

National Assembly for Wales
Standards of Conduct Committee

**Report 02-13 to the Assembly under
Standing Order 22.9**

March 2013



Cynulliad
Cenedlaethol
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National
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Wales

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Standards of Conduct Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: 029 2082 1821

Fax: 029 2089 8021

Email: Standards@wales.gov.uk

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The Standards Committee was established on 22 June 2011. The Committee's role is to carry out the functions set out in Standing Order 22. These include: the investigation of complaints referred to it by the Standards Commissioner; consideration of any matters of principle relating to the conduct of Members; establishing procedures for the investigation of complaints, and arrangements for the Register of Members' interests and other relevant public records determined by Standing Orders.

Current Committee membership



Mick Antoniw (Chair)
Welsh Labour
Pontypridd



Llyr Huws Gruffydd
Plaid Cymru
North Wales



Mark Isherwood
Welsh Conservatives
North Wales



Kirsty Williams
Welsh Liberal Democrats
Brecon and Radnorshire

Introduction

1. This report is made to the Assembly under Standing Order 22.9 and paragraph 8.1 of the Procedure for Dealing with Complaints against Assembly Members¹ (“the Procedure”), in relation to a complaint made against Bethan Jenkins AM.
2. The terms of reference of the Standards of Conduct Committee are set out in Standing Order 22. In accordance with functions set out in Standing Order 22.2 the Committee must:
 - (i) investigate, report on and, if appropriate, recommend action in respect of any complaint referred to it by the Commissioner for Standards that a Member has not complied with:
 - (a) Standing Order 2;
 - (b) any Assembly resolution relating to the financial or other interests of Members;
 - (c) Standing Order 5;
 - (d) any Assembly resolution relating to Members’ standards of conduct;
 - (e) any code or protocol made under Standing Order 1.10 and in accordance with section 36(6) of the Act;
 - (f) Standing Order 3; or
 - (g) Standing Order 4;
 - (ii) consider any matters of principle relating to the conduct of Members generally;
3. This report sets out the details of the complaint and the way in which the Committee arrived at its recommendation.

¹ The National Assembly for Wales’ Procedure for Dealing with Complaints Against Assembly Members.

Consideration of the Complaint

4. The report from the Commissioner for Standards on his investigation of the complaint is at Annex A of this report. It sets out the details of the complaint and the findings of the Commissioner's formal investigation.

5. The complaint alleged a possible contravention of the central principle underpinning the Determination on Members' Pay & Allowances in April 2010 (along with the revised edition in September 2010), which provides that:

'Members may only claim for the reimbursement of reasonable allowances and/or expenses, necessarily incurred, in connection with his or her role as an Assembly Member'.

6. The Commissioner's investigation led him to be "entirely satisfied that the claim made by the AM was made with the best of intentions and that neither dishonesty nor deception play any part whatsoever in these transactions". He nevertheless found that the Assembly Member, by her conduct breached sections 4(b) and 4(e) of the Code of Conduct for Assembly Members in that, in submitting a claim for reimbursement of expenses, "she failed to make it explicitly clear that the work in question had not been completed, thus failing to support and promote the principle of openness, and to strengthen the public's trust and confidence in the integrity of the Assembly."

7. The Standards of Conduct Committee met on Tuesday 26 February 2013 to consider the report of the Commissioner for Standards. The Committee resolved to consider the complaint in private. The Committee was satisfied that the Commissioner's report contained sufficient information upon which to base its deliberations, and that it was not necessary to seek further written or oral evidence.

Committee's Consideration of its Decision

8. The Committee then moved to consider whether the Member was in breach of one of the matters encompassed within Standing Order 22.2(i) and what action, if any, it should advise the Assembly to take if a breach was found.

9. The Committee noted that the Member concerned has acknowledged that, although the project in question was initiated 'in

good faith', her submitted claim could have been 'more transparent' and that her actions constituted a breach of the Code of Conduct.

10. The Committee further notes that the Member concerned has cooperated fully with the Commissioner for Standards' formal investigation into the complaint, and has provided a full personal statement regarding the circumstances surrounding this complaint, which is included in the Commissioner's report.

