



Northern Ireland
Assembly

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Ray McCaffrey

Issues relating to UK Standards Commissioners

1 Introduction

This paper has been prepared following a request from the Committee on Standards and Privileges. The Committee asked for information on the following specific points:

- If (and, if so, how) standards commissioners make available to the public any detail in relation to complaints which have been submitted to the Commissioner (in advance of the respective committees considering them)
- How they deal with complaints which are considered to be trivial or not of sufficient gravity to warrant investigation; and (if possible)
- How they would deal with a complaint where a Member had ceased to be a Member but then became a Member again

It provides information from the Parliamentary Commissioner for Standards (House of Commons), Commissioner for Standards (House of Lords), Commissioner for Ethical Standards in Public Life in Scotland (Scottish Parliament) and the Commissioner for Standards (National Assembly for Wales).

In addition to published documentation, the research sought information directly from the offices of the standards commissioners, but information from the Commissioner for

Ethical Standards in Public Life in Scotland and National Assembly for Wales Commissioner for Standards has not been received in time for inclusion in this paper.

The following are the **key points** from the paper:

Making available information in relation to complaints submitted to the Commissioner

- The Parliamentary Commissioner for Standards now publishes information on a monthly basis on ongoing inquiries, including the names of those Members under investigation
- The House of Lords Commissioner will reactively confirm queries regarding whether a complaint has been received. There is the possibility of a move to a more pro-active system as exists in the House of Commons, but no action has yet been taken
- The relevant legislation in Scotland and Wales places restrictions on the disclosure of information relating to complaints
- A Direction issued in 2004 by the Standards Committee in the Scottish Parliament stated that the Scottish Parliamentary Standards Commissioner (what is now the Commissioner for Ethical Standards in Public Life in Scotland) could not confirm or deny the receipt of a complaint
- The National Assembly for Wales Commissioner for Standards (NAfWCS) does not appear to provide information in relation to complaints received prior to the completion of an investigation

Dealing with complaints which are considered to be trivial or not of sufficient gravity to warrant investigation

- If the Parliamentary Standards Commissioner concludes that a complaint is frivolous or vexatious, she may decide not to inquire into it, and would report this decision briefly to the Committee
- The House of Lords Standards Commissioner has discretion to screen out complaints which are “clearly trivial or vexatious”, or which substantially repeat allegations which have already been investigated (unless new evidence is provided)
- The Commissioner for Ethical Standards in Public Life in Scotland (CESPL) can, in certain circumstances, screen out complaints that he deems do not warrant further investigation. He must however, have regard to the eligibility tests for complaints that are set out in legislation
- The National Assembly for Wales Commissioner for Standards (NAfWCS) must assess complaints against a set of criteria and may determine that a complaint is inadmissible

Dealing with a complaint where a Member had ceased to be a Member but then became a Member again

- The Parliamentary Standards Commissioner would judge each case on its individual merits before deciding whether or not to proceed
- In the case of the House of Lords, this could apply to a bishop who retires and later becomes a life peer, or an hereditary peer who left the House in 1999 but returns in an hereditary peers' by-election. But there is no specific provision in the Code of Conduct for how this should be dealt with
- No specific provision exists for this scenario under the Scottish regime, although former Members can be investigated
- There appears to be no specific provision for this in Wales, although again former Members can be investigated

2 House of Commons

Making available to the public any detail in relation to complaints which have been submitted to the Commissioner (in advance of the respective committees considering them)

In 2010 the House of Commons Committee on Standards and Privileges published its report *Publication of information about complaints against Members*¹. The report noted that its predecessor Committee had recommended that the Parliamentary Commissioner for Standards should be allowed to publish more information on complaints against Members of Parliament. In January 2010 the Committee set out a proposed way forward in relation to this issue:

Complaints against MPs: proposal to publish more information

The Committee on Standards and Privileges has agreed a proposal from the Parliamentary Commissioner for Standards that he should publish more information on complaints against Members of Parliament.

The proposed new arrangements are as follows:

1. The Commissioner will each month place on his website statistical information about complaints. This will cover the number of complaints he has received; the number he has accepted; the number he has not accepted by broad category; and the number which he has resolved in the previous month, including the numbers not upheld, rectified, or reported to the Committee².

¹ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmstnprv/577/577.pdf>

² The current Commissioner is Kathryn Hudson, whose tenure started on 1 January 2013. Ms. Hudson replaced John Lyon, who was Commissioner at the time of the Committee's report.

2. The Commissioner will publish on his website his determination letters on specific complaints not upheld or rectified, as soon as possible after they are produced.

