

Procedure for Dealing with Complaints against Members of the Senedd

1. Status of the Procedure

1.1 This procedure for Dealing with Complaints against Members of the Senedd has been adopted by the Senedd Standards of Conduct Committee and was laid before the Senedd in accordance with Standing Order 22.2(iv) on 6 July 2022. It applies to complaints received by the Commissioner on or after 18 July 2022

1.2 This procedure relates to the consideration of complaints against Members of the Senedd for the purpose of section 10(1)(b) of the National Assembly for Wales Commissioner for Standards Measure 2009, which requires the Senedd Commissioner for Standards to investigate complaints in accordance with this procedure.

1.3 This procedure applies to:

- (a) complainants;
- (b) Members of the Senedd who are subject to a complaint;
- (c) witnesses in relation to a complaint;
- (d) any other person asked to provide information or assistance in relation to an investigation by the Senedd Commissioner for Standards;
- (e) the Senedd Standards of Conduct Committee when considering and reporting to the Senedd on a report from the Senedd Commissioner for Standards; and
- (f) any person accompanying a Member to a meeting of the Standards of Conduct Committee.

1.4 The Senedd Standards of Conduct Committee may from time to time issue guidance on the operation and application of this procedure. Such guidance does not form part of the procedure but is issued to assist the understanding of the procedure by members of the public and the Members of the Senedd. The Senedd Commissioner for Standards may have regard to such guidance in the investigation and consideration of a complaint.

2. Interpretation

2.1. In this procedure:

“Act” means the Government of Wales Act 2006 (as amended);

“Clerk” means the Chief Executive and Clerk of the Senedd;

“clerk to the Committee” means the committee clerk to the committee with responsibility for the matters set out in Standing Order 22;

“Code” means the Code of Conduct for Members of the Senedd;

“the Commissioner” means the Senedd Commissioner for Standards established by section 1 of the Measure;

“the Committee” means the Standards of Conduct Committee or any other Committee with responsibilities for the standards of conduct of Members set out under Standing Order 22;

“complaint” means a complaint to the Commissioner that, at a relevant time, a breach of a relevant provision within the meaning of section 6(3) of the Measure has occurred or a referral by the Clerk under section 9 of the Measure. Where there is more than one breach alleged in a single document each breach alleged will be treated as a separate complaint or, as the case may be, referral;

“complainant” means one or more of the following who submits a complaint or makes a referral to the Commissioner:

(a) an individual person;

(b) a body corporate; or

(c) an unincorporated body or group, acting by at least two representatives with authority to make the complaint;

“confidential” means not sharing or discussing matters relating to a complaint with other people without express permission from either the Commissioner or the Committee;

“day” means a calendar day;

“election period” is the period between the dissolution of the Senedd and the date on which a Member returned takes their oath or affirmation;

“the Measure” means the National Assembly for Wales Commissioner for Standards Measure 2009;

“Member” means a Member of the Senedd, and unless the context otherwise requires, includes a former Member;

“personal data” means information relating to living persons who: (i) can be identified or who are identifiable, directly from the information in question, or (ii) who can be indirectly identified from that information in combination with other information¹;

“the procedure” means this procedure for dealing with complaints against Members of the Senedd;

“Record of Proceedings” includes any report published pursuant to Standing Order 31;

“relevant provision” has the same meaning as in section 6(3) of the Measure;

“relevant time” has the same meaning as in section 6(2) of the Measure;

The singular includes the plural.

¹ See Article 4(1) of the UK General Data Protection Regulation and section 3(2) of the Data Protection Act 2018 (or any relevant successor legislation). Personal data may also include special categories of personal data or criminal conviction and offences data. These are considered to be more sensitive and may only be processed in limited circumstances.

3. General provisions about the Commissioner

3.1. The Commissioner must at all times act in accordance with the principles of natural justice and fairness.

3.2. The Commissioner must reply to any correspondence in the language used in the original communication.

3.3. The Commissioner must make reasonable adjustments to facilitate any person who reasonably requires them.

3.4. If at any stage in the consideration of a complaint the Commissioner becomes aware of conduct which could involve the commission of:

(a) an offence under section 36(7) of the Act; or

(b) any other offence;

the Commissioner must inform the Clerk immediately in respect of any potential offence under (a) above, and in respect of both (a) and (b) above inform such other investigatory authority or the Police as appropriate.

