



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

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

Dydd Mawrth, 15 Gorffennaf 2014
Tuesday, 15 July 2014

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cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, a transcription of the simultaneous interpretation is included.

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

Mick Antoniw	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Llyr Gruffydd	Plaid Cymru The Party of Wales
Mark Isherwood	Ceidwadwyr Cymreig Welsh Conservatives

**Eraill yn bresennol
Others in attendance**

Gerard Elias QC Y Comisiynydd Safonau
Commissioner for Standards

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance**

Richard Johnson Dirprwy Glerc
Deputy Clerk
Meriel Singleton Clerc
Clerk

*Dechreuodd y cyfarfod am 09:29.
The meeting began at 09:29.*

**Cyflwyniad ac Ymddiheuriadau
Introduction and Apologies**

[1] **Mick Antoniw:** Bore da, good morning; I welcome everyone to the Standards of Conduct Committee. For the benefit of anyone coming into the public gallery, a reminder to turn mobile phones to silent. Headsets are available for amplification on channel 0 and interpretation on channel 1. We are not expecting any fire drill; if the fire alarms go off, the ushers will tell everyone what to do and, if necessary, direct them to the fire exits. Under introduction and apologies, Kirsty Williams has sent her apologies and no substitutions are permitted on the standards committee under Standing Order 22.4.

09:30

**Ystyried Adroddiad Blynyddol y Comisiynydd Safonau
Consideration of the Commissioner for Standards' Annual Report**

[2] **Mick Antoniw:** We move on to the National Assembly for Wales Commissioner for Standards' annual report for 2013-14. I welcome the standards commissioner to the committee to present his report.

[3] **Mr Elias:** Thank you, Chair. As you know, I have a statutory duty to provide a report to the Assembly each year. This year, I am pleased to present my report, which runs to 31 March. It is my third report. It is as brief as the last two were, but I hope it contains everything it should contain. If I may, I will make one or two more general points about the report. I refer to the commissioner for standards lecture at the Pierhead, given by the then Lord Chief Justice of England and Wales, Lord Judge, because he underlined what seems to me to be the important and ongoing thread so far as standards are concerned, and that is that it is the reputation of this place that we should all be concerned about. Everyone should be taking steps to ensure that that reputation is maintained and set as high as we possibly can set it.

[4] In paragraph 01.05 of the report—. Perhaps I should, since this is public, set this out, and perhaps I may also say that this report will be available on the commissioner for standards' website to any member of the public who wishes to read it after it has been laid before the Assembly today. Paragraph 01.05 says this:

[5] ‘So how does Wales stand, and particularly the National Assembly and its Members, against that call to demonstrate that our standards are, in reality, high and that we set the example? I am pleased to record,’

[6] —this is for the year in question—

[7] ‘and give credit where it is due, that in terms of admissible complaints against Assembly Members in the last year, the score is good, for there were none. But, as the Presiding Officer, Dame Rosemary Butler AM, says frequently, we need to remain vigilant in all areas of standards and behaviour in public life that we do not let our guard slip.’

[8] Of course, I am sure that I do not need to underline that. I go on to say this, because I believe it to be the case:

[9] ‘I believe it right to state, therefore, that our Assembly Members take their responsibilities under the Code of Conduct very seriously and that the public has every reason to assume the integrity and transparency of both Members and the Assembly itself, and little or no reason currently to doubt it.’

[10] I put on record in paragraph 01.09 the support that I have received,

[11] ‘from the Presiding Officer, the First Minister and Party Leaders as well as all Assembly Members.’

[12] I put that on record particularly because I think that it does demonstrate very tangibly the importance and value that, now, all Members place on getting things right. I am very grateful for that support, as I am grateful for the support, Chair, from you and the clerk to the committee, as well as its members.

[13] I set out in paragraph 02 the complaints that were received for the year in question. There were 20, which falls into the same bracket as previous years. There were 20 complaints received, as you will see, against 14 in the previous year and 20 in the year before. It falls into the same sort of bracket. None of them were admissible, as you will see. None were carried forward this year. I should indicate that in 02.02 is a summary of how the complaints were handled:

[14] ‘3 complaints received related to Welsh Government Ministers. By the statute which appoints me, I am precluded from investigating complaints against Ministers’.

[15] However, I could and perhaps should have added at that point that I am precluded from investigating complaints against Ministers acting as such. So, a Minister, for clarity, does not necessarily fall outside the ambit of being dealt with by the standards commissioner if his or her conduct was that of an AM, as opposed to purely that of a Welsh Government Minister.