3. The Commissioner will publish on his website the evidence he has received in relation to complaints which he has not upheld or has rectified. It may not always be possible to publish the evidence at the same time as the relevant determination letters are published.

4. The Commissioner will list each month on his website the names of Members who are subject to an inquiry, with a brief description of the nature of the complaint.

The Committee has agreed with the Commissioner that under the proposed new arrangements the Commissioner will publish statistical information from the beginning of this financial year, quarterly for the first three quarters, and monthly thereafter, to be followed by a list of Members currently the subject of an inquiry. The Committee has agreed with the Commissioner that the publication policy will apply also to determination letters for this current and for the last financial year, and in due course to the evidence on which they are based. The Commissioner will write to each Member concerned and to each complainant and witness before publication takes place.

The new publication policy will require the approval of the House. Further announcements will be made once this has been obtained.

Subsequent approval of the House was necessary due to the fact that Standing Order 150, which set out the Commissioner's powers, did not include provision for him to publish information on complaints received. However, Parliament was dissolved before it could consider the new policy, although the House finally agreed in December 2010 to the proposed changes³.

These changes were also contained in a Procedural Note of April 2012, which set out what information could be published in relation to complaints and enquiries:

The Commissioner publishes monthly updates on his or her caseload including the names of any Members under inquiry and the general category in which the inquiry comes. Outside of these updates the Commissioner will confirm, in response to enquiries, that a complaint has been received against a Member, that a Member is subject to an inquiry, or, at a later stage, whether that inquiry has concluded.

However, the Commissioner will not at any time discuss details of a complaint or inquiry with third parties...

The Commissioner's office will provide general, factual information to the press and others on request about the system for regulating Members' conduct and investigating complaints. However, neither the Commissioner nor his or her staff will talk to the press or others about any individual complaint other than within the

³ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmcomstan/1328/1328.pdf>

framework agreed by the House and summarised in this note. The Chair of the Committee will normally take the lead in dealing with inquiries from the press about the published reports of the Committee⁴.

Why did the policy need to change?

Some of the information contained in the Annual Report could be outdated by the time it was published, so the Commissioner and the Committee agreed that statistics should be published on a monthly basis.

What information does the Commissioner now publish?

The Commissioner now has an inquiries home page on his website which provides statics on current and past inquiries. Below is a sample of the information available:

Matters under inquiry by the Commissioner

Members who were the subject of an inquiry by the Commissioner on 30 September 2013 are listed below, in chronological order according to when the inquiry began, together with a brief description of the nature of the allegation. This list is updated monthly.

Current inquiries

- Rt Hon Simon Hughes MP - Declaration, registration and lobbying
- Rt Hon Maria Miller MP - Members' Allowances (ACA/PAAE)
- Mr Patrick Mercer MP - Declaration, registration, paid advocacy
- Mr Tim Yeo MP - Lobbying

Key to abbreviations used above

- ACA - Additional Costs Allowance
- PAAE - Personal Additional Accommodation Expenditure (which replaced ACA from 1 April 2009)

Page last updated on 7 October 2013⁵

Dealing with complaints which are considered to be trivial or not of sufficient gravity to warrant investigation

Paragraph 114 of the House of Commons Code of Conduct and the Guide to the Rules relating to the Conduct of Members (2012) states:

If the Commissioner concludes that a complaint is frivolous or vexatious, or that an inquiry would be disproportionate given the nature and seriousness of the allegation

⁴ http://www.parliament.uk/documents/documents/Procedural_Note-April_2012.pdf

⁵ <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/pcfs/publications/inquiries/current-inquiries/>: page accessed 31 October 2013

made, he may decide not to inquire into it. In such cases he would report the circumstances briefly to the Committee.⁶

Dealing with a complaint where a Member had ceased to be a Member but then became a Member again

The Office of the Parliamentary Standards Commissioner advised that this scenario would depend on the case. The Commissioner doesn't halt an investigation if a Member ceases to be a Member, and she can investigate former Members with the consent of the Committee on Standards. The Commissioner would investigate the actions of a former Member only if those actions took place while they were a Member. She would consult the Committee on Standards before accepting for investigation a complaint against a former Member or one which went back more than seven years.

However, if she had turned down a complaint against a former Member, and then that Member was re-elected, it would be a matter for her discretion and judgment on the merits of the individual case as presented⁷.

3 House of Lords⁸

Making available to the public any detail in relation to complaints which have been submitted to the Commissioner (in advance of the respective committees considering them)

At present the House of Lords press office reactively confirms to enquirers whether a complaint has been received, and whether the Commissioner will investigate it. No other information is then revealed until the case is concluded, except general information about process. However, the Sub-Committee on Lords' Conduct has in principle agreed that the Commissioner may establish a webpage giving basic information about investigations that are underway, in the same way as the Parliamentary Standards Commissioner. This webpage has not yet been established (see below).

