but many do not reach me. That is where Gareth and Kath come in, and paragraphs 11, 12 and 13 refer to that and how those are dealt with. Often when I am sitting in with Gareth and Kath the phone rings and they deal with a potential complainant. It may be that the complainant has come through to the wrong place, or that the complaint is not about the Assembly or an Assembly Member, and sometimes there is no real evidence that would allow me to consider whether it is admissible, and so it does not even meet the initial criteria. I occasionally listen to Kath and Gareth dealing with the potential complainants, and they are creative, supportive and helpful. I do not think that there are many potential complainants who feel that they have been thwarted or turned away inappropriately. It is a way of filtering what comes to me. That is a powerful part of the role that Gareth and Kath play.

[14] Some things that do come to me are complaints about the performance, if I can put it in that way, of Assembly Members. I have always made it clear that that is not my role. I do not judge performance; I judge, or deal with, conduct. Performance is another matter and there are more traditional ways of dealing with complaints about performance.

[15] **Jeff Cuthbert:** That is done through the ballot box.

[16] **Mr Penn:** Yes, that is absolutely right, Chair. That view is shared by my counterparts in the other devolved legislatures. We are not here to performance-manage Assembly Members.

[17] Paragraph 14 simply picks up some other activities that I have tried to engage in over the years to build my visibility, as it were. That has been quite interesting. I have participated in a number of events, and I have set out some of them at the bottom of paragraph 14. There have been two all-Wales complaints conferences, one of which I think you attended, Chair, a few years ago, and I chaired the one that took place last year. I have also contributed to the work of various seminars and workshops on the role of the Committee on Standards of Conduct—or perhaps more so on that of the Commissioner for Standards. I have also had a number of meetings and have liaised over the last four or five years in order to provide evidence. I gave evidence most recently to the independent review panel on pay and allowances, and then to the legislation committee that was dealing with the proposed remuneration Measure. I also gave oral and written advice to your committee about the proposed standards commissioner Measure.

[18] Members are always interested in expenditure and what I cost, and paragraph 15 sets that out. I am not allocated a formal budget. It is mostly about my time, and I am funded on the basis of an annual retainer and a per diem rate. You can see in the table that my costs have gone up and then gone down somewhat, but they are around £20,000 per year. Those costs do not include the costs that Gareth and Kath can allocate to their work, and they have equated their contribution to the work that I do to around £10,000 per annum.

[19] On the future, this is an important moment. The Measure has been passed and there will be the appointment of a statutory commissioner for standards later this year, therefore my position as non-statutory commissioner will come to an end. That will place the role on a similar statutory basis to that of commissioners in the UK and Scottish Parliaments. As part of my evidence to the committee, I must say that I have never felt that not being a statutory commissioner in any way hindered me or downgraded my role. I can say with honesty that I

have always received considerable support and co-operation from all of those involved in the Assembly—Members, of course, but others as well. Giving the commissioner that statutory power will emphasise the power and independence of the commissioner, thereby ensuring that the role is seen to be totally independent and able to act with complete objectivity and impartiality. It also provides the new statutory commissioner with additional functions, set out in paragraph 19. These are important elements of the Measure, and they extend and develop the role and powers of the commissioner.

[20] In conclusion, as set out in paragraph 20, I have considered, on average, about eight complaints a year about the conduct of Assembly Members. During that period, I have deemed nine to be admissible. I have not referred a complaint for consideration by your committee since March 2007, for almost three years. I have always said that my role is not to stop complaints being made, but to try to assist Assembly Members in not putting themselves in a position where a complaint could be made against them. You cannot stop complaints, but you can certainly try to ensure that Assembly Members understand the danger areas and understand what the code of conduct and the various protocols require of them, and the objective is to have as few complaints as possible. The fact that I have only dealt with nine complaints in that period that I have deemed admissible, and that I have not referred anything to your committee for nearly three years, is a clear indicator of the importance that Assembly Members place on high ethical standards.

[21] There is no room for complacency, but the appointment of a statutory commissioner will build on the work already undertaken and strengthen the public's confidence in the ethical standards of Assembly Members. There are three annexes to my paper. Annex A sets out the relevant Standing Order, and annex B includes a grid showing the complaints, as categorised, over the last four years. The procedure itself is attached in annex C, and the code of conduct is also included if Members want to look at any element of that.

[22] **Jeff Cuthbert:** Thank you, Richard. Gareth, would you like to say anything before we go into questions?

[23] **Mr Rogers:** No, there is nothing that I would like to add.

