

Ninth report to the Sixth Senedd under Standing Order 22.9

March 2024



The Welsh Parliament is the democratically elected body that represents the interests of Wales and its people. Commonly known as the Senedd, it makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this document can be found on the Welsh Parliament website: **www.senedd.wales/SeneddStandards**

Copies of this document can also be obtained in accessible formats including Braille, large print, audio or hard copy from:

Standards of Conduct Committee
Welsh Parliament
Cardiff Bay
CF99 1SN

Tel: **0300 200 6565**

Email: **SeneddStandards@senedd.wales**

© Senedd Commission Copyright 2024

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the Senedd Commission and the title of the document specified.

Ninth report to the Sixth Senedd under Standing Order 22.9

March 2024



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

* Did not participate in any of the considerations of the complaint and there was no Plaid Cymru substitute.

Contents

1.	Introduction and Preliminary Matters.....	5
2.	Summary of decision	8
3.	Consideration of the Commissioner’s Report and Further Evidence	13
	The Committee’s approach.....	14
	Principles of natural justice and the standard of proof.....	14
	Assessing the evidence and findings.....	15
4.	The Committee’s Findings	18
	Findings of fact 1, 2, 4, 13, 17, 19, 20 and 21.....	18
	Findings of fact 5, 6, 7, 8, 9, 10, 11, 12, 18, 22 and 23.....	19
	Findings of fact 5 and 6.....	19
	Findings of fact 7 and 12.....	21
	Findings of fact 8, 9, 10, 11, 18, 22 and 23.....	21
	Findings 3, 14, 15, and 16.....	23
5.	Procedural Matters and Submissions	25
	Procedural fairness.....	25
	Human Rights Act considerations.....	25
	Bias.....	29
	Further Matters.....	49
	Admissibility of complaint.....	51
	Motivation.....	51
	Duration of the Complaint and the Committee’s decision making.....	52
6.	The Committee’s decision and recommendation	54
	Committee’s recommendation on sanction.....	58
7.	Matters of General Principle	60

The presence and impact of alcohol	60
Plaid Cymru Party Procedures.....	60
New Members adjusting to the Senedd working patterns	61
Representation on the Standards of Conduct Committee	62
Procedures of the Commissioner for Standards.....	62
Members' Preferred Language.....	62
Initial procedural meeting.....	62
Additional matters to the initial complaint.....	63
Witnesses approaching the Commissioner	63
Annex A: Chronology of Committee proceedings	64

1. Introduction and Preliminary Matters

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. The office of independent Senedd Commissioner for Standards is established by the National Assembly for Wales Commissioner for Standards Measure 2009 (“the Measure”).

3. 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 Senedd³ (“the Procedure”) in relation to a complaint against Rhys ab Owen MS (“the Member”).

4. This report sets out the Committee’s consideration of the report of the Senedd Commissioner for Standards (“the Commissioner”) and the Committee’s decision on the complaint.

5. The members of the Committee who considered the complaint were Vikki Howells MS, John Griffiths MS and Natasha Asghar MS.

6. Peredur Owen Griffiths MS who is a member of the Committee, recused himself from consideration of this matter following notification from the Committee Clerk that he was named in the report from the Commissioner.

7. In notifying the Committee of his decision to recuse, Peredur Owen Griffiths MS explained that he and the Plaid Cymru group had taken steps to protect his impartiality in this case by making sure he was not present at any discussions about the decision to suspend the Member from the Plaid Cymru Group, once it was known a complaint had been made to the Commissioner. However, all other members of the Plaid Cymru Group were involved in the discussion regarding the decision to suspend Rhys ab Owen, “without prejudice”, from the Group, pending the outcome of the complaint. This included the Plaid Cymru nominated alternative, Rhun ap Iorwerth MS. Accordingly, the notification from Peredur

¹ Standing Orders

² Standing Order 22.2(i)

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

Owen Griffiths MS also stated that Plaid Cymru Group had agreed to recuse themselves completely from the deliberations of the Standards Committee regarding the complaint and this report.

8. The Committee has set out the key dates of its consideration of the report from the Commissioner and to reach its conclusion in respect of this complaint in the chronology at annex A. The Committee has received advice during its deliberations from its secretariat and has received external legal advice from Caroline Rees KC. The Member has been advised by his own counsel Malcom Bishop KC.

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

10. The Committee has also considered the arrangements for the publication of the Commissioner's report and related documentation. The Procedure for Dealing with Complaints against Members of the Senedd provides that:

8.26. The Committee may redact or withhold all or part of the Commissioner's report, or publish a summary if considered necessary. A decision to redact, and the general reason for it, must be noted in the Committee report. The reason for doing so must either:

(a) be consistent with the provisions in the Committee privacy notice; or

(b) for other reasons where the Committee considers there is a risk of harm or distress to any person.