11. The Member concerned has also stated that she does not wish to make an appeal against the Committee's findings or any recommended sanction in this case. For this reason, the Committee is reporting to the Assembly as soon as possible, and within the usual 10 day time period stipulated in paragraph 8.1 of the Procedure within which the Member complained of may choose to lodge an appeal with the Presiding Officer.

12. The Committee unanimously agreed with the finding of the Commissioner (paragraph 10 of his report) that the Member's actions had constituted a breach of paragraphs 4(b) and 4(e) of the Code of Conduct for Assembly Members.

13. The Standards of Conduct Committee considers that a breach by any Assembly Member of the 'Nolan principles' of conduct in public life is a serious matter. The reputation of the National Assembly for Wales as an institution, and the public's trust and confidence in it, rely upon the integrity and openness of Members.

Committee's Recommendations

14. The breach is in relation to the Member's personal conduct, and the sanctions available to the Committee under paragraph 7.11 of the Procedure are: that a breach has been found but that no further action should be taken; or that a breach has been found and that the Member should be censured under Standing Order 22.10.

Recommendation 1

The unanimous decision of the Committee is to recommend to the Assembly, in accordance with 7.11(iii) of the Procedure, that a breach has been found but that no further action should be taken.

15. In reaching a decision in this case the Committee also took note of the specific circumstances surrounding the submission of this

expenses claim. In particular the Member's personal statement notes that the documentation 'does not appear to take account of claims made for work not yet done.' The Committee welcomes the Commissioner's advice on this point, given in accordance with his powers under section 7 of the National Assembly for Wales Commissioner for Standards Measure 2009. This Measure was one of the first passed by the Assembly, and this case serves to highlight the value of the statutory powers it gives to the Commissioner to provide such advice to the Assembly.

Recommendation 2

The unanimous decision of the Committee is to recommend, in accordance with its functions under Standing Order 22.2(ii) to 'consider any matters of principle relating to the conduct of members generally', and in light of the particular circumstances referred to in the Commissioner's report, that the Remuneration Board reviews the extent to which the operation of the Determination on Members' Pay and allowances ensures probity, accountability, value for money and transparency with respect to the expenditure of public funds. The Committee further recommends that the Assembly Commission takes steps to amend the procedure for handling expenses claims to take account of the recommendations in paragraphs 11 and 12 of the Commissioner's report.

16. The Committee Chair has tabled a motion (in accordance with Standing Order 22.11 and paragraph 9.1 of the Procedure) calling on the Assembly to endorse the Committee's recommendations.

STRICTLY CONFIDENTIAL

From: Gerard Elias QC, Commissioner for Standards

To: The Committee on Standards of Conduct

FORMAL INVESTIGATION REPORT

Complaint against BETHAN JENKINS AM

The Complaint

1. On 10 October 2012, I received a letter in relation to the Assembly Member, Bethan Jenkins (“the AM”), from the Clerk to the National Assembly (“the Complainant”). The Clerk purported to act under section 9 of The National Assembly for Wales Commissioner for Standards Measure 2009. The letter raised concerns as to whether a claim made by the AM had been paid in circumstances where the work claimed for had not in fact been completed.
2. The complaint alleged a possible contravention of the central principle underpinning the Determination on Members’ Pay & Allowances in April 2010 (along with the revised edition in September 2010) , which provides that:
‘Members may only claim for the reimbursement of reasonable allowances and/or expenses, necessarily incurred, in connection with his or her role as an Assembly Member’.
3. I reviewed the evidence then available to me and was satisfied that the complaint was admissible in that the requirements of paragraph 3 (i)-(vi) of the applicable Procedure for Dealing with Complaints against Assembly Members (24 April 2012) (“the Procedure”) had been fulfilled.

Accordingly, I so notified the AM (through an intermediary) and prepared to move to the Formal Investigation Stage.

4. At this time, I was made aware of the fact that the AM was in a “fragile” state of health and receiving medical advice and treatment and, (with notice to the Complainant), I suspended my further investigation pending her recovery. By letter to the AM, dated 7 January 2013, I resumed my formal investigation.

