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Further information on Standards Commissioners

1 Introduction

This briefing paper provides further information relating to Standards Commissioners in the Scottish Parliament, National Assembly for Wales and House of Commons. The information was requested by the Committee on Standards and Privileges following its consideration of [NIAR paper 717-11](#). In particular, this briefing provides additional information on:

- whether and in what circumstances other standards committees allow for investigations to be carried out into allegations of misconduct against former members
- examples of such instances (if any exist)
- what sanctions (if any) have been imposed against former members who have been found to breached the Code of Conduct
- further detail on the timescales agreed by other committees for submitting complaints to the respective Commissioners and a comparison with timescales associated with other similar high-profile complaints procedures

- requirement on other Commissioners to comply with agreed Codes of Conduct and to register certain interests

2 Issues

Whether and in what circumstances other standards committees allow for investigations to be carried out into allegations of misconduct against former members

Scottish Parliament

Section 20 of the Scottish Parliamentary Standards Commissioner Act 2002 (SPSC Act 2002) states that for the purposes of the Act 'member of the parliament' includes former Members¹. Therefore this allows former Members to be investigated for alleged breaches of the Code of Conduct. In his 2007-08 annual report, the Commissioner detailed an investigation into a former Member. The alleged misconduct took place when the Member had been an MSP. Below is an extract from the Commissioner's report:

I concluded, and the Standards, Procedures and Public Appointments Committee agreed, that there had been a breach of the requirements in the Members' Interests Order regarding registration of gifts. The former Member apologised for his error and the Committee did not recommend any sanction, noting that the available sanctions in any case could not apply to a former Member, as they involved restriction or prevention of participation in proceedings of the Parliament².

The Standards, Procedures and Public Appointments Committee in its report on the matter made the following observations:

Mr (Campbell) Martin is no longer an MSP. However, former MSPs may be subject to complaints to the Standards Commissioner concerning conduct whilst they were in office.

Under paragraph 9.43 in the guidance to the Code of Conduct...where the Committee finds that there has been a breach of any requirement to register an interest, it will decide whether or not to recommend the imposition of sanctions against the member.

Such sanctions are limited by the Members' Interests Order...to the prevention or restriction of that member from participating in any proceedings of the Parliament.

¹ Section 20 of the SPSC Act 2002. The only exemption from this is to allow former Members to apply for the post of Commissioner. See Section 1(3) of the Act.

² 2007-08 Annual Report of the Scottish Parliamentary Standards Commissioner

As he is a former MSP, Mr Martin is no longer entitled to participate in proceedings of the Parliament and therefore the Committee cannot recommend any sanction to the Parliament. Accordingly the Committee makes no such recommendation³.

The Members' Interests Order referenced in the Committee's report is the Interests of Members of the Scottish Parliament Act 2006 and the case of Mr. Martin concerns a failure to declare registrable interests. However, the Code of Conduct further states that:

As laid down in Schedule 3, paragraph 2 of the Scotland Act, the rights and privileges which the Parliament may consider for withdrawal are a member's rights and privileges as a member. The Parliament may consider the following to be appropriate in particular cases:

- exclusion of a member from proceedings of the Parliament generally or specifically, for example, proceedings at particular meetings of the Parliament or its committees;
- exclusion from other activities which a member might normally have a right to attend, such as Cross-Party Groups;
- withdrawal of a right of access as a member to the Parliamentary complex;
- withdrawal of a right of access as a member to Parliamentary facilities and services;
- removal of representational, ceremonial and related privileges which a member might normally enjoy as a member;
- withdrawal of a member's allowance or salary or any part of an allowance or salary⁴.

Officials from the Scottish Parliament have confirmed that the Code of Conduct only allows for sanctions against members that relate to the withdrawal of rights and privileges as an MSP – as a result there is no mechanism for the Parliament to impose sanctions on a former Member⁵.