11. The Committee has agreed to include relevant extracts from the report from the Commissioner where necessary in its report. The Committee has taken the decision to withhold the report from the Commissioner on the grounds in paragraph 8.26 (a) and (b) of the Procedure. This decision was taken to protect the identities of persons named in the Commissioner's Report and due to the risk of distress to those involved in this complaint.

12. The Committee is making available a redacted version of the Commissioner's report and annexes and other related documents, for Members of the Senedd to inspect in private prior to the matter being considered in plenary. This is to allow Members access to all necessary information as part of the decision-making process. The redactions to the Commissioner's report and related documents

were made to protect the privacy of those involved as far as possible and minimise the risk of distress to those involved in the complaint.

13. Members of the Senedd are expected to respect the conditions associated with viewing the report, to maintain the confidentiality of information which is not being made public. Members must not seek to identify any of those involved in this complaint.

14. A failure to adhere to the conditions would be considered a breach of rule 19 of the Code of Conduct.

15. Members of the Senedd should contact the Committee clerk to arrange a time to inspect the Commissioner's report.

2. Summary of decision

16. The Commissioner received a complaint in writing on 15 August 2022 in relation to the conduct of the Member on the evening of 30 June – 1 July 2021. On 11 October 2022, having decided that the complaint was admissible the Commissioner wrote to notify the Member of the complaint and asked whether the Member admitted or denied the following assertions made by the Complainant.

“1. That at about 11:00pm on 30 June 2021 in Wetherspoon’s Mount Stuart, Cardiff Bay [he was] very drunk.

2. That about 11:30pm that night in the street near to Wetherspoon’s [he] twice called the Complainant ‘a bitch’.

3. That at that time and place he put his arm around the Complainant and pulled her body close to his well knowing that his actions were unwanted by her.

4. That shortly thereafter in the rear of a taxi in transit between that location and Cardiff city centre he placed his left hand on her right thigh close to her groin and squeezed it hard.

5. That on several occasions since that date he had apologised the Complainant for his misconduct that night.”

17. The Commissioner also sent with his letter copies of the original complaint and supporting documents provided to the Commissioner by the Complainant.

18. In response to the Commissioner’s letter, the Member accepted points 1 and 5 but stated that points 2,3, and 4 were not admitted.

19. The Commissioner conducted an investigation into the complaint which included interviewing the Member, the Complainant, and a number of other witnesses who either provided voluntary statements or who the Commissioner decided to interview under oath using the powers under section 11 of the Measure. The Commissioner made the following 23 findings of fact, some of which the Committee has redacted or summarised to protect the identity of people and to avoid harm or distress⁴:

⁴ Procedure or dealing with complaints provision 8.26

Finding of Fact 1 - On the evening of 30 June 2021, prior to attending a dinner for Plaid Cymru Members of the Senedd at the Côte restaurant, the Member drank a pint of beer.

Finding of Fact 2 - Whilst there, he drank a quantity of wine.

Finding of Fact 3- He made lewd comments about [Senedd Members and a Member of Commission staff].

Finding of Fact 4 - After the dinner the Member and a number of other Members moved to Wetherspoons where they met up with a number of Plaid Cymru staff who had been attending a separate event.

Finding of Fact 5- All those present had consumed varying amounts of alcohol and were intoxicated to varying degrees. The Member was more intoxicated than the others present.

Finding of Fact 6- The Member made disparaging comments about [a Member of the Senedd] in a voice loud enough to be heard by those at adjoining tables. [Comments redacted].

Finding of Fact 7- The Member inappropriately touched the waist of Witness A.

Finding of Fact 8- In the street near to Wetherspoons the Member twice called the Complainant a 'bitch'.

Finding of Fact 9- He touched her inappropriately by putting his arm round her [the complainant's] waist and pulling her body close to his.

Finding of Fact 10- Knowing that he was not welcome, the Member got into the rear seat of a taxi and sat next to the Complainant.

Finding of Fact 11- In the taxi he touched the Complainant inappropriately by squeezing her upper thigh hard with his hand.

Finding of Fact 12- When called out by Witness A, the Member called her a 'bitch'.

Finding of Fact 13- At the Boom Battle Bar, the Member, Witness A, Witness B, Witness C and the Complainant sat together for approximately three hours and consumed more alcohol some of which was paid for by the Member.

Finding of Fact 14- Whilst there the Member made disparaging comments about [a Member of the Senedd].