[24] **Jeff Cuthbert:** Okay, we will go into questions. I will take advantage of being Chair by asking the first question. Regarding paragraph 20, I think that Members can also be credited for the fact that levels of behaviour have been such that there has been no need to refer complaints to this committee since March 2007. No doubt, in part at least, that is because of the work that we have done on the development of the National Assembly for Wales Commissioner for Standards Measure 2009 and the general discussion about standards. Unfortunately, I daresay that the impact of well-publicised accounts from another place has also had an inspirational role in terms of people being whiter than white.

[25] My question is in two parts. First, the last three cases that were brought before us, as you have alluded to in your report, were related to the use of blogs. Indeed, we issued guidance on that, as you mention in your paper. I do not want to know any details, but have there been any further issues on blogs, as far as you are aware? Secondly, on the two cases that are still outstanding, as of the end of last year, do either of those relate to blogs, or do they involve other matters? Again, I do not want details. In any event, when do you anticipate having reached a conclusion on the two outstanding matters?

9.50 a.m.

[26] **Mr Penn:** I think that you are right in saying that all three cases were to do with blogs. There was certainly one prior to those that dealt with issues relating to House Committee rules.

[27] **Mr Rogers:** There was a slight overlap; one complaint was considered by the committee where House Committee guidance had been breached. Information was published on a blog that led to that breach of guidance.

[28] **Mr Penn:** The other two hearings were to do with the use of blogs by two different Assembly Members. You are right: those three cases all had elements of the use of blogs. Of the two that are yet to be concluded, one is related to the use of a blog—I am still gathering information on that one—and the other is not. I will be concluding both cases shortly

[29] **Jenny Randerson:** I have a number of questions, Chair.

[30] **Jeff Cuthbert:** Of course.

[31] **Jenny Randerson:** I start by thanking you very much for your introduction, Mr Penn. This report is delightfully anonymous—anodyne, even—and I am sure that it is intentionally so. However, there is, of course, a feeding frenzy out there on the behaviour of politicians, and I am aware that details of the standards process in the House of Commons have become public. I am sure that you have thought about the freedom of information requests that will follow from this report. What is the position on them?

[32] **Mr Penn:** You are absolutely right; the report is deliberately anonymous and anodyne. I try very hard to retain confidentiality at all times. As you have just heard, the Chair understands and has always respected that fact, and no-one has ever asked me for details of ongoing investigations or those that have been concluded. That is a very important part of my work, and people will often say that they do not want to know, but will ask if I can tell them whether I am involved in an investigation at the moment without telling them any details. That has been a feature over the last 10 years.

[33] However, in the outside world, there is a lot of interest in these issues. Some complaints do reach the media; some do so before they reach me, which is not always acceptable. Indeed, the code of conduct was amended because of a Member's dealings with the press subsequent to a hearing—one of the last three hearings. There is always a concern that these things will get into the public domain inappropriately. I had not anticipated that publishing this report would result in many requests for detail. Gareth, perhaps you could help me clarify the rules on what happens when we are asked for details by anyone, either through an FOI request or any other approach. What is our standard response?

[34] **Mr Rogers:** We do not have a standard response. Each request would be looked at on its own merits. The role of the commissioner for standards is not captured specifically under the Freedom of Information Act, therefore, I presume that the rules that apply to the commissioner would be the same rules that apply to the Assembly. It is a position that is established through the Standing Orders, so I would take advice from Keith Bush and the freedom of information team on any request that comes in, to see whether the details could be released.

[35] The situation would obviously be different if there was an ongoing complaint or if the request was seeking details of a complaint that is already being considered. All that I could do in those instances would be to take advice on each complaint that comes in and work accordingly.

[36] **Jeff Cuthbert:** Is it fair to say that the view on freedom of information requests here is that they are responded to literally, in that the FOI request must be precise in its nature as opposed to something general? If it is not absolutely clear what information is being requested, so that it can be tested to see whether it is legitimate, would you then go back to



the instigator of the request for clarity?

[37] **Mr Rogers:** To be perfectly honest, Chair, we have not had to deal with an FOI request, so my knowledge of that is quite limited. Perhaps Keith could come in on this.

[38] **Mr Bush:** As things stand, and because Richard is an extension of the Assembly and is not a statutory commissioner, it would be open to anyone to make a request to the Assembly under the Freedom of Information Act 2000. Having said that, there are a number of exemptions that I am confident would cover the work that he does in the interests of protecting various kinds of regulatory activity. The regulation of the conduct of Assembly Members would be covered, along with confidentiality of information supplied to him, up until the point when he has to report to this committee, based on data protection exemption and so on. So, all in all, in the normal run of a case, I am confident that a Freedom of Information Act 2000 request could not extract details of a complaint that was dealt with by Richard himself without it being decided that it had sufficient weight to be referred by him to the committee.