National Assembly for Wales

The legislation surrounding the Commissioner for Standards in the National Assembly for Wales (National Assembly for Wales Commissioner for Standards Measure 2009) does not contain a specific provision that makes reference to former Members. However, in response to a request for information for this paper, the Commissioner stated:

³ <http://archive.scottish.parliament.uk/s3/committees/stanproc/reports-08/stpr08-03.htm>

⁴ <http://www.scottish.parliament.uk/msps/42841.aspx>

⁵ Information received from Committee officials 1 December 2011

Under Section 6 of the Measure, I am empowered to investigate “any complaint that the conduct of an Assembly Member has, at a relevant time, failed to comply with a requirement of a relevant provision”. A “relevant time” is defined as “a time when the requirement in question was in force”. Therefore, if a complaint is received about the conduct of a former Member, relating to the time that they were a Member, then I am able to investigate... a hypothetical example might be an alleged misuse of Assembly resources for electoral purposes in the run up to an election at which the Member is subsequently defeated. It would be open to me, as Commissioner, to investigate such a matter, even though the individual was no longer a Member of the Assembly⁶.

Furthermore, in response to a question asked at a meeting of the Committee on Standards of Conduct, the Commissioner confirmed that former Members were within his remit:

Member: What would be the position if an investigation was still alive at the time of an election and the Member that you were investigating did not return, either by choice or by choice of the electorate? Would the investigation cease or continue to fruition?

Commissioner: From my perspective, the investigation would not cease; it would continue. I would report in the usual way and the matter could then be taken to the Assembly. Notwithstanding that the former Member was not present, the Assembly could determine to deal with the matter in a variety of ways that might, for example, have an effect on that Member in the future. Not being elected or even not standing does not necessarily bring an investigation to an end⁷.

Officials from the Committee confirmed that that there has never been a sanction applied by the Committee, even in a case where a breach has been found. There are five possible ‘recommendations’ the Committee could make:

- that no breach has been found and that the complaint is dismissed
- that a breach has been found but that it is a failure of a minor nature and the complaint should be dismissed
- that a breach has been found and that no further action should be taken
- that a breach has been found and that the Member should be “censured” under Standing Order 16.9
- that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time⁸

⁶ Information received from the Assembly Commissioner for Standards, 28 December 2011

⁷ Standards of Conduct Committee, 18 October 2011:

<http://www.senedd.assemblywales.org/documents/s3467/18%20October%202011.pdf>

⁸ Paragraph 7.12 Procedure for Dealing with Complaints

However it remains unclear to what extent the Committee could impose sanctions on former Members.

The Commissioner is currently consulting Members on the *Procedure for Dealing with Complaints* and it is likely that the issue of sanctions will be addressed as part of this. The Commissioner will be bringing forward his proposed changes to the Procedure in early 2012, to be considered formally by the Committee on 21 February.

House of Commons

In December 2010 the Standards and Privileges Committee of the House of Commons published its report on the activities of former MPs who were recorded on camera offering (what they believed to be) a US Communications company access to Ministers. The communications company did not in fact exist and the recordings were part of a 'sting' operation by the *Sunday Times* and the makers of the *Dispatches* television programme. All of the MPs involved were intending to stand down at the 2010 UK Parliamentary election.

The Parliamentary Standards Commissioner investigated the affair and reported to the Standards and Privileges Committee. The Committee made a number of observations that are worth restating:

Mr (Geoff) Hoon sought to argue that the Code of Conduct should not be applied to many of the statements and actions which have been covered in the Commissioner's inquiry. Mr Hoon's contention was that he was discussing what he might do after leaving Parliament, when he would no longer be subject to the Code; that in any case his employment prospects were not covered by the Code, which explicitly states that it does not apply to what Members do in their purely private and personal lives; and that meetings he had had while still a Member and which he referred to in the course of the meeting on 3 March were carried out in a personal capacity, not as an MP.

The Commissioner accepts that the Code does not apply to actions which a Member suggests he or she may carry out after leaving Parliament. But it does apply to activities undertaken while still a Member, including the meeting each Member held with an undercover reporter. The Commissioner also takes the view that the positions for which Mr Hoon and the other Members believed they were being considered were an aspect of their public lives, in which connection he notes that the employment of former Ministers is regulated by an Advisory Committee on Business Appointments.

In our judgment, the Code applies to a Member in circumstances where—as in the cases in point—the fact that the Member is an MP is relevant. In all the cases considered in this Report, the Members' status and record as an MP (and in all but one case also as a Minister) appears to have been the reason why they had been invited to the meeting. This was not about their purely private or personal lives⁹.

