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FDA Wales Response to Standards of Conduct Committee's Consultation on Procedures for Dealing with Complaints against Members of the Senedd

Introduction and background

FDA Wales welcomes the opportunity to contribute to this consultation.

The FDA led the long-running campaign for a fully independent complaints process in the House of Commons.

In Dame Laura Cox's inquiry into bullying and harassment of House of Commons staff[1], she found that bullying and harassment had been allowed to thrive because the culture in Parliament both tolerated and concealed bullying and harassment. She recommended a fully independent policy for complaints in which MPs would play no part in the process up to and including decisions on sanctions. She also recommended that because there had been an inadequate process in Parliament, staff should be able to bring past cases forward to be investigated in the new system. These recommendations were exactly what the FDA had been calling for.

In June 2020 the House of Commons approved the final stage of the independent process by voting through a motion to establish the new Independent Expert Panel (IEP) to make decisions on sanctions on upheld complaints of bullying, harassment and sexual harassment against MPs. The final stage of the process was designed by the FDA's House of Commons branch, and I offer any and all support from the FDA in the implementation of an independent process for the Senedd.

Our responses to the questions posed by the consultation are set out below.

In responding to this consultation, a key expectation from FDA Wales is that the Senedd must implement a similar, fully independent, process for dealing with complaints of bullying, harassment and sexual harassment. The objective of the Senedd should be to have a robust policy to deal with complaints against elected officials that is broadly comparable to an employer's disciplinary policy. Members of staff should feel confident to put in their complaint and that it will be investigated independently and fairly, and a sanction determined free from

[1] https://www.parliament.uk/globalassets/documents/conduct-in-parliament/dame-laura-cox-independent-inquiry-report.pdf

political interference. The public also expects fair and equal treatment for all MPs and complainants regardless of political party, status or seniority.

It is the FDA's experience, from all corners of the UK, that only an independent process that is completely free from political interference can work. If there is any opportunity for self-regulation, politics will take precedence over fairness and the victims of bullying, harassment and sexual harassment will be failed. It is a fundamental that everyone deserves to be treated with dignity and respect in the workplace.

The design and content of the Procedure

Question: Do you consider this to be the best approach? Is there any information you would like contained in the guide?

FDA Wales welcomes a set of formal procedural rules along with a separate explanatory guide to the complaints process, but those rules, the guide, and the code itself will only be effective if backed up by an effective independent complaints procedure.

FDA Wales believes that it makes sense for there to be one policy that:

- Supports and enforces the code of conduct and associated procedures to bring about real cultural change.
- Is independent of MSs at all stages, including decisions on sanctions.
- Is resourced effectively so that complaints can be investigated efficiently and quickly and are fair to everyone.
- Has the ability to compel parties to take part.
- Has the trust and confidence of Senedd staff; the Senedd authorities and MSs.

Question: Are there any additional terms used in the draft that you think could be usefully explained in this section? Do you have any general comments on the form and content of the Procedure? Are there other provisions you would you like to see included?

FDA Wales welcomes the inclusion of a user-friendly interpretation section, but as above, any code will only be as effective as the procedure underpinning it. Therefore, FDA Wales suggests that the Senedd should focus first on implementing a fully independent process for dealing with complaints of bullying, harassment and sexual harassment.

FDA Wales finds it startling that final decisions on breaches of the code must currently be endorsed by the whole Senedd – a classic example of institutions 'marking their own homework'.

Training and education are important for rectifying (and stopping) inappropriate behaviour. It is imperative that the Senedd develops and introduces a suite of mandatory learning courses to cover:

- Diversity and Inclusion
- Unconscious Bias
- Bullying and Harassment

The procedures should include a range of sanctions, up to and including expulsion.

Finally, procedures should be subject to six monthly reviews.

The admissibility criteria for complaints

Question: What time limit, if any, do you think would be fair and appropriate to safeguard both the rights of the complainant and the Member complained of? If a time limit is retained, do you have any views on the guidance included above to help explain what might constitute a good cause for the delay for complaints being made outside of the specified time?

It is important to make the distinction between:

(a) how far back any complaint may go; and

(b) how long there should be the opportunity to raise historic allegations.

We can understand the merits of a 'timescale for making complaints', this allows the Senedd to address issues of the past and move forward. It also encourages staff to come forward to submit their evidence which may bring to light some past offenders who thus far have been allowed to act with impunity.

However, when the procedure is first introduced there should a window of opportunity for members of staff to bring historic complaints to be investigated. This is a necessary step to ensure there is no 'year zero' where the slate is wiped clean for the bullies, in particular repeat offenders.

If there were a 'timescale' (of whatever length) there would need to be a process under which exceptional cases can be considered outside the window. For example, there may be circumstances where the behaviour of a particular MS may be such that a member of staff doesn't feel comfortable raising it until the MS has left the Senedd, and this is more likely to be the case with very serious allegations such as sexual harassment. It should be noted that the ICGS scheme was introduced with no time limits to bring forward a claim.

A timescale would only be acceptable once an entirely independent process has been fully implemented. Clearly many members of staff will not want to raise their historic complaint until a fully independent process is implemented, therefore the window needs to be sufficiently long enough for staff to raise their complaint after an independent process is in place.

Moreover, the Senedd will need to make sure any timescale is sufficiently long enough to allow staff on maternity leave, extended parental leave, a career break, or long-term sickness to raise their complaint on their return to work.

Finally, we would say that the timescale should only involve raising the complaint, not the determination of the complaint. A staff member has no ability to predict how long the complaint will take to investigate and determine. It would be entirely unfair if a member of staff raised a complaint a month before the window of opportunity closed but was told this wouldn't be determined in time.