Creation of web-page

The reason why the sub-committee approved the creation of a webpage was because the system of reactively providing information encourages journalists to contact the press office for information. This sometimes led to information being released in a piecemeal way and to speculation by journalists as to what stage an investigation was at. It also meant that journalists "in the know" would find out about investigations, but not necessarily the general public. It was thought better to have basic information available on the web, to which the press office could point journalists and say no more.

⁶ <http://www.publications.parliament.uk/pa/cm201012/cmcode/1885/1885.pdf>

⁷ Information received from the Office of the Parliamentary Standards Commissioner

⁸ Please note that information in this section is taken from correspondence received from the Commissioner's office, unless stated otherwise.

When the sub-committee approved the webpage its policy was that it would always recommend that reports of the Commissioner be published, save for exceptional cases. The decision on whether to publish is for the parent committee. Since then the sub-committee has decided that, when a member is cleared of any wrongdoing, it will make not make a recommendation either way as to whether to publish. This could result in the fact that a member is under investigation being known to the public (through the webpage), but the report clearing the member not being published. This could potentially lead to accusations of whitewash and lack of transparency. Therefore the sub-committee may have to reconsider either the creation of the webpage or the practice of not advising on publication.

Dealing with complaints which are considered to be trivial or not of sufficient gravity to warrant investigation

The Commissioner has discretion to screen out complaints which are “clearly trivial or vexatious”, or which substantially repeat allegations which have already been investigated (unless new evidence is provided). The House of Lords Guide to the Code of Conduct states:

The Commissioner conducts a preliminary assessment of all complaints. The Commissioner will not without good reason consider either anonymous complaints or ones where the complainant is not prepared to have his name and complaint disclosed to the Member whose conduct is criticised. He screens out complaints which fall outside the scope of the Code. He may choose not to consider complaints which are clearly trivial or vexatious, or which substantially repeat allegations which have already been the subject of inquiry (unless there is significant fresh evidence in their support)⁹.

Dealing with a complaint where a Member had ceased to be a Member but then became a Member again

This could apply to a bishop who retires and later becomes a life peer, or an hereditary peer who left the House in 1999 but returns in an hereditary peers’ by-election. There is no specific provision in the Code covering such circumstances, but the principles of natural justice and fairness (which apply to the complaints process) require that a member is judged against the Code in force at the time of the conduct complained of. So if the allegation relates to the member’s previous membership, he/she would be assessed against the Code then in force. The Code only applies to current members of the House. So if the allegation relates to the period when he/she wasn’t a member, then it wouldn’t be investigated¹⁰.

⁹ <http://www.publications.parliament.uk/pa/ld/ldcond/code.pdf>

¹⁰ Information received from the Office of the House of Lords Commissioner for Standards

4 Scottish Parliament

The Commissioner for Ethical Standards in Public Life in Scotland is the person with responsibility for investigating complaints against Members of the Scottish Parliament. The office of the Commissioner has undergone a number of changes since its original inception as the Scottish Parliamentary Standards Commissioner in 2002. The website of the Commissioner provides a timeline of the changes:

- The Ethical Standards Act assigns specific functions to the Chief Investigating Officer (2000)
- The Parliamentary Standards Act assigns functions to the Scottish Parliamentary Standards Commissioner (2002)
- The Public Appointments Act assigns functions to the Commissioner for Public Appointments in Scotland (2003)
- The Scottish Parliamentary Commissions and Commissioners Etc. Act 2010 establishes the Commission for Ethical Standards in Public Life in Scotland and brings together these functions as follows:
 - The Commission is launched on 1 April 2011 and has two members:
 - (a) the Public Standards Commissioner for Scotland who is responsible for the functions previously undertaken by the Chief Investigating Officer and the Scottish Parliamentary Standards Commissioner and
 - (b) the Public Appointments Commissioner for Scotland who is responsible for the functions previously undertaken by the Commissioner for Public Appointments in Scotland.
- The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (Scottish Statutory Instrument 2013/197):
 - (a) abolishes the post of Public Standards Commissioner for Scotland
 - (b) abolishes the post of Public Appointments Commissioner for Scotland
 - (c) dissolves the Commission for Ethical Standards in Public Life in Scotland and
 - (d) creates the post of Commissioner for Ethical Standards in Public Life in Scotland
- The functions of the Commission for Ethical Standards, Public Standards Commissioner and Public Appointments Commissioner are transferred to the Commissioner for Ethical Standards.