⁹ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmstnprv/654/65404.htm#a7>

The report goes on to say:

Sanctions against former Members

We are unaware of any modern precedent for punishing a former Member for misconduct committed while still a Member. The range of sanctions available to the House when dealing with such a breach must be regarded as very limited. The options of requiring an apology on the floor of the House or of suspension from the service of the House are of course no longer applicable in such cases. It is commonly supposed that the House has untrammelled power to fine or to imprison offenders, but no-one has been fined by the Commons since 1666 and the last committal of an offender was in 1880. The use of these powers would be a major step; it is not a step we invite the House to take. It is also some time since anyone was summoned to the bar of the House to be reprimanded or to apologise, the last case being in 1957.

The House may not interfere with the pension entitlement of a former Member, which is a matter governed by statute. The House does, however, retain control over access to its precincts. The current rules allow former Members to apply for and be issued with a photopass, which grants them privileged access to parts of the Parliamentary estate and to some of the facilities located on the estate. This entitlement can be suspended or withdrawn.

The principal sanction, however, is and will in all likelihood remain the damage which an adverse finding by the Commissioner, backed up by a critical Report from this Committee, inflicts on someone whose status and, in some cases, livelihood depends in large part on their public reputation¹⁰.

Furthermore, in its eleventh report of the 2010-11 session, the Committee noted in relation to a former member:

We note that there were significant delays on Mr Wright's part in responding to the Commissioner's inquiry. The Code of Conduct for Members of Parliament requires Members to co-operate with any inquiry by the Commissioner. In our view, a former Member who is the subject of a complaint which is being investigated by the Commissioner is under just as much obligation to comply with this aspect of the Code as a sitting Member. It is of great importance for the reputation of the House of Commons and its Members that the Commissioner is able to carry out his work effectively and without impediment. We take this opportunity to remind both Members and former Members of the importance of prompt and full co-operation with the Commissioner's inquiries. We welcome Mr Wright's apology to the Commissioner for delaying his investigation¹¹.

Despite the Committee's assertion that former Members are under as much obligation as current Members to comply with requests from the Commissioner, it is not clear how

¹⁰ As above

¹¹ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmstnprv/788/78802.htm>

it would deal with a former Member who simply refused to co-operate. As the Committee itself noted in its report on the *Sunday Times/Dispatches* affair, the sanctions regarding former Members are limited, beyond the damage to a person's reputation caused by publication of a Committee report.

Further detail on the timescales agreed by other committees for submitting complaints to the respective Commissioners and a comparison with timescales associated with other similar high-profile complaints procedures

Scottish Parliament

The SPSC Act 2002 provides that complaints should be made no later than 12 months after the complainer could reasonably have become aware of the conduct complained about (this is repeated in the guidance to the Code). However, under the terms of section 7(4) of the Act, the Commissioner is required to report to the Parliament before dismissing a complaint that does not meet this 12 month deadline. Upon receipt of such a report, it would then be for the Parliament to direct the Commissioner to either dismiss the complaint or to treat it as if it had met the 12 month deadline. There is no prohibition to complaints being made against former MSPs and no specific timescales other than set out in the legislation¹².

National Assembly for Wales

In accordance with paragraph 3.1 of the *Procedure for Dealing with Complaints against Assembly Members*, in order to be admissible a complaint must be made within one year from the date when the complainant could reasonably have become aware of the conduct complained about.

Parliamentary Commissioner for Standards

Procedural Note 2 states: The Committee on Standards and Privileges has made clear to the Commissioner that it would not expect him normally to consider complaints against former Members or those about matters over seven years old unless these are of a particularly serious nature¹³.

Comparisons with other office holders

The following table provides comparisons between the timescales for complaint submissions to other high-profile office holders: the Police Ombudsman, Children's Commissioner, Older Person's Commissioner and the Northern Ireland Ombudsman.