[39] When the commissioner for standards Measure comes into force, the statutory commissioner will be an independent statutory authority. Then, it will be for the appropriate authorities—and I will come to that in a second—to decide whether to add the commissioner to the list of public authorities that are subject to the requirements of the Freedom of Information Act. Therefore, from the appointment of the commissioner, as things stand, the Freedom of Information Act would not apply to that person, but I am aware of the fact that the UK Government—as is part of its normal process of keeping the Freedom of Information Act up to date—certainly intends to look at the question of whether the commissioner should or should not be subject to its provisions. I have suggested to it, and I think that this is probably what will happen, that the right course of action is to wait until a commissioner is appointed and then to consult with that person, because he or she will clearly have a view on whether the work of the commissioner ought to be subject to the provisions of the Act or not.

[40] **Jeff Cuthbert:** Thank you, Keith; that is very helpful.

[41] **Mr Penn:** May I just add something? The only time that there is public knowledge of complaints is when they are referred by me for a hearing. The committee then has to put its conclusions in the public domain by report—I am not sure what the phrase is, but it has to report the outcome to the Assembly at large. In the last five years, only three complaints would have had that status. In other words, until it reaches the committee, everything is confidential and nothing escapes into the public domain, except where either a complainant or, occasionally, someone who is complained about, chooses to put it in the public domain.

[42] **Jenny Randerson:** That is fine, but this report reveals the stuff that goes on under the radar, shall we say? That is why I was interested in what its fate may be under FOI rules. Keith has been very helpful in that respect.

[43] **Mr Penn:** That is an important point, and I might take the opportunity to look at it again. It has not been published yet—actually, I suppose it has been published because it is on the internet, but it has not been circulated in the way that I intend it to be. I think that I stated in my letter to the Chair that, as a result of this committee meeting, it may be appropriate to look at the document again.

[44] **Jeff Cuthbert:** May I just clarify this with the clerk? My understanding is that we would then publish the paper.

[45] **Mr Grimes:** Only on our website.

[46] **Mr Penn:** It is probably best not to, but I will think about that point; it is an important point.

[47] **Jenny Randerson:** I have a few more points. From time to time, people have come to me with complaints about Ministers and I have had to say to them, 'You are complaining about a Minister, and you are not complaining about them as an Assembly Member'. There is a clear interface there.

10.00 a.m.

[48] It is my view—I do not need you to comment on it, but I shall put it out there—that the ministerial code needs substantial revision and is flawed and weak in certain respects. Other people have also said that. Do you have ongoing discussions with the First Minister or whoever on that interface and whether the two fit? That is, does the work that you are doing fit with the ministerial code so that there is no gap in the middle that people's complaints could fall through, and so that there is no situation in which something could be investigated both under the ministerial code and in relation to the Minister being an Assembly Member, because there is an overlap?

[49] **Jeff Cuthbert:** Before you answer that, Richard, I have to say that during the early discussions on the Measure, when Kirsty was the representative of your party on this committee, Jenny, that issue was raised and considered in some depth. The conclusion was that the ministerial code is a matter for the First Minister.

[50] **Jenny Randerson:** I remember that.

[51] **Jeff Cuthbert:** I take your point, Jenny, and I raised it in Plenary when we moved and had the Measure on the commissioner agreed. If there is anything that you would like to respond to on the issue of general compatibility, please do so, Richard, but it has been formally established that it is a separate matter.

[52] **Jenny Randerson:** I know what the situation was in relation to the Measure, because I was a member of the committee for the final part of that process. However, I am talking about practical contact during everyday working.

[53] **Mr Penn:** Some of the potential complaints that my office receives are against Assembly Members in their role as Ministers. The complainants are advised that I cannot deal with those and that they have to be referred to the First Minister, as he should be the recipient of any complaint about the conduct of his Ministers. He investigates those. I have no involvement in that process, and I do not know how it is done or what the outcome is. I have no contact with that. In the early days, I investigated one or two complaints against Ministers in their role as Ministers and it was a learning situation. It became clear that that was not appropriate for my role, so I no longer do it and there is no interface between the two processes. It is sometimes difficult to distinguish whether an Assembly Member is acting as a Minister or as an Assembly Member, in which case, any complaint about their conduct would be dealt with by me. There is potential confusion for the public and I do not know what happens when people are told that I cannot deal with the matter if it is a complaint about an Assembly Member acting as a Minister, because it has to be referred to the First Minister. I do not know what happens then and whether there is any dissatisfaction. We have no evidence on that.