[16] In those three cases, I was satisfied that it was a matter that related to a Minister acting as a Minister, and therefore I referred the matter back to the complainant to take it on, if he or she chose, to the Government to examine whether there had been a breach of the ministerial code. Four complaints were not pursued by the complainants following the initial allegation. None of them, I hasten to add, were of the first order in terms of magnitude or seriousness. The complainants were reminded, not once, but a number of times, and asked to provide further information and/or evidence to support those matters, but nothing was received. Therefore, there was no further investigation and, in time, the files were closed.

[17] Four complaints were resolved without the need to proceed to formal investigation relating to such areas as perhaps the odd reference in an Assembly-funded website to something that was more party political and to the use of the words 'local' and 'regional' by AMs. In these cases of complaint, having informally offered the Assembly Member in question the opportunity to rectify the matter, and he or she having done so, I judged that it was not in the public interest to take the matter on further and, in each case, the complainants were themselves satisfied.

[18] Four complaints related to issues that I classed as performance-related complaints, where it was alleged that a Member had not responded to telephone calls, letters and things of that kind. Although, in such instances, I usually contact the AM to notify him or her that a complaint has been made, I do not generally class such matters as potential breaches of the code. At the end of the day, I take the view that the performance of an Assembly Member is to be judged by the electorate at the ballot box.

[19] Two of the 20 complaints related to comments made by AMs in Plenary or in official meetings. Such complaints were deemed inadmissible. It is not for me, in the exercise of my powers and functions, to seek to determine the truth or accuracy of any comments of an elected Member in such a setting.

[20] Three complaints received related to other matters, including the use of Assembly resources, allegations of a conflict of interest, and the actions of an AM in relation to the local and regional roles. However, on the basis of the evidence provided to me, I decided that there had been no breach of the code in any of these cases, and, therefore, deemed the complaints inadmissible.

[21] So, that is how, in a nutshell, the 20 complaints were dealt with. You will see that, at paragraph 03, I set out other activities with which I have been involved and then, specifically because it is set out under the statute that I should so report, I set out at paragraph 04 the cost of this office, which is shown at table 4 on page 11 most graphically, I think. The expenditure in 2011-12 was £19,549, in 2012-12 it was £24,768, and in 2013-14 it was £21,244. So, again, it is staying within the same bracket, as I am sure the committee will appreciate. The role of the commissioner is, to some extent, demand led. This year, for example, we have had some complaints that have had to be investigated and we have also had quite a considerable amount of time taken in relation to reviewing our code and the consultation process there. So, it may be that the expenditure next year will be marginally up on the figure this year, but that is why, I think, it fluctuates from year to year. However, I would make the point that in relation to, I think, all other United Kingdom parliaments, the cost of the commissioner's office here—I know that we are not precisely comparing like with like—is very considerably lower than elsewhere.

[22] So, Chairman, simply noting that I do thank those who help me at paragraph 07—I am very grateful for the assistance that I get and I am grateful for the assistance that I get from the Assembly Commission—that is my report, which will be laid before the Assembly today.

[23] **Mick Antoniw:** Thank you very much. Are there any questions to the commissioner?

[24] **Llyr Gruffydd:** Mae gennyf un cwestiwn, os caf. Yn amlwg, rwyf eisiau diolch i'r comisiynydd am ei arweiniad a'i gyngor gydol y flwyddyn. Mae'n gaffaeliad mawr i ni fel pwyllgor, ac rydym i gyd yn gwerthfawrogi'r gwaith sy'n cael ei wneud.

Llyr Gruffydd: I have one question, if I may. Obviously, I want to thank the commissioner for his leadership and advice during the year. It is a great asset to the committee and we all appreciate the work that is done. I just wanted to note the reasons

Hoffwn jest nodi'r rhesymau yn y manylion yr ydych chi'n eu rhoi am y gwahanol gwynion sy'n cael eu cyfleu. A oes rhywbeth yr ydych chi'n meddwl y gallwn ni ei wneud fel Aelodau Cynulliad i esbonio'n well wrth y cyhoedd yr hyn sy'n gŵyn addas neu, efallai, yr hyn nad yw'n addas? Mae hwnnw'n gwestiwn cyffredinol.

in the details that you provide for the various complaints. Is there anything that you think that we can do, as Assembly Members, to explain better to the public what is a suitable complaint, or what is not appropriate? That is just a general question.