3.5. Where a complaint has been dealt with in accordance with paragraph 3.4, the Commissioner must suspend the consideration of the complaint until satisfied the risk of prejudice to any criminal investigation or proceedings has passed.

3.6. If at any stage in the consideration of a complaint, the Commissioner becomes aware of an investigation or criminal proceedings which may be prejudiced by such consideration, the Commissioner:

(a) must suspend the consideration of the complaint in the case of criminal proceedings or a criminal investigation; and

(b) may suspend consideration of the complaint in any other case;

until such time as the Commissioner is satisfied that the risk of prejudice has passed.

3.7. Where the Commissioner receives a referral from the Clerk in relation to an alleged breach of those requirements of Standing Order 2 relating to the registration of Members' interests, it must be dealt with in accordance with the provisions of the Protocol between the Commissioner, the Senedd and the Director of Public Prosecutions, and any other applicable protocols or requirements.

3.8. When communicating at the outset with any person regarding a complaint, the Commissioner must inform them that personal data will be processed in accordance with the Commissioner's privacy notice and of where that notice may be viewed.

3.9 During an election period the Commissioner may continue to investigate and consider a complaint but the Commissioner must not during such period:

- (a) require any person who is a candidate to attend before the Commissioner to give evidence or to produce documents;
- (b) dismiss a complaint which does not comply with the requirements for complaint to proceed;
- (c) issue any findings of fact on a complaint for comment; or
- (d) issue a report in respect of any complaint then before the Commissioner.

3.10 The Commissioner must keep full and accurate records in respect of the consideration of complaints.

4. Complaints – Initial Consideration

4.1. on receipt of a complaint the Commissioner must, as soon as reasonably practicable, provide the Member being complained about with a copy of it and any supporting documentation redacted as considered necessary and appropriate by the Commissioner.

4.2. The Commissioner may investigate a complaint only where the complaint:

- (a) is made in writing;
- (b) states the name of the complainant;
- (c) states the postal or email address of the complainant except where the complainant is a current Member;
- (d) is about the alleged conduct of a named Member;
- (e) states the acts or omissions of the Member being complained about that are alleged to have breached a provision in the Code or other relevant provision;
- (f) in relation to each act or omission complained of, is supported by sufficient evidence to satisfy the Commissioner that (i) the conduct complained of may have taken place and (ii) if proved might amount to a breach of a relevant provision; and
- (g) is made within six months from the date of the conduct complained of, unless the Commissioner is satisfied there is good cause for the delay.

4.3. The Commissioner may conduct a preliminary investigation to determine whether a complaint meets the requirements set out in the preceding paragraph.

4.4. If the Commissioner receives a complaint which does not satisfy one or more of the requirements set out at sub-paragraph 4.2, identifying the criteria which the complaint has failed to satisfy. If the Commissioner considers the complaint can be rendered admissible, notice must be given to the complainant in writing:

- (a) specifying any additional information necessary to satisfy the criteria; and

(b) informing the complainant that if all the information specified is not provided by a date set by the Commissioner (such date to be not less than 14 days from the date of the notice), the complaint will not be admissible and will be dismissed.

4.5. Where it is alleged that sufficient evidence for a complaint is set out in the Record of Proceedings, it will be sufficient for the complainant to submit the reference to the relevant passage.

4.6. A complaint based on a media report is not substantiated within the meaning of sub-paragraph 4.2(f), except where the Commissioner decides that the media report itself provides sufficient evidence that a breach of a relevant provision may have occurred.

4.7 The Commissioner will inform the complainant and Member complained of if a complaint is not admissible.

5. Complaints - bringing consideration to an end before final report

5.1. The Commissioner may bring consideration of an admissible complaint to an end at any time if satisfied that:

(a) it is no longer meets the requirements under sub-paragraph 4.2 for the complaint to proceed;

(b) the complaint repeats substantially an allegation that has already been considered by the Commissioner and no significant additional evidence has been provided;

(c) the complainant no longer wishes to proceed with the complaint;

(d) the subject of the alleged conduct, who is not the complainant, does not wish the complaint to proceed;

(e) the alleged conduct is not sufficiently serious to justify further consideration, the Member being complained about has admitted and apologised and, in so far as practicable, rectified the breach (paragraphs 7.6 and 7.7 set out further detailed requirements in this regard);

(f) the complainant has, without reasonable excuse, failed to co-operate with the Commissioner; or

(g), it is not in the public interest to proceed further with the consideration of the complaint.