[54] **Mr Rogers:** When we receive a call, we always try to clarify the issue. When we are clear that the issue is about a Member's conduct as a Minister, all that we can do is to refer that complaint on. We have little understanding of what happens from there. We have not received any feedback stating, 'The direction you told me to take wasn't any help'. We have

not received any feedback such as that, but, once it leaves us, we do not know what happens.

[55] **Jenny Randerson:** It is difficult for the public, because complaints about Ministers are often along the lines of ‘Well, he said that as the local AM; he said that as a Minister.’ So, it is difficult for the public. My final question relates to paragraph 9, which states that there have not been any recent complaints about the use of Assembly resources. Is it your view that the guidance on the use of Assembly resources is now clearer and, therefore, problems have been avoided, or is it simply the case that a lot of us have been here for a long time and have got used to the problems that we grapple with? In my experience, it has been difficult, on occasion, to decide and it has been necessary to seek guidance. Of course, it is our decision. We may seek guidance, but we cannot hide behind it. Going on to the use by Members of websites and blogs, the Commission issued some draft guidance on websites, which came badly unstuck, some 18 months ago. It was withdrawn because it was pointed out by a large majority of Assembly Members that it was completely impractical. To my knowledge, I do not believe that it has ever reissued it.

[56] **Chris Franks:** No. ‘Once bitten, twice shy’, I think.

[57] **Jenny Randerson:** You have made comments on blogs, but have there been any complaints about websites? Are you satisfied that the use of websites is largely appropriate?

[58] **Mr Penn:** On your first point about the use of Assembly resources, two things have happened. First, you are absolutely right that Assembly Members have become more familiar with what is required of them in terms of the guidance and the requirement to comply with it. I think that mistakes were made, very often not by the Assembly Member, but by someone in the Member’s office. In those circumstances, paragraph 10 became particularly relevant when someone may have put out some letters in envelopes that should not have been franked in the Assembly because they included party-political material. Reimbursing the cost of that and acknowledging that there was a breach of the code is a good example of where paragraph 10 can be used. A number of complaints in the early days—and I go back to 1999-2000—were about the use of resources and included complaints about postage, stamps and things such as that. We do not get such complaints anymore. There has been a learning process, and the guidance is also clearer. When new Members are elected, I always encourage them to ensure that not only do they understand what is required under the guidance, but that their office and support staff do as well. There has been a major reduction in complaints relating to the use of resources reaching the Committee on Standards of Conduct, as well as in the use of paragraph 10.

[59] On the use of blogs and websites, Keith is probably better placed to answer your question about the guidance and what happened to it. I think that we have only ever had one complaint about a website, as opposed to a blog. We have had a number of complaints about blogs, but I can only think of one complaint about a website, which has been the subject of a preliminary investigation. That is one of the ongoing ones, but I will not give any details on that.

[60] **Jenny Randerson:** That is quite reassuring.

[61] **Chris Franks:** I support the philosophy of the commissioner in acting as an adviser and guide. That is far more profitable than other options. The proof of the pudding is the report that we see before us. I will ask a specific question drawing on a comment that you made about being accessible and being seen. As far as I am aware, your office is in the Pierhead building. Is that the best location? I would have thought that it might be of advantage for you to be in this building, walking the corridors—

[62] **Mr Penn:** Checking up on people—*[Laughter.]*

[63] **Jeff Cuthbert:** You do not know what he might see.

[64] **Chris Franks:** Oh, I see. Perhaps I should take advice, then.

[65] **Mr Penn:** I did have an office in a corner of the third floor for some time. To be blunt, I do not think that Members like visiting me in my office, because it is a bit like going to the headmaster's study. If I have calls from a Member wishing to see me, I always say that I have an office or that I am very happy to meet in a place of the Member's choosing. That is, almost inevitably, the Member's own office, which is private. There is an element of seeing someone traipsing off to the commissioner's office and thinking that he or she must have done something wrong. That is not necessarily the case, but that is the perception.

10.10 a.m.

