

CONSULTATION: PROCEDURE FOR DEALING WITH COMPLAINTS AGAINST MEMBERS OF THE SENNEDD

EVIDENCE OF DOUGLAS BAIN, SENEDD COMMISSIONER FOR STANDARDS

Introduction

1. My evidence is based on experience gained during my five years as the Northern Ireland Assembly Commissioner for Standards and my more than two years as Acting Senedd Commissioner Standards and Senedd Commissioner for Standards.
2. I address the specific questions posed under each of the headings in the consultation paper and go on to add suggested revisions to the draft Procedure.

Design and content of the Procedure

3. I have no doubt that a set of formal procedural rules accompanied by a guide will make the complaints process both more precise and more easily understood.
4. The guide should cover all aspects of the complaints process and must be in language that is easily understood by complainants and others who are not familiar with the complaints process.
5. There are no further terms which I believe need to be included in paragraph 2 of the Procedure.

Admissibility criteria

6. It remains my firm view that, save where there is good cause, a complaint should be admissible only if it is made within six months of the date on which a complaint about the conduct could reasonably have been made.
7. It is important that investigations take place whilst memories are fresh and documentary evidence is available. There is no doubt that memories fade with time and whilst any cut-off date is arbitrary six months is reasonable. The same cut-off applies to the institution of proceedings for almost all summary offences. Further, a six month cut-off would prevent the abuse of the process, experienced during the Fifth Senedd, when submission of a complaint was delayed until the complainant

judged the complaint would cause most political damage to the Member concerned. The proposed 'good cause' exception would ensure that the proposed cut-off had no adverse impact on any genuine complainant.

Information contained within a complaint

8. I am content with what is proposed.

The complainant

9. I welcome the proposal to keep the complainant informed of the progress of the complaint after the Commissioner's report has been submitted to the Committee. The same information should be given to the Member who is the subject of the complaint.
10. I believe that the proposed milestones are appropriate.
11. The proposed way of dealing with multiple complaints about the same subject is sensible and will potentially result in resource savings without any adverse impact.

Bringing a complaint to an end and the right to request a review

12. I support both the proposed new discretion for the Commissioner to bring a complaint to an end on the ground set out in the draft Procedure. I do not believe that any further grounds are required. I welcome also the proposed right to have the Commissioner's decision to bring a complaint to an end reviewed by the Committee. Broadly similar provisions have been in place in Northern Ireland since 2016 and I understand that they have proved effective.
13. I welcome the proposals regarding the rectification process which will bring transparency to what has been an opaque process.

The appeal process

14. I support the proposed removal of the appeals process. As has been seen the current appeals process is wide open to abuse by Members who simply wish to delay the making of a finding that they had breached the Code of Conduct. The Committee is well placed to adjudicate on whether the process followed by the Commissioner was fair and would be entitled to seek legal advice to assist in its deliberations on that matter.

15. I support the proposal to empower the Committee to refer back to the Commissioner any matter arising from representations made by, or on behalf of, the Member.

Redacting the Commissioner's report

16. I welcome these proposals which are entirely sensible.

Detailed comments on the draft Procedure

17. Paragraph 1.1 – it should be provided that the new Procedure applies to complaints received on or after a specified date. It would be confusing for all concerned to apply the new Procedure to a complaint started under the old Procedure.
18. Paragraph 3.9 – I am concerned, given the definition of 'election period' in paragraph 2.1, that sub-paragraphs (a) – (c) could lead to unnecessary delay to the complaints process. In 2021 there was a period of almost seven weeks between election day and the appointment of the Standards of Conduct Committee. I accept that candidates (including Members seeking re-election) should not have to engage with the complaints process prior to election day but I am not satisfied that there is any good reason why the process should potentially be disrupted for a further seven weeks after the poll.
19. Paragraph 4.2(e) – to align this with section 6(2) of the Measure the reference should be to 'other relevant provision'.
20. Paragraph 4.4(b) – this presupposes that the omission is capable of rectification but in practice some complaints are so misconceived that they could never be admissible e.g. complaint about the conduct of a Member whilst acting exclusively in a Ministerial capacity.
21. Paragraph 8.5 – the text 'The Commissioner will only attend the Committee by invitation of the Committee' is unnecessary and should be deleted. The Commissioner has no right to attend the Committee and like any other person can do so only by invitation.
22. Paragraph 8.14 – there is a risk that the Member may use the absolute privilege enjoyed when making representations to make allegations of misconduct against the Commissioner or a third party. That risk is not theoretical: such allegations have been made in another jurisdiction. To secure that any person maligned in that way has an opportunity to respond and to have their response published consideration

should be given to requiring the Committee to refer the matter to any person against whom such allegations have been made.

23. Paragraph 8.15 – providing the Member with a transcript in every case seems wasteful of resources. Consideration should be given to providing an audio file in every case and a transcript only when that is sought by the Member. A transcript should not be prepared unless the Committee meeting was in public, the Member requests it or the Committee needs it to assist in its deliberations.
24. Paragraph 8.17 – ‘clear majority’ is imprecise. It could mean that more than half of those on the Committee favoured the recommendation or that more than half of those who attended the meeting were in favour. Clarification, by deletion of ‘clear’ should be considered.
25. Paragraph 8.18 – for consistency consideration should be given to deleting ‘any other matter mentioned in Standing Order 22.2(i)’ and substituting ‘other relevant provision’.
26. Paragraph 8.19 – it is unclear whether the provision requires the Committee to remove only material from which the Member could be identified or material from which the complainant, the member or a third party could be identified. If the latter it is inappropriate to confer on the Members a right to veto the anonymization of anything other than material from which they could be identified. In addition, consideration should be given to applying the redaction provisions of paragraph 8.25 to ‘no breach found’ situations.
27. Paragraph 8.25 – consideration should be given to replacing the narrative drafting style with the more precise style adopted elsewhere in the draft.

Douglas Bain CBE TD

Senedd Commissioner for Standards

15 February 2022