5.2. Where the Commissioner decides for any reason to bring consideration of a complaint on one of the grounds in paragraph 5.1, the Commissioner must give written notice of that decision and the reasons for it to the complainant and the Member being complained about.

5.3. Notice sent to the complainant under sub-paragraph 5.2 must also specify a date (such date to be not less than 14 days from the date of the notice) by which the complainant may give to the Commissioner notice in writing that the complainant is dissatisfied with the decision of the Commissioner.

5.4. Where a complainant gives notice to the Commissioner under sub-paragraph 5.3 the Commissioner must inform the Member being complained about and refer the complaint and the relevant documents to the Committee for further consideration.

5.5. Where the Committee believes that consideration of a complaint referred by the Commissioner under sub-paragraph 5.4 should not have been ended, the Committee will refer the complaint back to the Commissioner, who must then

- (a) Inform the complainant and the Member being complained about of the decision of the Committee; and
- (b) proceed to investigate it in accordance with the procedure.

6. Complaints - Formal Investigations

6.1. When the formal investigation of a complaint begins, the Commissioner must give notice to the complainant, and the Member being complained about advising that a formal investigation of the complaint has commenced.

6.2. The Commissioner must undertake a full and thorough investigation with a view to—

- (a) establishing all the relevant facts in relation to the alleged breach of a relevant provision; and
- (b) forming a view whether or not a breach of that provision has occurred.

but the Commissioner is not required to investigate any part of a complaint which has been accepted by the Member being complained about.

6.3 The Commissioner may form a view that a breach of a relevant provision has occurred only if satisfied on the balance of probabilities that such a breach has occurred.

6.4. When interviewing a person under the powers conferred by section 11 of the Measure, the Commissioner:

- (a) must ensure that an audio recording of the interview is made;
- (b) must provide that person with a copy of that recording;
- (c) provide that person with a copy of any transcript of the interview that is prepared and allow that person not less than seven days to suggest any revisions to that transcript; and
- (d) may accept or reject any revision of the transcript proposed by that person.

7. Report of investigation of a Complaint

7.1. Before finalising the report on an investigation, the Commissioner must give the complainant and the Member being complained about not less than seven days to submit written corrections or representations regarding any finding of fact made by the Commissioner.

7.2 Any such representations must set out why it is considered that the finding is inaccurate and be supported by any available documentary evidence.

7.3. If no representations are made, then the facts are deemed accepted.

7.4 The report by the Commissioner of the investigation must set out:

- (a) an outline of the investigation carried out by the Commissioner;
- (b) the facts established by the Commissioner in the investigation, with references to evidence as appropriate;
- (c) any representations made under sub-paragraph 7.1 that were not accepted by the Commissioner and the reason why they were not accepted;
- (d) the Commissioner's reasoned opinion on whether or not a breach of a relevant provision has occurred;

(e) the complaint and all evidence (other than the audio recording of any interview of which a transcript was prepared) which has been obtained as part of the Commissioner's investigation and which was relied upon in reaching a decision;

(f) details of any failure by the Member being complained about or any other Member to co-operate with the investigation;

(g) any recommendation of the Commissioner regarding material to be redacted from any published version of the report for one of the reasons set out in sub-paragraph 7.5; and

(h) information on any matter of general principle identified during the investigation.

7.5. The Commissioner may redact any part of a report where:

(a) that redaction is necessary to prevent the disclosure of personal data which was not relied on by the Commissioner in order to reach an opinion; or

(b) the redacted part may unnecessarily cause harm or distress to any person if published.

If a breach is rectified and no further action recommended

7.6 Where, at any stage of an investigation, the facts are not disputed and the Member promptly rectifies and/or apologises to the satisfaction of the Commissioner for a failure of a minor nature, the Commissioner may recommend to the Committee that the investigation should not be continued. If the Committee agrees, the Commissioner must inform the Member and the complainant that, although a breach has been found, no further action will be taken against the Member.

7.7 In these circumstances, the Commissioner need not report formally to the Committee except to recommend any action that may be needed in relation to matters of general principle or practice. Where the Commissioner does choose to report in this way, the report must be anonymised.

8 Complaints - Consideration by the Standards of Conduct Committee

Notification of Commissioner's report

8.1. Following the receipt of a report from the Commissioner, the Committee clerk will –

- (a) notify the complainant either directly or via the Commissioner's office of its intention to consider the complaint and the process involved in this consideration;
- (b) provide the complainant with a copy of the Commissioner's report;
- (c) tell the complainant that the Commissioner's report must be kept confidential until published by laying before the Senedd; and
- (d) tell the complainant that personal data will be processed in accordance with the Committee's privacy notice and of where that notice may be viewed.