[25] **Mr Elias:** Chair, may I indicate that, when I receive complaints that are not admissible, I do not simply respond to the complainant that that is the fact? If I can put it this way, I go out of my way, and ensure that my office goes out of its way, to indicate to the complainant why the complaint is not admissible and what other steps they may be able to take to gain some satisfaction for the position that they are in. I not infrequently see complainants, even when I am saying that their complaint is inadmissible, to explain to them face to face what the position may be, and, as I said, what other steps they may be able to take. Almost invariably, if it is, for example, what I will call a 'performance issue' I will—either myself or through the staff—ensure that the office of the Assembly Member concerned is contacted so that they are aware that this is being said. Frequently, the letter has not been received, for example, or there is some administrative error that has been made somewhere. It means that amends can be made. It is not easy, because many of the complaints that I get, I think it is fair to say, do seem to reflect what I call the 'performance-related matters' and I think that it is simply for Members to ensure that they are dealing with matters even if it is only, as it were, a courtesy note stating 'I have received the issue that you wish to raise with me'. However, there also appears to me to be perhaps a view that is held more broadly than one might imagine that there is a duty on Assembly Members to take up the cause of any constituent, whatever it may be. Indeed, in a recent letter that I wrote to a complainant who was, effectively, urging me to come to that conclusion, I said to him in the letter, 'But, of course, you must understand that there cannot be that duty because you could be requiring in one constituency a Member to take up both sides of an argument because two constituents will take different views.' So, it is difficult to say that there are steps that can be taken. I think it is an education process that we can all participate in.

[26] **Mick Antoniw:** Mark Isherwood, do you have anything to ask?

[27] **Mark Isherwood:** Yes, I just have a quick comment. You have usefully referred to the comments made by Lord Judge referring to a focus on the perception of the conduct of politicians. What is your view on the danger of our focusing on tackling public perception rather than reality? I think all we can do is focus on whether Members do or do not act within the rules, act appropriately, act ethically, and represent as they should, because perception is something, generally, that we cannot control. If certain elements of society seek to represent everything we do negatively and only dig the dirt and never represent the good then really we cannot control that. All we can do is what we are supposed to do, which is try to ensure within the means of the Assembly that standards are maintained. Could you comment on that before I go further?

[28] **Mr Elias:** Well only to say, of course, that I think Lord Judge endeavoured to do that and to deal with that aspect—it is there at paragraph 1.03—and said that we have to work at it. That is my view too. If the perception is there, I agree with you. One perhaps cannot do anything directly about the perception except to ensure that we act to the highest possible standards and that that is then seen by the public.

[29] **Mark Isherwood:** I have a few other comments. You referred, I think, under the complaints analysis in the first section, to three complaints against Welsh Government Ministers. Could perhaps just the three words 'in that capacity' be added, so that it is 'if

related to Welsh Government Ministers in that capacity', just to clarify that?

[30] **Mr Elias:** They could, but I think my report has gone before the Assembly.

[31] **Mark Isherwood:** Oh, it has gone. Right—

[32] **Mr Elias:** Certainly I will make that clear, however.

[33] **Mark Isherwood:** You have clarified that on the record. Thank you. Finally, in terms of two complaints relating to comments made by AMs in Plenary, even if you do not have investigative powers in such matters, do you believe there is any role for yourself or the committee if any Member repeatedly and knowingly makes statements that are false or untrue?

[34] **Mr Elias:** In Plenary?

[35] **Mark Isherwood:** Yes.

[36] **Mr Elias:** Yes, I do. It is not, I think, that I have no power to deal with matters in Plenary; I believe that I do, and I think that I am given them by statute, but the protocol, if you like, that I have with the existing Presiding Officer is that, where matters arise in Plenary, it will, in the first instance, be for the Presiding Officer or the Deputy—whoever is presiding at the time—to deal with the matter. However, of course, if he or she calls upon me to investigate matters that may be broader than simply something said in Plenary, then I am available and willing to investigate further and, if necessary—if the Presiding Officer were to ask—to take the matter on. So, I do not say that the commissioner is excluded from dealing with matters in Plenary. It is, at the moment, obviously better that those who preside should have that power initially. That is the view, certainly, that I take, and which I know the Presiding Officer takes, but I would certainly be prepared and available to investigate and take a complaint on if it were referred to me.

09:45

[37] **Mark Isherwood:** Okay. Thank you.

[38] **Mick Antoniw:** The only comment I would make on the report is that I think this is an indication that all Assembly Members not only work hard, but have worked hard, to maintain the high standards in this Assembly. Consequently—and, I suppose, sadly—this report will probably be totally non-newsworthy in any matter. It is the commissioner's report, and I put on record that I appreciate very much not only this report and the work that the commissioner has done, but also—to reflect the comments you made, Llyr—the considerable work that has been going on in terms of the code of conduct and the work on the register of interests, which will be coming in report form to our next meeting at the beginning of the next term. If there are no other comments, thank you very much for your report.

[39] **Mr Elias:** I am grateful, Chairman.

[40] **Mick Antoniw:** That was the only item on the agenda today. Again, I thank all members of staff and everyone else for coming today. We will circulate a list of the meetings for the next term over the course of the next week or two. Thank you very much. I close the meeting.

*Daeth y cyfarfod i ben am 09:46.
The meeting ended at 09:46.*