

Seventh report to the Sixth Senedd under Standing Order 22.9

June 2023



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About the Committee

The Committee was established on 23 June 2021. Its remit can be found at:
www.senedd.wales/SeneddStandards

Current Committee membership:



**Committee Chair:
Vikki Howells MS**
Welsh Labour



Natasha Asghar MS
Welsh Conservatives



John Griffiths MS
Welsh Labour



Peredur Owen Griffiths MS
Plaid Cymru

Welsh Parliament
Standards of Conduct Committee

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1. Introduction

1. The terms of reference of the Standards of Conduct Committee (“the Committee”) are set out in Standing Order 22¹. In accordance with the functions set out in Standing Order 22.2, the Committee must:

“investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards.”²

2. This report is made to the Senedd under Standing Order 22.9 and paragraph 8.23 of the Procedure for Dealing with Complaints against Members of the Senedd (“the Procedure”)³ in relation to a complaint made to the Commissioner for Standards (“the Commissioner”).

¹ **Standing Orders**

² **Standing Order 22.2(i)**

³ **The Senedd’s Procedure for Dealing with Complaints Against Members of the Senedd**

2. Consideration of the Complaint

3. The Commissioner received a complaint in relation to a tweet posted by a Member of the Senedd which the complainant considered to be:

“...intentionally misleading, & risks harming the Senedd's reputation.”

4. The Complainant set out their view that the tweet breached the Honesty, Integrity and Openness principles and that by tweeting something which was not truthful the Member had breached Rule 2 of the Code of Conduct.

5. The Commissioner took representations from the Member and Complainant before making the complaint admissible.

6. The Committee met on 24 April and 22 May 2023 to consider the Commissioner's report and reach its conclusion in respect of this complaint.

7. The Committee has included the relevant parts of the Commissioner's report within this report to protect the anonymity of those involved in this complaint.

8. This report sets out the details of the complaint and the Committee's deliberations in arriving at its decision.

9. A copy of this report has been provided to the Member concerned and the Complainant.

3. Committee's Consideration of its Decision

10. The Committee considered whether the Member was in breach of Standing Order 22.1(i).

11. In considering whether a breach took place, the Committee reviewed the findings of the Commissioner as set out in his report. The Committee also received written representations from the Complainant about the conclusion in the Commissioner's report. The Committee referred these representations back to the Commissioner and shared the Commissioner's response with the Complainant. The Committee then reviewed the further written representations from the Complainant.

12. The Member did not avail themselves of the opportunity to make written or oral representations to the Committee.

13. The Commissioner's findings of fact set out that the Member did not intend to mislead anyone by their admittedly incorrect description of [a company] and that there is no evidence that anyone was misled by that description. The Commissioner shared his findings of fact with the Complainant and the Member Complainant of in advance of preparing his final report. The Member confirmed acceptance of the findings. The Complainant did not respond. In accordance with paragraph 7.3 of the Procedure the facts were deemed to be accepted. The reasoned opinion of the Commissioner set out that the Complainant:

"... asserted that the Member's 'tweet clearly breaches the overarching principals of Honesty, Integrity and Openness, in breach of Rule 1 of the Code of Conduct on the Standards of Conduct of Members of the Senedd.' I do not agree. Given my findings, which the Complainant is deemed to have accepted, the Member's conduct cannot reasonably be described as dishonest. I do not accept that the Honesty Principle was breached. Whilst the Member's conduct may have caused some to question his judgement, I am not of the opinion that it was of a kind that would undermine the public's trust and confidence in the integrity of the Senedd or bring it or its Members generally, into disrepute. I do not consider that the Integrity Principle was breached. In my opinion the Openness Principle was not engaged by the Member's admitted conduct. I am satisfied that no other relevant provision has been breached."

14. Following representations from the Complainant and the Committee's consideration of the report, the Committee sought clarification from the Commissioner in relation to the section of the Code of Conduct guidance relating to the principle of Honesty and on how he approaches making decisions on what a Member "ought to have known" to be false⁴.