- The Commissioner for Ethical Standards is established on 1 July 2013¹¹.

Making available to the public any detail in relation to complaints which have been submitted to the Commissioner (in advance of the respective committees considering them)

Section 16 of the Scottish Parliamentary Standards Commissioner Act 2002 places restrictions on the disclosure of information contained in a complaint, except for the purposes of carrying out an investigation¹².

Furthermore the Committee issued the following Direction in 2004:

Dealing with enquiries about complaints

2. In response to an enquiry about a complaint or alleged complaint, the Commissioner must not confirm nor deny the existence of that complaint or alleged complaint.

The Direction listed the following **exceptions**:

The Commissioner may confirm the existence of a complaint-

- (a) for the purpose of, or in connection with, the investigation of the complaint;
- (b) where the complaint has been made public by the Standards Committee;
- (c) in statistical data that does not disclose confidential information (for example, the identity of the complainer, the identity of the member concerned, details of the conduct complained about); or
- (d) in a report to the Parliament under the 2002 Act.

The research could not find any published information that would suggest this Direction has been replaced or amended, or indeed to what extent it applies to the current Commissioner. In addition, the website¹³ of the CESPL contains the following information:

Do you have an enquiry about a specific investigation (including media enquiries)?

Enquiries of this nature should be made in writing (e-mail is welcome) to the office. It may be helpful to explain that we are a legal body and we are required to treat investigations confidentially. It may also help to explain that with this in mind, and in line with the public expectation of transparency, we will confirm only certain basic information that is provided to us.

¹¹ <http://www.ethicalstandards.org.uk/site/uploads/publications/59280531651cd950fc61844.27570714.doc>

¹² <http://www.legislation.gov.uk/asp/2002/16/section/16>

¹³ <http://www.publicstandardscommissioner.org.uk/contact-us/>

Dealing with complaints which are considered to be trivial or not of sufficient gravity to warrant investigation

The Scottish Parliamentary Standards Commissioner Act 2002 details the steps to be taken by the Commissioner to determine if a complaint is admissible. The following is an overview of the relevant provisions contained within the legislation.

A complaint is admissible if it meets three tests:

- It is relevant
- The complaint meets certain requirements (i.e. it is made in writing, is not anonymous, names the MSP concerned, sets out the facts of the complaint and is supported by any relevant documentation, is made within one year from the date the complainant could reasonably have become aware of the conduct complained about)
- The complaint warrants further investigation

If the Commissioner considers that the complaint is inadmissible for failing to satisfy the first (complaint is relevant) or the third test (complaint warrants further investigation), the Commissioner shall dismiss the complaint and shall inform the complainant and the member of the Parliament concerned accordingly, together with the reason for that view.

Therefore, in certain circumstances, the Commissioner can act unilaterally if he decides, based on the available evidence, that a complaint does not warrant further investigation.

However, if the complaint is deemed by the Commissioner to be relevant, but does not meet one or more of the specified requirements, the Commissioner cannot dismiss the complaint. He must, in those circumstances, make a report to the Parliament and await a Direction as to how to proceed.

A further condition states that before the Commissioner makes a report to Parliament he should investigate whether the complaint meets the third test and if it does, the report must contain a statement to that effect. If it doesn't, then the Commissioner can dismiss the complaint and no report requires to be made.

In the years 2010/11, 2011/12 and 2012/13 **no complaints** passed the Stage 1 test of admissibility¹⁴.

Dealing with a complaint where a Member had ceased to be a Member but then became a Member again

¹⁴ <http://www.ethicalstandards.org.uk/site/uploads/publications/fa16805ce89802135fe9847cf7bfd1f6.pdf>

Section 20 of the Scottish Parliamentary Standards Commissioner Act 2002 states that for the purposes of the Act 'member of the parliament' includes former Members. 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 Parliament¹⁵.

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.

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 recommendation¹⁶.

5 National Assembly for Wales

Making available to the public any detail in relation to complaints which have been submitted to the Commissioner (in advance of the respective committees considering them)

Section 16 of the National Assembly for Wales Commissioner for Standards Measure 2009 places restrictions on the disclosure of information contained within a complaint, except for the purposes of carrying out an investigation¹⁷.

