

Guidance to the Procedure for Dealing with Complaints against Members of the Senedd

1. The standards of behaviour expected of Members of the Senedd (Members) is set out in the [Code of Conduct](#) (the Code). This sets out the principles and rules Members are required to follow. If it is considered that a Member has not met these standards, a complaint can be made to the independent [Commissioner for Standards](#) (the Commissioner). The National Assembly for Wales Commissioner for Standards Measure 2009 (the Measure) sets out other grounds on which a complaint can be made to the Commissioner¹.

¹ 6 Functions of the Commissioner

(1)The functions of the Commissioner are—

(a)to receive any complaint that the conduct of a Member of the Senedd has, at a relevant time, failed to comply with a requirement of a relevant provision,

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(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 Members of the Senedd of their membership of societies,

(iii)the registration or notification of any other information relating to Members of the Senedd or to persons connected to Members of the Senedd.

(b)any resolution of the Senedd relating to the financial or other interests of Members of the Senedd,

(c)any Code of Conduct approved by the Senedd relating to standards of conduct of Members of the Senedd.

(d)any resolution of the Senedd relating to standards of conduct of Members of the Senedd, 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.

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2. The Procedure for Dealing with Complaints Against Members of the Senedd (the procedure) sets out the process for dealing with such complaints. It applies as appropriate to:
 - persons making complaints;
 - Members who are subject to a complaint;
 - witnesses in relation to a complaint;
 - anyone assisting a Member to make representations;
 - any other person asked to provide information or assistance in relation to an investigation by the Senedd Commissioner for Standards, and
 - the Senedd Standards of Conduct Committee when considering and reporting to the Senedd on a report from the Senedd Commissioner for Standards.
3. The Senedd Standards of Conduct Committee (the Committee) has issued this guidance to explain elements of the procedure and assist with its application, and may from time to time issue revised or further guidance as it considers appropriate.
4. This guidance does not form part of the procedure but is aimed at helping Members, and members of the public, to understand and follow it. The Commissioner may however have regard to this guidance in the investigation and consideration of a complaint, but complaints cannot be made based solely on the guidance.
5. This guidance does not repeat the procedure but provides further information on:
 - The support available during the complaints process;
 - The Admissibility criteria for complaints, in particular around the time frame for complaints;
 - How a complaint may be investigated by the Commissioner;
 - What happens when the Commissioner has completed an investigation;

- The Committee process, in particular the representation stage and the sanctions available, and how a Committee may reach a decision; and
- What will happen with your data.

Support available for the Complaints process.

7. There is guidance and support available throughout the process for those making a complaint and the Members complained of.
8. If you wish to make a complaint or are the Member complained of, the [Commissioner's office](#) can provide you with support in relation to the complaints process and what you need to do but cannot advise you on whether you should make a complaint.
9. If the Commissioner has submitted a report to the Committee, the [Clerking team](#) can provide support in relation to the next step of the process.
10. There is specific support available for those who are considering, or have made, a complaint and for those who are subject to such a complaint:
 - [Support when making a complaint](#)
 - [Support when an allegation is made against you](#)

The admissibility criteria

11. After receiving a complaint, the Commissioner assesses whether it is admissible. To be admissible, the complaint must:

- **be in writing** – this can be by letter or email (but, for example, a complaint cannot be made orally by simply phoning the Commissioner’s office). If help is needed to put your complaint into writing, the Commissioner’s office will provide this;
- **state the name of the complainant** – the name of the person complaining must be included in the information shared with the Commissioner. Normally your name and address of the complainant will be disclosed to the Member. If there is a reason why this should not be done you must give it to the Commissioner. It is important to note that anonymity cannot be guaranteed throughout the process if the complaint proceeds to a final report by the Committee. Reference should be made to the respective Commissioner and Committee privacy notices for more information about how personal data will be processed under the procedure;
- **state the postal or email address of the complainant** (except where the complainant is a current Member) – the Commissioner needs to be able to contact complainants to properly investigate the complaint and, as such, requires a postal or email address;
- **be about the alleged conduct of a named Member** – a complaint must be about an identifiable Member or Members; it cannot be a general complaint about the Senedd or its Members as a whole. A complaint about more than one Member will be dealt with as separate complaints. ;
- **state 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. The complaint should make reference to the part of

the Code or relevant provision that may have been breached by the actions of the Member. ;

- **be supported by sufficient evidence** – in relation to each act or omission complained of to satisfy the Commissioner that (i) the conduct complained of may have taken place, and (ii) if proved might amount to a breach of the Code or a relevant provision. This is to ensure that public money is not wasted dealing with complaints that have no evidential basis;

If you are making a complaint, and some of your evidence is in the record of proceedings, you do not have to include all the quotes from the record, but can just include the relevant paragraph numbers from it. The record of proceedings can be accessed [here](#). (paragraph 4.5);

If you are complaining about matters that have been reported in the press, the Commissioner will need to be satisfied that the report is sufficiently accurate and reliably represents the facts (and is not merely hyperbole or fabricated). (para 4.6); and

- is made within 6 months from the date when a complaint about the alleged conduct could reasonably have been made – unless the Commissioner is satisfied there is good reason for the delay.