15. The Commissioner set out in correspondence that:

"The representations are, in the main, based on the proposition that any statement that is untrue is a breach of the Honesty Principle. As Finding of Fact iv made clear, [the Member] was aware that the statement ... was not accurate: no question of what [the Member] ought to have known arose.

If a statement breaches that Principle, it must be dishonest. Dishonesty is normally defined as including some element of deceit, fraud or moral turpitude. Whilst all dishonest statements are incorrect not all incorrect statements are dishonest.

The supporting text to the Honesty Principle requires that Members be truthful. In my opinion given the context that must be interpreted as meaning no more that Members must be honest and not dishonest.

In Finding vi I found that [the Member] had no intention of misleading anyone. That was not challenged by the complainant. I was satisfied that although the tweet was incorrect there was no element of deceit, fraud or moral turpitude. I was not satisfied that the tweet was either dishonest or untruthful. Rather it was a rather clumsy but inaccurate shorthand statement which [the Member] corrected the next day.

Support for this interpretation of the Honesty Principle is to be found in paragraphs 58 – 60 of the Guidance on the Code of Conduct which deal with Rule 2 (Members must act truthfully). Paragraph 60 states 'A complaint would normally be based on an alleged lie' whilst paragraph 59 makes clear that not all incorrect statements would be regarded as untrue for the purposes of that Rule.

⁴ Members must not make statements which they know – or ought to have known – to be false.

In considering this matter the Committee may wish to have regard to the possible consequences of adopting the complainant's interpretation that any inaccurate statement by a Member, even where there was no intention to mislead or deceive and the inaccuracy has been corrected, would constitute a breach of the Honesty Principle. I suspect that adopting that interpretation would, particularly in the run-up to elections, lead to a significant increase in the number of admissible but trivial complaints about Members' use of social media which would, unless rectification was an option, all have to be investigated and reported to the Committee."

16. The Committee noted this response and further representations from the Complainant on this matter.

17. The Committee was of the view that the tweet from the Member was regrettable in as much as it contained careless terminology.

18. The Committee noted and carefully considered the Commissioner's comments on dishonesty and where he 'sets the bar' on a breach of the Code of Conduct relating to the honesty principle. The Committee agreed with the Commissioner about the wider legal concept of honesty being more than an incorrect or careless statement, and therefore that absent clear evidence of intent the 'threshold' had not been met on this occasion.

Having considered the information available and all the representations, the Committee agreed with the conclusion of the Commissioner that there was no breach of the Code of Conduct.

4. Matters of General Principle

19. As reflected above, the Committee considered the tweet to be regrettable. The Committee noted the finding of the Commissioner that the Member corrected the tweet the next day. On this occasion the correction was done via a reply within the tweet thread. In their further representations the Complainant suggests that in rectifying a tweet, a Member should

“... apologise, correct the record in a way that is appropriate to the number of people who saw the untrue statement, and retract the untrue statement where possible.”

20. The Committee agrees with this view, and would like to remind all Members that it is incumbent on them to rectify tweets in a manner that is proportionate to the original tweet. The Committee does not wish to prescribe to Members the manner in which retractions are made, but consideration should be given to matters such as:

- where the retraction is made, either within the thread if it is still an active conversation, or an original tweet or both; and
- whether the original tweet should be deleted.

21. The Committee has written to the Chief Executive and Clerk to request that consideration is given to including a section on retraction and correcting the record in future training on social media for Members and staff.

22. The Committee notes that the concept of honesty as adopted by the Commissioner is one based around established legal principle rather than the more everyday understanding of honesty. The Committee notes also the need, expressed by the Commissioner, for a clear ‘threshold’ to ensure that incorrect utterances, that do not amount to dishonesty or otherwise breach the Code of Conduct, are not inadvertently captured by it. The Committee will review the relevant guidance on the Code of Conduct to ensure it is clear as to the correct approach to interpretation and the expected standards of conduct in this regard.