Moreover, including the determination of the complaint in the window incentivises MSs with complaints against them to 'run out the clock' by deliberating delaying the proceedings. The FDA would argue that, if introduced, the timescale should only apply to the case being raised, not completed.

If any timescale is introduced this should not apply to continuing acts – so a member of staff could bring a complaint that includes earlier acts providing that the last act of bullying, harassment and sexual harassment is in time.

As stated above, there does need to be discretion around timescales because there may be circumstances where the behaviour of a particular MS may be such that a

member of staff doesn't feel comfortable raising it until the MS has left the Senedd, and this is more likely to be the case with very serious allegations.

The information contained within a complaint

Question: Do you agree with this approach, or have any comments or concerns about it?

FDA Wales welcomes any steps to improve the clarity and accessibility of policies and procedures, including setting out all aspects of the process in straightforward, non-legalistic terms.

The process to find a complaint admissible is unclear and members of staff may feel deterred from putting in a complaint due to the 'pre-investigation' stage.

FDA Wales is disappointed to note the limitations placed on making complaints under the proposed new procedure set out at para 9.8. of Annex A:

Complaints against a former Member made after they cease to be a Member

"A complaint about a former Member cannot be made once they have ceased to be a Member unless, in addition to meeting the requirements in sub-paragraph 4.3 above,:

b. it is made within eight weeks of the former Member having ceased to be a Member, and

c. the Commissioner, having due regard to the prudent use of resources and the nature of the complaint, believes that it is in the public interest for it to be investigated".

The Independent Complaints and Grievance Scheme (ICGS)[2] in place at the UK Parliament allows complaints about bullying and harassment where both the complainant and the respondent were members of the Parliamentary Community at the time when the alleged bullying and harassment took place, whether or not they remain members of the Parliamentary Community at the point when the complaint is made. FDA Wales calls on the Senedd to replicate the ICGS.

The Complainant

Questions: Do you think the complainant needs to be informed more? If so, do you agree with the milestones identified? Do you have any specific concerns about the proposal?

FDA Wales welcomes proposals to keep complainants regularly informed during an investigation. However, having a transparent and fully independent process - free from any suggestion of political interference - is key to potential complainants having the trust and confidence to come forward.

Question: Do you think this (group complaints) is a reasonable provision? Do you have any concerns with this proposal?

FDA needs to understand the framework and criteria for selecting 'lead' cases and establishing whether and how the complaints/allegations and circumstances of 'lead' cases are on all fours with other 'group' cases.

[2] https://www.parliament.uk/globalassets/documents/icgs-documents/making-a-complaint---a-guide-for-complainants.pdf

It is not clear whether the findings and outcomes (recommendations and sanctions) of 'lead' cases will automatically apply to all 'group' cases.

FDA Wales needs to see that level of detail before commenting further.

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

Questions: Do you agree the Commissioner should have this discretion, and do you agree with the grounds specified under which a complaint can be brought to an end? Are there any additional grounds which should be included, and if so what are the reasons for suggesting the additional grounds? Do you agree that there should be a right of review by the Standards Committee of a decision of the Commissioner to dismiss a complaint on any of these grounds?

FDA Wales is broadly content but believes there should be a right of review in respect of the final grounds, i.e., "having due regard to value for money considerations and the nature of the complaint, it is not in the public interest to proceed further with the consideration of the complaint".

In line with our call for a fully independent process FDA Wales believes that review should be carried out by an Independent Panel rather than the Standards Committee.

Question: Do you agree with the way in which the early rectification procedure has been restated

Instances of early rectification should be exceptional, and FDA Wales believes notifications of complainant dissatisfaction with decisions on bringing complaints to an end before a final report should be reviewed by an Independent Panel.

The appeal process

Questions: Do you agree that the present appeal process should be removed? If you do not agree, what form do you consider an appeal process should take? Do you agree that the rules for the oral hearing stage should include a provision for a reference back to the Commissioner? If you do not agree, what other arrangements for the Standards Committee's consideration of reports from the Commissioner should be adopted in the procedure?

FDA Wales believes the current process for appeals and consideration of recommendations by the Senedd (paras 8.1 to 9.1 of Procedure for dealing with complaints against Members of the Senedd) is confusing, opaque, and is not truly independent.

FDA Wales believes it would be wrong to completely remove an appeals process in favour of relying on:

- the Standards Committee considering the investigation findings

- the right of a Member complained against to make representations to the Committee, and

- Members having a right to state their case in a plenary debate.

Based on our experience in other administrations, the lack of a fully independent appeals process – one that is independent of MSs at all stages – will lead to accusations of unfair treatment and will not gain the trust and confidence of Senedd staff, the Senedd authorities, or MSs.

That is why FDA Wales calls on the Senedd to introduce an Independent Expert Panel[3], with the authority to hear, and determine, appeals against investigation outcome decisions and sanctions.

The panel's functions should be:
(a) to determine outcome and appropriate sanction in cases referred to it by the Independent Commissioner,
(b) to hear appeals against outcome decisions, and
(c) to hear appeals against a sanction

Redacting the Commissioner's report

Question: Do you agree that the Committee should have discretion to redact or summarise the reports of the Commissioner for safeguarding or confidentiality reasons?

FDA Wales is broadly content but notes the proposal refers to the Committee publishing reports "in either summary or redacted form **where it considers** that there are safeguarding or confidentiality reasons for doing so". FDA Wales is concerned the wording used is vague and would like specific criteria under which safeguarding or confidentiality reasons would apply to publish redacted/summary reports.

Summary

FDA Wales calls on the Senedd to implement a fully independent process for dealing with complaints of bullying, harassment, and sexual harassment against MSs - one in which MSs play no part, up to and including decisions on sanctions.

[3] https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/independent-expert-panel/