Finding of Fact 15- He also made disparaging comments about [two Members of the Senedd].

Finding of Fact 16- He made a number of wholly inappropriate comments to Witness A [Comments redacted].

Finding of Fact 17- By the time he left the Boom Battle Bar the Member was in his own words 'very, very drunk'.

Finding of Fact 18- At a virtual meeting with the Chief Whip on 2 July 2021 the Member was given full details of all the allegations against him.

Finding of Fact 19- Later that day the Member sent the Chief Whip an email in which he apologised for 'his drunken behaviour of Wednesday night.'

Finding of Fact 20- The same day the Member emailed Witness A and apologised to her for 'what happened on Wednesday'. [30 June 2021]

Finding of Fact 21- At about 5pm that day the Member telephoned the Complainant and, speaking in Welsh, told her repeatedly that he was sorry.

Finding of Fact 22- The Member has admitted that his conduct caused mental pain to the Complainant and others. His conduct continues to adversely affect the Complainant.

Finding of Fact 23- Other than being drunk and making crude comments to Witness A, the Member does not accept any improper conduct towards either the Complainant or Witness A and has shown no remorse for it.

20. The Commissioner considered that these findings of fact amounted to a breach of the following rules in the Code of Conduct:

- Rule 1 Members must uphold the Overarching Principles;
- Rule 3 Members must not act or behave in a manner that brings the Senedd or its Members generally, into disrepute;
- Rule 4 Members must not engage in unwanted behaviour, harassment, bullying, or discrimination;
- Rule 6 Members must not subject anyone to personal attack – in any communication (whether verbal, in writing or any form of electronic or other medium) – in a manner that would be considered excessive or

abusive by a reasonable and impartial person, having regard to the context in which the remarks were made;

- The Commissioner also expressed an opinion that the Member's conduct was contrary the Senedd's Dignity and Respect Policy (in particular inappropriate behaviour that adversely affects the dignity of another).

21. Finding of Fact 1,2,4, 13, 17, 19, 20 and 21 were accepted by the Member.

22. Having considered the evidence presented, including the report from the Commissioner and its annexes, written submissions from the Member and his counsel and from the Commissioner, additional information requested by the Committee and the oral representations from the Member and his counsel, the Committee:

- agreed with the findings of fact agreed by the Member, and findings 5, 6, 7, 8,9, 10, 11, 12 18, 22 and 23;
- made no determinations in relation to the Code of Conduct in respect of findings of fact 3, 14, 15, and 16, for procedural reasons set out below and taking into account the position of witness A who did not make a complaint and was summoned by the Commissioner to give evidence. However, the Committee considered these findings as part of the surrounding circumstances in reaching its decisions on the other findings of fact.

23. Consequently, the Committee's decision is in respect of eleven of the matters (findings 5,6, 7,8,9, 10, 11, 12, 18, 22 and 23) set out at paragraph 22 above and those findings admitted by the Member (1,2,4,13,17,19, 20 and 21).

24. The Committee noted the Commissioner's opinion that the behaviour contravened the Dignity and Respect policy. However, the Committee now considers the policy to be covered under Rule 1 of the Code of Conduct to uphold the eight overarching principles of the Code and particularly the Respect principle⁵ and rule 4 of the Code of Conduct.⁶

25. Having considered the evidence and the submissions, the Committee has decided that the conduct of the Member, in terms of the finding agreed by the

⁵ The Respect Principle states: "Members must not behave in ways that reduce equality of opportunity, must always respect the dignity of other persons and must not engage in discriminatory or unwanted behaviour."

⁶ Rule 4 states: "Members must not engage in unwanted behaviour. Harassment, bullying or discrimination."

Committee had breached the Code of Conduct in respect of Rules one, three, four and six and recommends that the Member should be excluded for a period of 42 days not including recess.

26. The Committee's approach and consideration of these matters is set out in the following sections of this report:

- The Committee's approach to the case – chapter three;
- The Committee's findings – chapter four;
- Consideration of procedural matters and challenges – chapter five;
- The Committee's decision and recommendation – chapter six;
- Matters of general principle arising – chapter seven.

3. Consideration of the Commissioner's Report and Further Evidence

27. The Committee considered whether the Member was in breach of Standing Order 22.2(i).⁷

28. In agreeing how to approach its consideration of this matter, the Committee decided in the interests of fairness not to invite the Commissioner to attend the Committee and to seek further clarification and information from the Commissioner in writing. Responses and additional information received from the Commissioner were shared with the Member, who was afforded the opportunity to comment on these documents.