Commissioner’s Formal Investigation

5. I requested and was supplied with:
 - A meeting with the proprietor of the Film Company, A Thousand Pictures Video Production;
 - A signed personal statement from the AM - I also interviewed her both before and after she had made a draft statement;
 - All correspondence/emails in relation to this claim between the AM and the MBSU and the Film Company;
 - An interview with the head of the Members Business Support Unit (MBSU).

Facts Found by Commissioner

6. From the information before me, I find the following facts:
 - i In or about June 2010, Bethan Jenkins discussed with the Head of Members’ Business Support Unit (MBSU) the possibility of producing an educational DVD on the work of an Assembly Member. She enquired whether the cost of such a DVD could be claimed from her Office Costs Allowance.
 - ii The Head of MBSU confirmed that such a cost could be reimbursed, as the Office Costs Allowance stated:

- *‘Members are entitled to claim an Office Costs Allowance to reimburse Members all reasonable costs relating to the running of an office and engaging with constituents. Receipts or proof of expenditure must be submitted with all claims.’¹*

- iii On 23 March 2011 Bethan Jenkins submitted a claim form for expenses incurred under her Office Costs Allowance for £2,700. The claim stated that *‘this is a promotional DVD that will be used to increase knowledge of the Assembly, AMs and their work.’* (Claim form attached)

- iv The payment was authorised and, at the AM’s request, was made directly to a company called ‘A Thousand Pictures Video Production;

- v Although some preliminary enquiries and preparation work was carried out, both by the AM and the film company, the DVD presentation was never made.

- vi The money claimed was intended by the AM to be spent on production of an approved promotional DVD.

- vii The relationship between the AM and the film company proprietor was solely a business relationship and the AM stood to gain nothing from it other than the production of the DVD.

- viii In late 2012, following its own investigation, The Western Mail revealed publicly the fact that the payment had been made and no DVD produced;

- ix In January 2013, following a suggestion made by me in the course of interview, the film Company made full repayment to the Commission of £2700, recognising that there was no realistic possibility of the project now getting off the ground.

¹ S10.1.1 - The National Assembly for Wales Determination on Members’ Pay & Allowances 1 April 2010.

Conclusions

7. I am entirely satisfied that the claim made by the AM was made with the best of intentions and that neither dishonesty nor deception play any part whatsoever in these transactions.

8. When the matter was originally referred to me, it was on the basis as set out in paragraph 2 herein, that is, that members are to be “reimbursed” for expenses “necessarily incurred”. Whilst, to a lawyer, this may imply that the claim is for work already done or services already completed, I am not satisfied that this interpretation is necessarily the only one. Has an expense been incurred if, in law, a contractual liability to pay £2700 has arisen by virtue of an agreed contract? In any event, I am satisfied that the AM did not knowingly seek to “get round” the regulations – rather she sought to make up front payment at the sum agreed in order to cement the deal. I am further satisfied that no query was raised as to the payment of this sum at the time, but this may simply be because the MBSU assumed from the history that this was payment for a now completed project.

9. All that said, the AM is the holder of high public office and was dealing with public money. In these circumstances, as the AM accepts in her personal statement, it would have been more transparent if the fact that the project was being financed in advance was made explicitly clear by the AM in her claim. I believe that is what the public would have expected. Further, such notification would have put the Commission on notice that this was a claim that required continuing monitoring, until completion.

10. Accordingly, I find that the Assembly Member, Bethan Jenkins, by her conduct breached sections 4(b) & (e) of the Code of Conduct for Assembly Members in that:

In submitting a claim for reimbursement of expenses, she failed to make it explicitly clear that the work in question had not been completed, thus failing

- to support and promote the principle of openness and
- to strengthen the public's trust and confidence in the integrity of the Assembly.

and thereby falls to be dealt with by the Committee on Standards of Conduct under Standing Order 22.2(i).