What is meant by good reason?

- Complaints should be made as soon as possible whilst the complainant and Member's memories of the events are still clear. If you make a complaint more than six months after the date when it could reasonably have made it, you will have to have "good reason" for the delay, otherwise it will not be considered by the Commissioner.
- 'Good reason' covers a wide range of circumstances where a complaint could not reasonably have been made earlier, for example:

- because of illness;
 - a reaction to the circumstances of the complaint prevented engagement with the complaints process any earlier (it is recognised that this consideration may be particularly relevant in complaints of alleged bullying, harassment, intimidation or other unwanted behaviour); or
 - pressing family or work issues.
- These examples are not exhaustive, and if you think that there was a good reason for not making your complaint in time, you should give full details of it to the Commissioner when making your complaint.

What happens if your complaint is not admissible?

- Paragraph 4.4 states that if a complaint is not admissible, the Commissioner will write to the complainant setting out the reason for the decision including, where possible, which criteria in part 4.2 of the procedure have not been met and what further information would be required to make the complaint admissible. The Commissioner will also set a date for the information to be provided by and give support in identifying relevant areas of the Code.

If you do not provide all the required information by the date specified your complaint will be inadmissible and will not be further considered.

The Commissioner's decision on the admissibility of a complaint is final and can only be challenged by way of judicial review.

Complaints - bringing consideration to an end before final report

13. Paragraph 5.1 sets out the circumstances when the Commissioner may consider it appropriate to discontinue investigating a complaint. These are:

- **it no longer meets the requirements under sub-paragraph 4.2 (admissibility criteria)** for the complaint to proceed – Having considered the matter further, it becomes clear to the Commissioner that the complaint is not admissible;
- the complaint **repeats substantially an allegation that has already been considered by the Commissioner** and no significant additional evidence has been provided – The Commissioner has considered the matter previously and the complaint does not provide new information or evidence;
- the complainant no longer wishes the complaint to proceed;
- the **subject of the alleged conduct, who is not the complainant, does not wish the complaint to proceed** – If the complaint has been made about conduct by a Member towards someone other than the complainant, this person has the right to say they do not want the complaint to continue;
- the **alleged conduct is not sufficiently serious to justify further consideration**, and the Member being complained about has admitted and apologised and, in so far as practicable, rectified the breach. If the Commissioner considers the breach to be minor in nature and the Member has taken steps to correct the error and apologised (for example updating the register of interests when notified there has been an error), then the Commissioner can decide to terminate the investigation at this point and discontinue the remaining stages of the complaints process;

- **the complainant has, without reasonable excuse, failed to co-operate with the Commissioner** – It is important that complainants fully engage with the Commissioner in order to progress a complaint. If, having made a complaint, there is little or no engagement without reasonable excuse, this limits the Commissioner’s ability to properly investigate. Where this prevents the Commissioner being able to reach a sound conclusion on the evidence, the investigation can be terminated at this point; or
- **it is not in the public interest to proceed** further with the consideration of the complaint – Various considerations may be relevant in this regard including, but not limited to, value for money considerations and the nature of the complaint.

14. Paragraphs 5.2 –5.5 set out that, where the Commissioner has made a recommendation to not continue with a complaint (as set out above), the Commissioner must write to the Complainant and the Member complained of setting out the decision and the reasons for it, together with a time limit (being no less than 14 days) within which representations should be made.

15. In this written notification, the Commissioner will also notify the complainant of their right to give notice that they are unhappy with the decision, and to set out the reason why. The Committee will then consider the representations, and can decide that either the Commissioner was correct to discontinue consideration of the complaint or that the Commissioner should continue to investigate in line with the procedure. A decision to refer a complaint back to the Commissioner is a neutral act and has no bearing on the ultimate finding of the Commissioner.

