

WRITTEN SUBMISSION TO THE STANDARDS OF CONDUCT COMMITTEE OF THE NATIONAL ASSEMBLY FOR WALES

Introduction

1. This paper provides an overview of the arrangements under the Scottish Parliamentary Standards Commissioner Act 2002 in response from a request from the Standards of Conduct Committee of the National Assembly for Wales.

Background to the Current Arrangements

2. The proposal to appoint a Standards Commissioner on a statutory basis came at the conclusion of the Models of Investigation of Complaints inquiry undertaken by the previous Standards Committee in 1999-2000¹. This inquiry reviewed four possible investigative options: investigation by the Standards Committee, by a Standards Commission, by a non-statutory Standards Officer, or by a Standards Commissioner appointed under statute. The key principle underpinning the Committee's recommendation was the need for an independent element to be introduced into the complaints process. The Committee considered this to be an essential factor in securing the confidence of complainers, MSPs and the public at large in the Parliament's handling of allegations of misconduct. As will be seen below, however, the complaints regime still recognises the central role played by the Standards Committee and the Parliament itself, both of which under Standing Orders and the Scotland Act have responsibilities in dealing with complaints against Members.
3. The previous Committee considered that statutory powers to compel evidence held in the Commissioner's own right were a necessary bulwark of his or her independence. The Committee recognised that although it would have been quicker to appoint a Standards Officer on a non-statutory basis, he or she would have had to rely on the Committee's own powers to summon witnesses thus risking undermining his or her independence.
4. The structure of the complaints process which is set out below also reflects the previous Committee's desire to strike a balance between the requirement for transparency with the need to avoid ongoing investigations being prejudiced by publicity or becoming a 'trial by media'. The Commissioner's initial consideration of a complaint and any subsequent investigation take place in private and independently of the Committee. The Committee's initial consideration of the Commissioner's report also takes place in private session. This is necessary because the Committee could decide to refer the report back to the Commissioner for additional inquiries or to undertake its own investigation and publicity could prejudice

¹ Standards Committee 4th Report 2000, *Models of Investigation of Complaints*, SP Paper 186

this. Subsequent elements of the complaints process take place in public session, for example any oral evidence taken by the Committee. The Committee's decision is also announced in public and its report and that of the Commissioner together with any relevant evidence are also published.

5. Following publication of the Committee's proposals, a temporary Standards Adviser was appointed as an interim measure until the Parliament had an opportunity to consider the Committee's Bill.

The Scottish Parliamentary Standards Commissioner Act 2002 and the Complaints Process

6. Section 10 of the Parliament's Code of Conduct (attached) provides an overview of the arrangements for investigating complaints against MSPs.
7. Appointed under the Scottish Parliamentary Standards Commissioner Act 2002, the Standards Commissioner is responsible for investigating complaints against MSPs concerning the conduct of their Parliamentary duties. Specifically, he or she is responsible for the first two stages of the four stage complaints process:
 - **Stage 1:** The Commissioner establishes whether the complaint is admissible. This stage is an initial sift which enables the Commissioner to screen out complaints which are clearly without foundation or fall outwith his or her remit.
 - **Stage 2:** If the complaint is admissible, the Commissioner is responsible for carrying out a full investigation. At the conclusion of the investigation, he or she is responsible for preparing a report for the Standards Committee.
 - **Stage 3:** The Standards Committee's consideration of the Commissioner's report. The Committee is not bound by the Commissioner's findings and may conduct its own investigation. At the conclusion of this stage, the Committee publishes its own report and that of the Commissioner. The Committee's report will set out whether or not there has been a breach of the Code of Conduct and if so, whether it wishes to recommend the imposition of sanctions.
 - **Stage 4:** The Parliament debates the Standards Committee's motion on sanctions.
8. The Act provides the Commissioner with statutory powers to compel witnesses and the production of evidence. The Commissioner is also responsible for producing an annual report setting out a statistical analysis of complaints dismissed at Stage 1, details of complaints which proceeded to a full Stage 2 investigation and other matters.
9. The Commissioner's remit is restricted to the investigation of complaints relating to Members' conduct of their Parliamentary duties. Certain complaints are excluded from the remit of the Commissioner. Complaints concerning the misuse of allowances, for example, are referred to the

Scottish Parliamentary Corporate Body (SPCB); complaints concerning a Member's conduct at a meeting of the Parliament or Committee are referred to the Presiding Officer or relevant Committee Convener.

10. The Act also prohibits the Commissioner from making any recommendation on sanctions or from providing advice to Members, for example on the Register of Members' Interests. In relation to the latter, the previous Standards Committee believed that responsibility for investigating complaints and the provision of advice on standards issues should be separated in order to avoid a situation where the Commissioner might be called on to investigate a matter on which he or she had previously offered advice.
11. The post of Commissioner is a part time appointment and is home-based. The specification for the post indicated that the Commissioner would be expected to spend on average between five and ten days a month on the work but in the event of a substantial inquiry might be required to work full time for a period. The Commissioner receives a salary of £36 500.
12. Following an open recruitment process held in the autumn of 2002, Dr Jim Dyer was recommended for appointment by the selection panel. The Parliament agreed to Dr Dyer's appointment on 30 January 2003 and Dr Dyer took up the post on 1 April 2003. He has been appointed for a period of three years with the possibility of one further reappointment for up to five years.
13. The Commissioner's budget is currently set at £100 000 which includes provision for the Commissioner's salary and National Insurance contributions. The Act enables the Commissioner to appoint staff 'with the consent of the Parliamentary Corporation as to numbers'. The Commissioner has not to date appointed any staff.
14. The Act also enables the Commissioner to contract for support services to carry out his functions, for example, legal advice. Again the Commissioner requires the consent of the SPCB. The SPCB has approved the Commissioner having a contract with an Edinburgh law firm to provide legal support. All costs for legal support will be met from the Commissioner's existing budget, and the contract has been let on a short-term basis for one year to allow the SPCB to consider the usage of such advice and possible future options.

The Operation of the New Arrangements in Practice

15. The arrangements under the Scottish Parliamentary Standards Commissioner Act 2002 are relatively new and it is difficult for the Committee to assess how they are operating at present. However, the Committee intends to keep the arrangements under review. For example, the Committee intends to consider whether the Commissioner's draft report should be disclosed to the complainer at the same time that it is shown to the MSP who is the subject of the complaint.

16. In reviewing the operation of these procedures, the Committee wishes to ensure that they remain fair, open and proportionate. The Committee is also reviewing the rules on the registration and declaration of Members' interests and intends to bring forward proposals for replacement legislation in a Committee Bill later this year. The Committee's objective in developing this draft legislation will be to ensure that it complements the arrangements for handling complaints against MSPs creating a standards framework in the Scottish Parliament which is rigorous, transparent and proportionate.