Additional Information

11. In accordance with my powers under section 7 of the National Assembly for Wales Commissioner for Standards Measure 2009, I respectfully advise that the procedure for making claims for reimbursement of expenses be streamlined to ensure;

- A. **that any claim for work/services not yet completed is made on a different form to the straightforward and true "reimbursement" claim form,**

so that

- B. **any claim for work or services to be completed can be monitored by the MBSU until completion.**

12. Thus the standard claim form could contain wording to this effect:

"This is a claim for the reimbursement of reasonable allowances and/or expenses, necessarily incurred, in connection with my role as an Assembly

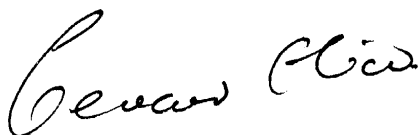
Member. I confirm that the monies claimed apply to work or services which have already been completed or fully provided.

(If you are unable to make this declaration you MUST indicate such to a member of the MBSU staff.)”

Requirements under the Procedure for Dealing with Complaints

13. I confirm that:

- The AM and the Complainant were given a copy of the final report and wished to raise no factual inaccuracy contained therein;
- The AM, having been informed of her right to make oral representations to the Committee at an oral hearing, indicated that she did not, and would not, seek to exercise such right;
- The AM, having been informed of her right to make written representations to the Committee within a specified time, indicated that the only written representations she wished the Committee to take account of was her own signed statement furnished to the Commissioner, dated 7 February and appended to this Report.
- The AM, having been made aware of the Committee’s powers under Standing Orders 22.9, 22.10 and 22.11, and of her right of appeal under section 8.1) of the Procedure, wishes to waive her right of appeal against the Committee’s decision.



Gerard Elias QC

13 February 2013



Cynulliad Cenedlaethol Cymru
National Assembly for Wales

FEES OFFICE 1440
75321
24 MAR 2011
SWYDDFA FFIWEDD
75322

1. OFFICE COSTS ALLOWANCE - CLAIM FORM

This form is for claiming expenses for the cost of maintaining an office in the Assembly Member's constituency. Members should attach receipts with all claims, and contact Members Business Support with any queries.

- Reimbursement Direct Payment (one claim form per invoice)

Payee: A THOUSAND PICTURES
(Please state company/person to be paid)

Expenditure type:	£	Expenditure type:	£	Expenditure type:	£
<input type="checkbox"/> Books		<input type="checkbox"/> Office Contents Insurance		<input type="checkbox"/> Parking Permits	
<input type="checkbox"/> Business Cards		<input type="checkbox"/> Office Electricity		<input type="checkbox"/> Photocopying	
<input type="checkbox"/> Computer Maintenance		<input type="checkbox"/> Office Equipment - Lease		<input type="checkbox"/> Photography	
<input type="checkbox"/> Conference Fees		<input type="checkbox"/> Office Equipment - Purchase - IT		<input type="checkbox"/> Postage	
<input type="checkbox"/> Consultancy		<input checked="" type="checkbox"/> Office Equipment - Purchase - Other	2700.00	<input type="checkbox"/> Presswork	
<input type="checkbox"/> Eye Test		<input type="checkbox"/> Office Gas		<input type="checkbox"/> Software Program	
<input type="checkbox"/> Event Stand		<input type="checkbox"/> Office Legal Expenses		<input type="checkbox"/> Staff Recruitment Advertising	
<input type="checkbox"/> Locksmith		<input type="checkbox"/> Office Maintenance		<input type="checkbox"/> Subscriptions	
<input type="checkbox"/> Members Training		<input type="checkbox"/> Office Removal Costs		<input type="checkbox"/> Surgery Advertising	
<input type="checkbox"/> Mobile Telephone		<input type="checkbox"/> Office Rent		<input type="checkbox"/> Surgery Room Rental	
<input type="checkbox"/> Newspapers/magazines		<input type="checkbox"/> Office Stationery		<input type="checkbox"/> Tickets	
<input type="checkbox"/> Office Business Rates		<input type="checkbox"/> Office Telephone		<input type="checkbox"/> Translation	
<input type="checkbox"/> Office Cleaner Salary		<input type="checkbox"/> Office TV Licence		<input type="checkbox"/> Waste Collection	
<input type="checkbox"/> Office Cleaning		<input type="checkbox"/> Office Water Rates		<input type="checkbox"/> Website	
<input type="checkbox"/> Office Cleaning Materials		<input type="checkbox"/> Office Window Cleaning		TOTAL COST	2700.00

Additional information: THIS IS A PROMOTIONAL DVD THAT WILL BE USED TO INCREASE KNOWLEDGE OF THE ASSEMBLY, AMs & THEIR WORK.