29. During the course of its consideration, the Committee accepted advice not to search for information on the internet or other media in relation to this case and to ignore anything they may have come across otherwise.

30. In considering whether a breach of the Code of Conduct had taken place, the Committee has therefore proceeded on the basis of the evidence set out in the:

- The Commissioner's Report and attachments,
- The Member's initial written representations,
- The Commissioner's responses to written question put to him by the Committee,
- The Member's further written and legal representations and additional documentation in response the Commissioner's responses, and
- Further written responses and comment from the Commissioner,
- Further evidence obtained by the Commissioner at the request of the Committee,

⁷ Standing order 22.2(i)The responsible 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 Senedd resolution relating to the financial or other interests of Members; (c) Standing Order 5; (d) any Senedd 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;

- The oral representations of the Member and counsel when appearing before the Committee.

31. The date of the receipt and detail of these documents is set out in the annexed chronology.

32. Having satisfied itself that the Commissioner had sufficiently answered the Committee's initial clarification questions, the Committee agreed to move to the representation stage of the Procedure. This stage took place on 23 October 2023, when the Member attended in person, accompanied by his counsel.

33. In advance of the meeting, the Committee received a written legal submission from the Member's counsel and further written submissions from the Member.

34. The Committee gave permission for counsel to address the Committee as well as the Member himself. The Committee received extensive representations which are considered in the next chapter.

35. Following the representation stage, the Committee agreed to request several further documents from the Commissioner and to ask him to investigate further matters arising from the representations.

The Committee's approach.

Principles of natural justice and the standard of proof

36. Section 3.1 of the Procedure places an obligation on the Commissioner to act at all times in accordance with the principles of natural justice and fairness. Consequently, in considering its decision, the Committee considered whether the Member was investigated by a person who was fair and impartial, and heard both sides of the argument; and that the Member had fair notice of the complaint against him and fair opportunity to answer the complaint.

37. The Committee noted that the procedure and process would not be considered fair if the investigation or decision-making was approached with actual or perceived bias. The Committee was advised that the law on apparent bias asks whether the process would leave a fair-minded and informed observer to conclude there was a real possibility that the fact finder or the decision-making was biased. The process must therefore be seen to be fair, but equally the fair minded and informed observer adopts a balanced approach and is neither complacent nor unduly sceptical.

38. The Committee was advised that the standard of proof to be applied was the balance of probabilities standard, which means on the evidence presented the occurrence of the events complained of was more likely than not.

39. The Committee was also advised that the Courts have decided that while there is no higher standard to be applied in matters such as those in this complaint, where the allegations are serious, more attention should be paid to the quality and cogency of the evidence to satisfy the standard. The Committee were particularly mindful of this consideration in their decision-making.

Assessing the evidence and findings

40. The Committee noted the definitions in the Code of Conduct in relation to “harassment” and “unwanted behaviour”, which are set out in part 2 of the Code of Conduct. These definitions are:

“harassment” means unwanted conduct which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual and includes sexual harassment;

“unwanted behaviour” means behaviour which is not encouraged or reciprocated by the recipient, regardless of whether it was meant to cause offence, and whether it is repeated or an isolated incident.

41. The Code further states that in applying these definitions:

- the intention of the person complained about is irrelevant;
- the test is whether a reasonable and impartial person would consider the conduct would fall within one of the definitions having regard to the context of the behaviour complained about;
- the respective rights under the Human Rights Act 1998 of both the person complained about and the person subject to the conduct in question must be respected.

42. Given the nature of the allegation in this report, the Committee received advice on how it should approach the central complaint of unwanted touching.

Avoiding assumptions

43. The Committee noted that there is no typical situation in these types of complaints. People respond in different ways, and there is no typical response.

The Committee was also advised to consider whether there was any power imbalance between the Member and the Complainant given the impact this may have on the response of the Complainant.

Timing of Complaint

44. That the timing of the complaint, whether immediate or delayed is not indicative of the truthfulness of the complaint. Different people react in different ways. The Committee noted all the circumstances of the case, including reasons given for the delay by the Complainant and the submissions made by the Member when considering the timing of the complaint.

Inconsistent accounts

45. It should not be assumed that because a witness gave different accounts that the evidence of that witness is untrue. Experience has shown that inconsistencies in accounts can happen whether a witness is telling the truth or not. Some may go over an event many times in their mind so that their memory becomes clearer over time. Others may block an event out so that they have difficulty recalling matters later in time. The Committee noted this and considered this matter on the basis of the evidence as a whole, including any inconsistencies and the impact of any inconsistencies on the reliability of witnesses.