8.2 The Committee clerk will also:

- (a) notify the Member being complained about that a report has been received by the Committee and, where the Commissioner has made a finding of breach, of its intention to consider the complaint and the process involved in this consideration;
- (b) provide the Member with a copy of the Commissioner's report;
- (c) tell the Member that the Commissioner's report must be kept confidential until laid before the Senedd;
- (d) tell the Member complained of that personal data will be processed in accordance with the Committee's privacy notice and of where that notice may be viewed.

8.3 The Member being complained about will be informed of their right to:

- (a) make written representations to the Committee within a time specified by the Committee; and
- (b) to make representations to the Committee in person.

Initial Consideration stage

8.4 If a Member who sits on the Committee is the subject to or otherwise directly connected with the complaint under consideration, they must not take any part in the proceedings of the Committee relating the complaint and a substitute Member must be appointed in accordance with Standing Order 22.5.

8.5 The Committee may seek further clarification from the Commissioner on the report at the initial consideration stage, which may be in writing or by the Commissioner attending the Committee.

8.6 The Committee will meet in private to consider the Commissioner's report unless the Committee is of the view it is in the public interest to consider the matter in public.

8.7 Notwithstanding any representations the Member being complained about may make, the Committee may request that they attend a meeting of the Committee in person.

8.8 If the Committee agrees unanimously that it does not wish to seek any clarification or explanation, either in writing or orally, and the Member being complained about has confirmed they do not wish to provide any further representations, the Committee can move directly to the decision stage (8.18-8.20) omitting the representation stage set out below

Representation stage

8.9 A Member attending Committee to make representations may choose to be accompanied by another person.

8.10 The Committee must be notified in advance of such a person, and their status.

8.11 The person accompanying the Member may make representations with the permission of the Committee.

8.12 Unless otherwise provided to the contrary in the procedure, the normal rules of conduct as set in Standing Orders apply.

8.13 Unless the Committee decides otherwise, at the meeting, the order of proceedings will be:

- (a) the Member's representations to the Committee on the Commissioner's report;
- (b) questions by the Committee arising from the Commissioner's report and/or the Member's representations;
- (c) the Member's closing representations (if any) in the light of the Committee's questions;
- (d) the Member (and representative) withdraw to allow the Committee to deliberate in private.

8.14 Matters arising from the Member's representations, either written or oral, may be referred by the Committee, as follows:

- (a) where representations appear to raise new facts or point to new evidence they shall be referred to the Commissioner for comment and/or further investigation;
- (b) where a person is criticised by the Member in their representations, the Committee may, where it considers it appropriate in the interests of fairness, inform the person concerned and afford them a right to reply within a period specified, which shall be not less than seven days. Any reply received, or a summary thereof, may be published in any report by the Committee on the complaint where it is requested to be so published by the person concerned and the Committee agrees that, taking account of all the relevant circumstances, it is appropriate to do so.

8.15 A verbatim transcript of any oral hearing will be provided to the Member concerned. This transcript will only be published if the meeting is conducted in public. A Member can request the audio file of the meeting within 14 days of the transcript being produced.

Decision stage

8.16 Where a report from the Commissioner is received by the Committee, the decision to accept a finding of the Commissioner on whether or not there has been a breach of the Code, or any other matter mentioned in Standing Order 22.2(i), rests solely with the Committee.

8.17 There must be a majority within the Committee in favour for a recommendation to be made to the Senedd.

Report to Senedd – no breach of Code found

8.18 Where the Committee is of the opinion that there has been no breach either of the Code or other relevant provision, the Committee must publish its report and lay it before the Senedd along with the Commissioner's report on the complaint.

8.19 The Report of the Committee and the Commissioner must be anonymised for publication unless the Member concerned requests to be named in the report.

8.20 The complainant and the Member being complained about are to be provided with a copy of the Committee's report. The report must be kept confidential by all parties until published by laying before the Senedd.

8.21 The Committee will take all reasonably practicable steps to give all individuals named in the report advance notification of its publication.

Report to Senedd – breach of the Code found

8.22 Where the Committee adopts a recommendation that a breach has been found, the Committee must either:

(a) recommend a sanction in accordance with Standing Order 22.10;
or

(b) recommend that, notwithstanding that a breach has been found, no further action should be taken.