¹² Information provided by Officials from the Procedures and Public Appointments Committee, 1 December 2011

¹³ <http://www.parliament.uk/documents/pcfs/procedural-notes/pcfsprocednote2.pdf>

Table 1: Timescales for complaint submissions to high-profile office holders

Police Ombudsman ¹⁴	Children's Commissioner ¹⁵	Older Person's Commissioner ¹⁶	Northern Ireland Ombudsman ¹⁷
<p>Complaints must be made within one year of the incident occurring.</p> <p>There are special circumstances where this does not apply:</p> <ul style="list-style-type: none"> ◦there was a previous investigation, and the Police Ombudsman considers that a complaint is grave or exceptional ◦there was no previous investigation, but there is now new evidence which was not available before, and the Police Ombudsman believes the complaint is grave or exceptional 	<p>The Commissioner shall not conduct an investigation into a complaint if it appears to the Commissioner that there has been an unreasonable delay in making the complaint to the Commissioner.</p>	<p>The Commissioner may not conduct an investigation into a complaint if it appears to the Commissioner that there has been an unreasonable delay in making the complaint to the Commissioner.</p>	<p>The Ombudsman would generally not investigate a complaint if the action complained of took place more than 12 months ago.</p>

Requirement on other Commissioners to comply with agreed Codes of Conduct and to register certain interests

Scottish Parliament

There are no provisions in either the SPSC Act 2002, or the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, which set out a Code of Conduct for the Public Standards Commissioner or which require him to register any interests that he may have¹⁸.

National Assembly for Wales

Committee officials confirmed that: "There is nothing specific in the Measure other than the Schedule setting out that fair and open competition must be used for appointment and that the Assembly is responsible for the terms of the appointment. The recruitment itself was confidential, but the Committee did hold a confirmation hearing in public on

¹⁴ <http://www.policeombudsman.org/modules/pages/howToComplain.cfm/#step2>

¹⁵ http://www.legislation.gov.uk/nisi/2003/439/pdfs/uksi_20030439_en.pdf

¹⁶ http://www.legislation.gov.uk/nia/2011/1/pdfs/nia_20110001_en.pdf

¹⁷ <http://www.ni-ombudsman.org.uk/Dealing-with-Complaints/Matters-he-cannot-deal-with.aspx>

¹⁸ Information provided by Officials from the Procedures and Public Appointments Committee, 5 December 2011

21 October 2010 for the proposed appointee prior to going into private meeting to agree his appointment, and the matter of interests was raised¹⁹:

On the question of trust, Chair, perhaps I should say a word more. The commissioner must not only be independent and impartial—and I shall be—he must be seen to be independent and impartial. As I think is probably well-known, I have connections with clubs and organisations in the field of sport, law and leisure within and outside Wales. I have strong links with the Church in Wales and I am the chancellor of a Welsh diocese, and although I have not attended a meeting nor been active in any way for about 12 years, I have been a freemason. If and insofar that I take the view that there arises, through these links and connections, any possibility that it may compromise my independence or impartiality in investigating or determining a complaint, or the perception of it, I would invite the Assembly, no doubt through this committee, to use the powers granted under the Measure to ensure that an acting commissioner handled that particular matter. I shall be alert to such possibilities, although I do not believe that, in reality, they are likely to pose any significant problem¹⁹.

House of Commons

Prior to the appointment of John Lyon as Commissioner, the House of Commons published a report (*Parliamentary Commissioner for Standards: Nomination of Candidate*²⁰) which outlined the appointments process of the Commissioner:

Following the exacting (recruitment) process...the House of Commons Commission recommends to the House Mr John Lyon CB, currently the Director General of Legal and Judicial Services in the Ministry of Justice responsible for relations between the judiciary and executive. The Commission is confident that he has the necessary standing, ability and personal authority for the role, and that he will bring to it the independence, discretion, and strength of character required to ensure that the system of Parliamentary self-regulation continues to work effectively, and that it is seen to do so both inside and outside the House²¹.

During the subsequent debate in the House no issues of integrity or declaration of interests were raised²².

¹⁹ Committee on Standards of Conduct, 21 October 2010

²⁰ Parliamentary Commissioner for Standards: Nomination of Candidate, October 2007: <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmcomm/1096/1096.pdf>

²¹ As above

²² HC Deb 15 November 2007 col 861:

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm071115/debtext/71115-0010.htm>