¹⁵ 2007-08 Annual Report of the Scottish Parliamentary Standards Commissioner

¹⁶ <http://archive.scottish.parliament.uk/s3/committees/stanproc/reports-08/stpr08-03.htm>

¹⁷ <http://www.legislation.gov.uk/mwa/2009/4/section/16>

Dealing with complaints which are considered to be trivial or not of sufficient gravity to warrant investigation

Section 10 of the National Assembly for Wales Commissioner for Standards Measure 2009 outlines the procedure for dealing with complaints. Section 10(3) states that “The Commissioner may, in such circumstances as may be prescribed by rules referred to in subsection (1)(b), dismiss a complaint summarily without reporting on it to the Assembly but must instead notify in writing the Assembly Member in question and the person who made the complaint, giving reasons for the dismissal”¹⁸.

In April 2012 the Committee on Standards of Conduct agreed a new procedure for dealing with complaints against Members, which included the criteria for determining the admissibility of a complaint:

2. PRELIMINARY INVESTIGATION STAGE

2.1 At this stage, the Commissioner must investigate and determine whether a complaint is admissible within the terms of paragraph 3 below. The Commissioner may contact the complainant to elicit more details and to ascertain whether or not he or she is willing for his or her name to be released to the Member complained of and the Committee. The Commissioner may also, at his/her discretion, contact the Member complained of if the Commissioner believes that it is necessary to do so in order to decide whether the complaint is admissible.

2.2 If the Commissioner considers that the complaint is admissible, the Commissioner must proceed to a Formal Investigation into the complaint.

2.3 If the Commissioner considers that the complaint is inadmissible, the Commissioner must dismiss the complaint and must inform the complainant together with the reasons for that view.

3. ADMISSIBILITY OF COMPLAINTS

3.1 A complaint is admissible under this procedure if:

- i. it is in writing (where the complainant is unable to make a complaint in writing, facilities will be made available through the Commissioner’s office so that he or she can agree the terms of a written statement)
- ii. it is about the conduct of an Assembly Member;
- iii. it is not anonymous and clearly identifies the complainant in a way which provides for further communication with him/her;

¹⁸ Subsection (1)(b) of section 10 states: The Commissioner must investigate complaints and must, subject to subsection (3), report to the Assembly on the outcome of investigations, in accordance with any rules relating to the consideration of complaints against Assembly Members which have been adopted by the Assembly under the Standing Orders.

- iv. it clearly identifies the Assembly Member complained of;
- v. it is made within one year from the date when the complainant could reasonably have become aware of the conduct complained about; and
- vi. it appears that there is enough substance to justify further investigation (i.e. there is enough evidence to suggest that the conduct complained about may have taken place, and if proved might amount to a breach of any of the matters encompassed within Standing Order 22.2(i).

Appearing before a meeting of the Standards of Conduct Committee in February 2012, the NAFWCS addressed the issue of frivolous complaints:

A Member: I would just like confirmation on the record that, in the event of a complaint being referred to the commissioner, when the commissioner will determine whether or not the Member should then be notified, prior to determining whether or not to investigate, that the commissioner would consider whether that complaint might be vexatious or have come from, for example, a stalker or someone with an ulterior motive, as opposed to being a potentially genuine complaint from a person who has no other vested interest in the matter.

NAWfCS: (On your point) about a vexatious complaint or stalker, under the provisions, the commissioner retains a power to notify a Member of a complaint. What first triggered this thought was that quite a number of complaints are complaints that, if I can put it this way, would never get off the ground in terms of admissibility. It does not seem to me sensible to trouble the Member by notifying the Member of something that they are never going to hear anything more about. The complaint may itself have been made through a misunderstanding on the part of the complainant as to what was or was not required, and, if they are then satisfied ultimately by what I as the commissioner tell them, it does not seem to me that there is a lot of mileage in notifying Members. However, it is a matter of applying common sense to the circumstances, and, certainly, if I had any inkling that there was more behind the complaint than a genuine concern about an aspect of a Member's behaviour, then I would be certainly likely to take the matter up with him or her or with the chair of the party, or, where the circumstances warranted, with the party leader¹⁹.

Dealing with a complaint where a Member had ceased to be a Member but then became a Member again

Section 20 of the National Assembly Commissioner for Standards Measure 2009 interprets (with minor technical exceptions) Assembly Members as encompassing former Members²⁰.

In response to a request for information for a previous research paper, the Commissioner stated:

¹⁹ <http://www.senedd.assemblywales.org/documents/s6100/21%20February%202012.pdf>

²⁰ <http://www.legislation.gov.uk/mwa/2009/4/section/20>

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 Assembly²¹.

²¹ Information received from Standards Commissioner for inclusion in a 2011 paper. No reference to an investigation of a former Member who subsequently returned to the Assembly could be found. A response from the Commissioner was not received in time for inclusion in this paper.