How the Commissioner undertakes investigations

16. Paragraphs 6.1 to 6.4 set out that if a complaint is admissible, the Commissioner will move to the formal investigation stage. This is where the Commissioner undertakes further investigation and produces a report for the Committee. The complainant and Member complained of will be notified in writing that the formal investigation stage has started.
17. The Commissioner will investigate the complaint and establish facts in relation to it. There are a number of ways this may be done, including interviewing people and questionnaires. It is up to the Commissioner to decide the most appropriate method of investigation for each complaint. Having established the facts the Commissioner will form a view on whether a breach of the Code or other relevant provision has taken place. (para 6.3)

Provisions to call witnesses and request documents under the Commissioner for Standards Measure 2009 (the Measure)

18. [Section 11](#) of the Measure gives the Commissioner power to require anybody (related to a complaint) to provide: evidence in person, or documents as requested by the Commissioner.
19. [Section 12](#) of the Measure sets out what the Commissioner must do when using this power. Paragraph 6.4 of the procedure also sets out some requirements on the Commissioner when conducting an interview under section 11.
20. [Section 13](#) of the Measure gives the Commissioner the authority to require that evidence is provided under oath.
21. If the Commissioner has made a request under these sections of the Measure, a failure to comply is an offence which can incur fine (not

exceeding level 5²) and/or imprisonment for a period not exceeding three months.³

² A Level 5 fine is unlimited

³ [National Assembly for Wales Commissioner for Standards Measure 2009](#)

Report of investigation of a Complaint

23. Paragraph 7 of the procedure deals with how the report by the Commissioner is produced and what must be included in it . It sets out requirements on the Commissioner in terms of sharing information with the complainant and Member complained of, as well as what should be in the report.
24. Before finalising a report, the Commissioner will share with the complainant and the Member complained of, a list of the facts as established by the Commissioner. These facts will form the basis of any report and conclusion the Commissioner reaches on the complaint. The complainant and Member complained of will have at least seven days in which to consider the facts and make representations on them.
25. Such representations may include corrections or queries about factual accuracy, or areas of evidence which do not appear to have been considered. It is important to engage with the Commissioner at this stage as this will be the factual basis the report is drafted on. If the Commissioner does not receive any representations, the facts are deemed to be agreed.

Reporting a breach of a minor nature

- During the course of an investigation, the Commissioner may establish a breach has occurred, but that it is of a minor nature. In such instances, if the facts are not disputed and the subject of the complaint has been resolved to the satisfaction of the Commissioner, the Commissioner can recommend that the investigation does not continue. The Committee will review the Commissioner's reasons and make a decision. If they agree with the Commissioner's recommendation, the Commissioner will inform the complainant and the Member complained of that there will be no further action. The Commissioner will not publish a formal report, but may report on any

matters of general principle. The Committee will publish an anonymised list of such rectified complaints on its webpage.

Complaints - Consideration by the Standards of Conduct Committee

- Once the Commissioner has completed a report on a complaint, it will be sent to the Committee. On receipt of a report, the Committee will:
- inform the complainant that the report has been received and provide them with a copy, explain what will happen next and how personal data will be processed (either directly or through the Commissioner's office depending on whether the complainant wishes to deal with the Committee directly); and
- inform the Member concerned that the report has been received and provide them with a copy, explain what will happen next and how personal data will be processed. For the Member this includes the opportunity to make representations to the Committee, either in writing or in person, within a specified timescale.

26. The Committee will meet to consider complaints in private, unless there is an agreement by the Committee to meet in public. Such a decision will be made in consideration of the public interest. The Commissioner will not attend such meetings unless invited to do so by the Committee.

What will happen at the representation stage?

27. If a Member asks to attend, or the Committee asks a Member to attend, this is known as the representation stage. A Member can choose to be accompanied to such a session, but must tell the Committee who will be attending and what their status is (for example if it is a lawyer, or adviser). It will be at the discretion of the Committee to decide if the person accompanying a Member will be able to make representations in the meeting – if the Committee agrees then the rules in the procedure apply to that person also.

28. The procedure sets out the typical running order for a session, although as each complaint is different, the Committee has the

discretion to agree how each representation stage will run. Members will be notified how the Committee intends to approach the meeting in advance. Typically a session will run as follows:

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

29. If a matter is raised during the representation stage that the Committee considers requires further consideration by the Commissioner, then the Committee can refer it back to the Commissioner. This may result in the Commissioner providing further information to the Committee, but will not normally change the Commissioner's report. The information will instead be noted in the Committee's report.

30. If comments are made by a Member in relation to the Commissioner or another individual, the Committee will give that person, where appropriate in the interests of fairness, a right of reply to these comments. The Committee can publish such responses where the request to do so has been made, but this will be at the discretion of the Committee considering the relevant circumstances. Given the role of the Commissioner in the process, the expectation would be that the Committee would normally publish verbatim any such response from the Commissioner.