I certify that the expenses shown above have been wholly, exclusively and necessarily incurred by me on Assembly duties. I attached receipts in support of all items claimed. I confirm that these items have not been previously claimed.

SIGNED Bethan Jenkins A.M. PRINTED NAME BETHAN JENKINS AM

CONSTITUENCY/ELECTORAL REGION SOUTH WALES WEST DATE 23/03/2011

NAW/MBS/FORMS2010/1

Annex B

Bethan Jenkins AM

Personal Statement

1. I acknowledge that I claimed the sum of £2700 as Office expenses in order to fund a DVD which I believed would help promote a better understanding of how the Assembly works. Although at the time of the claim the DVD had not been produced, I intended and believed that the project would be completed within weeks. The money claimed was required to fund “up front” and at a fixed price the work of the film makers. Funding was paid by Members’ Business Support Unit to a film maker I had contracted.
2. There are, however, reasons why the project wasn’t seen through and I would like to use this statement to explain to the committee why that happened .In the summer of 2010, I conceived an idea of involving more young people in democracy through a multi-media project after becoming concerned by Electoral Commission findings that a majority (58%) of eligible voters under the age of 24 were not registered to vote. Further research discovered that those figures rose in areas of deprivation, such as those found in South Wales West, giving greater urgency to the project in my area.
3. As a young AM who often deals with young people via social media, I was concerned that while they understand the mechanisms and outcomes of voting, learned through participation in shows such as *The X Factor*, they did not feel involved in democratic processes.
4. Ownership is a crucial factor in the popularity of social media – people feel it is theirs to shape and purpose – so it was decided that the use of media in any local democracy project would be essential.
5. The plan was as follows:

- My office would write to sixth forms and colleges across South Wales West and ask if I could come in and speak about my job and how the Assembly works.
- At the end of this discussion, I would set the students a challenge: to form their own “mini parliament” (or convene existing schools councils) and then agree on a subject matter that they could come together to debate, in a similar way to how the Assembly works.
- With the possibility of workshops offered involving myself or my staff in the time between this first meeting and the establishment of “mini parliaments”, students would be encouraged to choose among themselves a subject that was close to their hearts. It could be a local project, like much-needed recreation facilities, or a wider subject, such as bullying or eating disorders. It was important to pick a subject that was relevant and which they could engage in.
- A student chosen to propose the debate in a school or college would then be invited to make a short film, which would be shown at the start of the “mini parliament” debate, which I would chair.
- The debate would also be filmed, and the outcome further acted upon. For example, I would have made students aware of the function of the Petitions Committee, offering the real chance of demonstrating to students how an outcome they care about could become a reality through the use of democracy. This process would be filmed for the DVD, to show democracy in action. In this way, it was hoped to increase an interest in the subject among young and would-be voters.
- There would also be a strong element of social media work, with “mini parliaments” encouraged to set up their own Facebook pages, Twitter accounts, blogs and other online forums.
- Once the work was completed, a DVD would be compiled and sent to schools across the region in order to encourage them to take part. The DVD was to be offered to the Assembly and its outreach team. I also hoped that the “mini parliaments” would continue on their own, with visits from me from time to time.