8.23 As soon as may be following the Committee's decision to recommend a finding of a breach of the Code or any other matter mentioned in Standing Order 22.2, the complainant and the Member being complained about must be provided with a copy of the Committee's report. The report must be treated as confidential by all parties until published by laying before the Senedd.

8.24 The Committee will take all reasonably practicable steps to give all individuals named in the report advance notification of its publication.

8.25 The Committee must publish its report, including its recommendations, by laying it before the Senedd along with the Commissioner's report to the Committee.

8.26 The Committee may redact or withhold all or part of the Commissioner's report, or publish a summary if considered necessary. A

decision to redact, and the general reason for it, must be noted in the Committee report. The reason for doing so must either:

(a) be consistent with the provisions in the Committee privacy notice;
or

(b) for other reasons where the Committee considers there is a risk of harm or distress to any person.

8.27 Where the Committee finds a breach, the Chair of the Committee must table a motion calling on the Senedd to endorse the Committee's recommendations.

9. Arrangements applying in specific situations

Temporary Chair

9.1 The Committee must at all times have a Member designated to act as the temporary Chair whenever the Chair is unable to act or is disqualified from acting.

Handling of complaints already before the Standards Committee when a Senedd election period begins

9.2 If the Committee is considering a report on a complaint from the Commissioner at the start of an election period, consideration will be suspended and referred to the next Committee.

9.3 Where a Member being complained about is re-elected, consideration of the complaint will resume once a Committee is formed and will be concluded in accordance with the procedure.

9.4 Paragraph 9.5 below applies where the Committee formed after an election period:

- (a) has before it a report from the Commissioner that was already before the Committee prior to the start of an election period; or
- (b) a report from the Commissioner is received in respect of an investigation that had been resumed by the Commissioner after the election period.

9.5 Where paragraph 9.4 applies, the Committee must decide whether to proceed with consideration of the complaint, having regard to:

- (a) the nature of the complaint;
- (b) whether the complainant still wishes to continue;
- (c) whether, given the nature of the complaint, it would be a prudent use of resources to continue; and
- (d) whether it is in the public interest to continue.

9.6 If the Committee decides to continue with consideration of the complaint relating to a former Member:

(a) the former Member must be allowed the opportunity to make representations on the Commissioner's report in accordance with the procedure, which the Committee must take into account in preparing its report;

(b) where the complaint is found by the Committee not to be a breach of the Code, or any other matter mentioned in Standing Order 22.2(i), or the Committee would have recommended no further action had the person complained of still been a Member, then the Committee must arrange for its report and that of the Commissioner to be anonymised before publication unless the former Member requests to be named in the report; and

(c) the Committee's report on a complaint against the former Member must be published and laid before the Senedd but is not to be subject to debate in Plenary.

9.7 If the Committee decides to discontinue consideration of a complaint against a former Member, the complainant(s) and the former Member must be notified in writing as soon as practicable.

Complaints against a former Member made after they cease to be a Member

9.8. A complaint about a former Member cannot be made once they have ceased to be a Member unless, in addition to meeting the requirements in sub-paragraph 4.3 above:

(a) it is made within eight weeks of the former Member having ceased to be a Member; and

(b) the Commissioner, having due regard to the prudent use of resources and the nature of the complaint, believes that it is in the public interest for it to be investigated.

9.9 The report of the Commissioner on an investigation carried out under sub-paragraph 9.8 above must be considered by the Committee in accordance with the sub-paragraphs 9.3, 9.4 and 9.5 but subject to any modifications the Committee considers necessary in the interests of fairness.

Minor Procedural Irregularities – effect and rectification

9.10 A procedural irregularity at any stage will not invalidate the procedure where the Committee considers the irregularity to be of a minor nature that does not prejudice the fair consideration of the complaint. Where the Committee considers that the irregularity might prejudice the fair consideration of the complaint, it should be remitted back to the Commissioner or the Committee as the case may be for reconsideration and, where appropriate, rectification of the irregularity.”

10. Transitional

10.1. The time limit specified in sub-paragraph 4.2(g) is to be extended by 6 months for any complaint made in the 6 month period following the coming into effect of this procedure.

10.2 Complaints under consideration by the Commissioner on the date this procedure comes into force will be determined under the procedure applying when the complaint was received by the Commissioner.