Decision stage

31. Having gathered any relevant information, the Committee will then move to the next stage, which is making a decision on the report of the Commissioner. The first decision the Committee will make is whether it agrees with the recommendation of the Commissioner. A majority decision is required in this regard.

32. If the decision is that there was no breach of the Code of Conduct, the Committee will move to produce a report.

Report to Senedd – no breach of Code found

33. Paragraphs 8.18 to 8.21 set out the Committee’s reporting requirements to the Senedd if no breach of the Code is found.

34. In this instance, the Committee must lay its report and that of the Commissioner before the Senedd. The report will be anonymised, unless the Member concerned wishes to be named in the report. In that instance any other personal information will be anonymised. Prior to the report being laid it must be shared confidentially with the Member concerned and the complainant. The Committee will also take all reasonably practicable steps to notify individuals named in the report of its publication – this will depend on factors such as whether the Committee has the contact details for such individuals.

Report to Senedd – breach of the Code found

35. The options and sanctions available to the Committee if it decides a Member has breached the Code:

- that a breach has been found but that no further action should be taken;
- that a breach has been found and that the Member should be “censured” in accordance with Standing Orders;

- that a breach has been found and that the Member should be excluded from Senedd proceedings⁴ either generally or specifically – for example, proceedings at particular meetings of the Senedd or its committees – for a time to be specified time in the motion for exclusion, and in accordance with Standing Orders⁵;
- that a breach has been found and that certain rights and privileges of membership of the Senedd should be withdrawn from the Member concerned; or
- where deemed appropriate, any combination of the above sanctions may be applied.

36. The rights and privilege of membership of the Senedd that the Committee may recommend should be withdrawn will be as specified in the Committee's report to the Senedd, and may include:

- withdrawal of a right of access as a member of the Senedd estate;
- exclusion from other activities which a Member might normally have a right to attend; and/or
- removal of representational, ceremonial and related privileges which a Member might normally enjoy as a Member.

⁴ "Senedd proceedings" are defined in section 1(5) of the Government of Wales Act 2006 as "any proceedings of the Senedd, committees of the Senedd or sub-committees of such committees".

⁵ In the case of a recommendation of exclusion, in accordance with Standing Orders this will automatically result in the withdrawal of a member's salary for the period of exclusion, but not to the withdrawal of any other allowances provided for under the Determination on Members' Pay and Allowances. The salary and allowances of staff employed by the Member concerned will not be affected.

37. In deciding what sanction(s) to recommend to the Senedd, the Committee will make a judgement based on the specific circumstances of the case in question. It will consider:
- the severity of the breach;
 - the extent to which it may have brought the Senedd into disrepute;
 - whether the case in question is a repeat offence, or shows persistent conduct which may be considered to show contempt for Senedd colleagues, the rules or the institution; and
 - whether an apology has been made.
38. The Committee will also take account of intent, i.e. whether a breach is deemed to have been committed intentionally or not, and whether any dishonesty or deceit is deemed to have been involved.
39. The Committee may also have regard to the extent to which the Member has co-operated with the Commissioner during the investigation of the complaint
40. Prior to the report being laid, it needs to be shared confidentially with the Member concerned and the complainant. The Committee will also take all reasonably practicable steps to notify individuals named in the report of its publication – this will depend on factors such as whether the Committee has the contact details for such individuals.
41. The Committee has to publish both its report and the Commissioner’ reports (via a process called laying). Documents laid before the Senedd can be found [here](#). The Committee must also table a motion for the Senedd to endorse reports if a breach has been found – this means the report will be considered in a plenary session with all Members able to vote on the report. Such debates give the Member

complained of an opportunity to speak publicly about the complaint and the Committee's finding. The Committee will also take all reasonably practicable steps to notify the complainant and the Member of the date and time of that plenary session.

43. What happens to your data?

44. The procedure sets out how both the Commissioner and the Committee will process your personal data. The relevant privacy notices are available here:
- [Commissioner's privacy notice](#)
 - [Committee's privacy notice](#)
45. The Commissioner's report may not include information which the Commissioner considers to be personal data, or that may cause harm or distress if published. The decision at this stage rests with the Commissioner in terms of the information provided to the Committee, but the Committee may make a further decision, having completed its work, on what information should be published.
46. The Committee can decide to remove personal information (redact) from the Commissioner's report or summarise the findings of the Commissioner's report. This will be done in line with the Committee's [privacy notice](#), or if the Committee considers that publishing the full report could cause harm or distress to any of those involved. If you have any concerns about information which may be published in the Committee's report, please raise them with the Committee.