6. I first approached the Assembly Commission with the idea, which warmly received it, shortly after it was conceived. The possibility of funding directly from the Commission, with me taking on the role of directing the project, was seriously discussed. However, in the end, it was felt that funding such a project fell outside the remit of the Commission at that time – although I was told that the Commission was very keen to hear the outcome of the project with a view to taking it on itself.
7. I had in mind a video company, called A Thousand Pictures. In the course of my work as an AM, I had seen its work for Barnardo's and discovered it was based in Swansea. I believe very strongly in supporting the local economy and so approached A Thousand Pictures about producing the video.
8. The company is run by very experienced and professional people who have spent their entire careers in film production and were judged perfect for the role – particularly as they begin contributing ideas from the outset.
9. The company first quoted a price of around £3,500. I believed that exceeded what I was willing to spend on this project where the outcome was unknown, and so I negotiated the company down to £2,700.
10. I therefore made a claim for £2700 and received email confirmation from MBSU staff to inform me that the payment to the company had been made. MBSU directly paid A Thousand Pictures. I was only involved in this process in forwarding an invoice from the company to MBS.
11. At this time, MBSU did not raise any question with me about the project or the DVD. It was only after the matter was raised in a story in the Western Mail in late 2012 that a complaint was made. While I accept that the project was my responsibility, there appears to be no system which distinguishes between work done and yet-to-be-done on the claim forms allocated from the MBSU.

12. With the benefit of hindsight, it was clear that my office underestimated the scale of the work involved in a new project of this kind. Some 29 schools and colleges across the region were contacted and the following expressed an interest in setting up the “mini parliaments”:

- Bridgend College
- Neath Port Talbot College
- Gower College, Swansea
- Ysgol Gyfun Gwyr Comprehensive School, Gower
- Morryston Comprehensive School, Swansea
- Pencoed Comprehensive School, Bridgend County Borough
- Bishop Gore Comprehensive School, Swansea
- Ysgol Gyfun Llangynwyd Comprehensive School, Bridgend County Borough

13. It became clear during discussions with Head teachers and other school staff that they would have to consider issues such as Criminal Records Bureau (CRB) checks, and also getting written permission from parents if filming was involved. My office was warned at this stage that this could take some time to achieve.

14. In fact, what we had hoped would take a matter of weeks could not be resolved before the Assembly elections took place. Unfortunately, at this point, the project was put on the back burner while the election was being fought. It should be pointed out that, at this time, the company offered to return the money, but we agreed to review that once the result of the election was known.

15. I was successful in being re-elected, and soon - along with other AMs - settled into a very busy term as all kinds of issues such as office moves and the handing over of work from fellow Plaid AM Dr Dai Lloyd, who was not fortunate enough to have been elected, was carried out.

16. I made it clear to my office that I wanted the DVD project worked on over the summer, when there would be no work for plenary and little for committees. However, with students and many staff absent over that period, we swiftly discovered that there was little that could be taken forward at this time.
17. There were further problems when we returned to work. I was hospitalised and operated on following a back problem, and lost the member of staff responsible for the DVD project to a three-month sickness absence. Inadvertently, the project slipped from a priority to a marginal position. There were a number of attempts to meaningfully restart the DVD project. A plan to ask community youth groups across the region proved unworkable when local authorities declined to help with access to those groups.
18. As late as October last year, the heads of all the interested schools were re-contacted and asked if they wanted to continue with it.
19. The project was initiated in good faith and has suffered a number of unfortunate delays, such as time to process CRB checks, the election period, the summer recess, which were beyond my control. In addition, and perhaps crucially, as has been noted publicly already, I was also suffering from stress and depression, with loss of work time and this obviously had an impact on me and my work priorities and schedule.
20. The project has been blighted by bad luck, which could not have been foreseen. However, with each setback I sought to find a solution to ensure it could go ahead, although, inevitably, this meant the timescale slipped back.
21. I accept that, with hindsight, my submitted claim could have been more transparent. Involving as it did public money, I accept that it should have explicitly stated that the work was still to be completed at the time of claim.

I would point out, however, that the documentation does not appear to take account of claims made for work yet to be done.

22. It was always my intention that the DVD would be produced and speedily. I did not stand to gain from initiating this project other than to promote youth democracy. Regrettably, complex projects like this sometimes suffer setbacks I recognise the problems caused by failing to complete this project. It had been my intention to repay that trust by involving more young people in our democratic processes, and I still hope that I can seek to involve more young people in politics in the future.

Bethan Jenkins AM

Bethan Jenkins

5 February 2013