[66] On the other hand, Gareth and Kath are very accessible; their day jobs are in the Table Office, and they find that Members know them well because of that and so have the opportunity to seek advice and guidance. We are very careful—I certainly am, and I know that Kath and Gareth are too—about giving guidance. It is a personal decision, in the end, as to whether to make a complaint or whether you believe that you are in some territory that might lead to a complaint. Information is freely and readily available, as is pointing to relevant guidance and so on, but I have always been very wary of giving advice about anything. Support and information are an important element, however. It is not ideal in Pierhead, but if Members did not want to be seen walking along the third floor to my office, which was in the right corner, as far away as it possibly could be—

[67] **Jeff Cuthbert:** Standing outside in a small field. [*Laughter.*]

[68] **Mr Penn:** Indeed. Waiting to see the headmaster, as I said. I have not had cause to use it to interview a Member since I moved in there in the summer.

[69] **Chris Franks:** It is no big deal then.

[70] **Mr Penn:** No.

[71] **Chris Franks:** I am content.

[72] **Jeff Cuthbert:** Thank you very much indeed and thank you, Richard and Gareth, for all your work. Formally speaking, all we need to do is note the report. However, given that it is a report on five years of work, more or less, perhaps we should come to a view on its success, and thank Richard for all that he has done on our behalf. Perhaps we should also include a reference to Richard's report in our own annual report, which will be prepared in due course. Are Members content with that? I see that they are. Thank you very much indeed, Richard.

[73] **Mr Penn:** Gareth is here for the next item and I need to talk to him afterwards, so may I stay, Chair?

[74] **Jeff Cuthbert:** If you wish, absolutely.

10.12 a.m.

**Canllaw ar gyfer Aelodau'r Cynulliad ar Gofnodi Cyflogaeth Aelodau Teuluol gyda Chymorth Arian y Comisiwn**

## **Guidance for Assembly Members on the Recording of the Employment of Family Members with the Support of Commission Funds**

[75] **Jeff Cuthbert:** The relevant paper for this item is SOC(3)-01-10—paper 2. Members will be aware that there is a duty allocated to us to prepare guidance. It arose from the draft of a new Standing Order No. 31A, which we agreed in our meeting on 15 July 2008. It was subsequently considered by the Assembly Commission and the Business Committee, which made some changes to it, although they did not alter it in any fundamental way. For example, it clarified the position that, for the most part, Members' staff salaries do not pass through Members' hands as such, but are paid directly to the employee by the Commission. It removed the references to 'former partner' and 'cousins' because of the wide categories of family relationships that this would cover. A 'former partner', by definition, is no longer a member of the family. It also reduces the amount of personal information provided on a public register. This removed the requirement to disclose the salaries paid to family members, although Members will still need to give details of the capacity in which the family member is employed and the hours that they work. The Business Committee has now formally agreed the new Standing Order, and it will be considered by Plenary in due course. We are not going to anticipate the outcome of that, but a decision will be reached in due course.

[76] The purpose of today's discussion is to note Standing Order No. 31A, as amended, and to agree the guidance to Members, which is in annex C in the papers that were given to you. That is enough from me by way of introduction. Gareth is here to answer any questions. Before I ask for Members' questions, are there any points that you would like to amplify a little, Gareth?

[77] **Mr Rogers:** I do not think so, Chair, at this stage. I will just answer any questions that arise.

[78] **Jeff Cuthbert:** Okay. Do Members have any questions?

[79] **Jenny Randerson:** The Jones panel recommended that family members should not be employed, and that recommendation was accepted by the Commission. The new Standing Order departs from that principle. I am not here to argue that basic case—be reassured, Chair. What surprises me is that I could not see anything in the guidance to suggest that, when employing a family member, Assembly Members should ensure that there is proper public advertising of the post, shortlisting, and a full interview procedure, with records being kept. I suppose that I could have missed that, but I read the guidance quite carefully. Perhaps that is captured somewhere else in the employment instructions that we now have, but I could not see it here. Perhaps Gareth can explain that.

[80] **Jeff Cuthbert:** Before you come in, Gareth, what you are saying is quite correct, Jenny. The report of the independent panel said, first, that it supported the new Standing Order No. 31A, but that, in its opinion, the practice of employing family members should cease. However, as a formal committee, we have been asked to prepare guidance in relation to the Standing Order, and the Standing Order relates to the recording of family members who are employed. I am not trying to detract from your point, and I support the notion that any appointments procedure should be above board, and the recruitment policies should be clear and transparent, with no question of favouritism. However, in terms of our deliberations today, it is clear in my mind that we are considering guidance on the draft Standing Order.

[81] **Mr Rogers:** Just to clarify, the recommendation from the independent panel was that Assembly Members who already employ family members as defined under this new Standing Order should be allowed to continue to do so. However, we believe that Members should not henceforth make any new appointments of family members. It is important to remember that

this new Standing Order is to come in, it was considered by the panel, and the panel was happy that family members already in employment should continue, but any new Members appointed for the fourth Assembly would not be able to employ family members.

[82] In relation to your other point on being open and transparent in the appointments process, that is not something that this Standing Order is looking to capture. That is a separate recommendation that I believe is being looked into following the panel's report. I believe that the Assembly Members' business team will be looking at that, so it is not part of this Standing Order.

[83] **Jenny Randerson:** So I can be reassured, can I? I have no objection to the employment of family members per se, but I think that the public has doubts about that, which are largely based on misunderstandings. However, what would reassure the public is if there were proper interview and recording procedures, including advertising, and so on. Can I be reassured that, although this guidance does not refer to any of that, there will be guidance that refers to it in another context? Will those two sets of guidance be published together with the new Standing Orders, so that, when this hits the public domain, people will understand that although existing Assembly Members will be allowed to carry on employing members of their families, any new ones will have to be properly interviewed for jobs that have been publicly advertised?

[84] **Mr Rogers:** I am afraid that I cannot give you assurances on the appointments process, because that is outside my remit. My understanding is that the issue is being considered by the fees office, as part of the implementation of the panel's recommendations. Therefore, I am afraid that I cannot give you that reassurance. What I can say is that we have considered the guidance on this particular issue, and it will be available for Members when the new Standing Order is considered in Plenary. As the Chair said earlier, we will not pre-empt whether this will be adopted or not, but the guidance will be ready.

10.20 a.m.

[85] **Jeff Cuthbert:** You have said in all honesty as much as you can, Gareth, and we are grateful for that. Members are free to ask questions of other bodies within the Assembly on this matter. Keith, I believe that you wish to make a point.

[86] **Mr Bush:** It is important to bear in mind that this Standing Order and the guidance associated with it are to do with the registration of the fact of employment of family members where they are employed with the support of funds supplied by the Commission under Standing Order No. 1.7 and the determinations made under it. The issue that you have raised, which is that of the rules relating to whether you can employ a family member, is a matter for these determinations and not a matter for this Standing Order. That is where the public will be looking for the safeguards relating to a fair and transparent procedure for employing family members, and the determinations that the Commission is working on with a view to their coming into force before the beginning of the next Assembly will need to make provision relating to the rules for recruitment of family members.

[87] The scope of this Standing Order is different because it is wider in some respects than the rules relating to the direct employment of family members. It covers indirect employment of family members and the employment of family members of another Assembly Member. This is to do with transparency over a somewhat wider field than the separate but related rules that will apply to the direct employment of family members by an Assembly Member.

[88] **Jeff Cuthbert:** Chris, do you have any questions?

[89] **Chris Franks:** No, I am satisfied, but I should perhaps mention that there is a huge

amount of work involved in implementing all 108 of the Jones recommendations. I remind Members that they are being implemented in tranches. There will be another tranche around 1 April. I just thought that I should remind people about that.

[90] **Jeff Cuthbert:** We are very grateful for that information. If there are no further questions or comments, I ask committee members to state that they are content with the drafts before us. I see that you are content. We could perhaps have a brief report at our next meeting on the process and the exact relationship between our decisions now and the decisions of the Business Committee because I imagine that, ultimately, this will go to Plenary for approval—

[91] **Mr Grimes:** I think that the feeling was that this probably did not need to be approved by the Plenary. The Standing Order will be approved by Plenary, but the guidance—

[92] **Jeff Cuthbert:** Sorry, that is what I meant. So, we are content with the work we have done. Thank you very much.

10.23 a.m.

### **Blaenraglen Waith y Pwyllgor Committee Forward Work Programme**

[93] **Jeff Cuthbert:** This paper is for our information. We have agreed future meeting slots. The next meeting is on 9 March. After Easter, we will meet on 27 April, 25 May and 29 June. At our previous meeting, we agreed some of the work before us in this paper, but this is simply to remind us of the work ahead of us. Does anyone have any questions? Perhaps we could have a note in due course of work that it is known we will need to tackle. As always with this committee, we never know what might be waiting around the corner. We hope that there will be nothing, but you never know. Thank you all very much. I declare the meeting closed.

*Daeth y cyfarfod i ben am 10.24 a.m.  
The meeting ended at 10.24 a.m.*