Display (or lack of) of emotion/distress at time of first complaint

46. When considering the emotional state of the Complainant when making first complaint, it must be borne in mind that there is no typical response. Some may show distress. Others may be calm and unemotional. It must be borne in mind that some may not want to display their actual emotional state. Consideration must be given as to whether the response was genuine. If it is found to be genuine then it may assist when deciding whether the case has been proved. If it is not found to be genuine, then it is of no assistance. A fact finder should avoid making any assessment based upon any preconceived idea of how a person in this situation should behave.

Display (or lack of) of emotion/distress when giving account to the investigator

47. The way the Complainant gave her account to the Commissioner is not a good indication of whether or not the allegation is true. People react in different ways. Some show emotion and some do not. The presence or absence of emotion when interviewed is not a good indication of whether a person is telling the truth or not.

Objectivity

48. The Committee noted it must not allow emotion to cloud an objective assessment of the facts.

Corroboration

49. The Committee was advised that corroboration is not a requirement but noted that there was some witness corroboration in this case and scrutinised this carefully while taking into account the advice as a whole.

4. The Committee's Findings

50. The Commissioner made 23 findings of fact. This section sets out the Committee's decisions following consideration of these findings, and other matters arising from the Commissioner's report and attachments and the extensive submissions by the Member and the Commissioner's responses to those submissions. The facts have been grouped together for ease of consideration as follows.

Findings of fact 1, 2, 4, 13, 17, 19, 20 and 21

Finding 1 On the evening of 30 June 2021, prior to attending a dinner for Plaid Cymru Members of the Senedd at the Cote restaurant, the Member drank a pint of beer.

Finding 2 Whilst there, he drank a quantity of wine.

Finding 4 After the dinner the Member and a number of other Members moved to Wetherspoons where they met up with a number of Plaid Cymru staff who had been attending a separate event.

Finding 13 At the Boom Battle Bar, the Member, Witness A, Witness B, Witness C and the Complainant sat together for approximately three hours and consumed more alcohol some of which was paid for by the Member.

Finding 17 By the time he left the Boom Battle Bar the Member was in his own words 'very, very drunk'

Finding 19 Later that day the Member sent the Chief Whip an email in which he apologised for 'his drunken behaviour of Wednesday night.'

Finding 20 The same day the Member emailed Witness A and apologised to her for 'what happened on Wednesday' [30 June 2021].

Finding 21 At about 5pm that day the Member telephoned the Complainant and, speaking in Welsh, told her repeatedly that he was sorry.

51. In his comments of 10 May 2022 on the Commissioner's draft Findings of Fact, the Member accepted these findings. The Committee has therefore treated these as admitted facts.

Findings of fact 5, 6, 7, 8, 9, 10, 11, 12, 18, 22 and 23

52. These findings of fact relate to the original written complaint made by the Complainant on 15 August 2022.

Finding 5 All those present had consumed varying amounts of alcohol and were intoxicated to varying degrees. The Member was more intoxicated than the others present.

Finding 6 The Member made disparaging comments about [a Member of the Senedd] in a voice loud enough to be heard by those at adjoining tables. [Comments redacted].

Finding 7 The Member inappropriately touched the waist of Witness A.

Finding 8 In the street near to Wetherspoons the Member twice called the Complainant a 'bitch'.

Finding 9 He touched her inappropriately by putting his arm round her [the Complainant's] waist and pulling her body close to his.

Finding 10 Knowing that he was not welcome, the Member got into the rear seat of a taxi and sat next to the Complainant.

Finding 11 In the taxi he touched the Complainant inappropriately by squeezing her upper thigh hard with his hand.

Finding 12 When called out by Witness A, the Member called her a 'bitch'.

Finding 18 At a virtual meeting with the Chief Whip on 2 July 2021 the Member was given full details of all the allegations against him.

Finding 22 The Member has admitted that his conduct caused mental pain to the Complainant and others. His conduct continues to adversely affect the Complainant.

Finding 23 Other than being drunk and making crude comments to Witness A, the Member does not accept any improper conduct towards either the Complainant or Witness A and has shown no remorse for it.

Findings of fact 5 and 6

53. The Commissioner found that following a meal in Côte Brasserie on 30 June 2021, a group of Plaid Cymru Members went to the Mount Stuart (Wetherspoons')

pub and met up with some Plaid Cymru staff (comprising both Senedd support staff and central party staff). Findings of Fact 5 and 6 relate to the Member's conduct in the Mount Stuart pub.

54. A number of witnesses interviewed by the Commissioner corroborated that the Member was intoxicated at the Mount Stuart, although there is some variation in their accounts about how intoxicated the Member appeared. The Committee took account of the Member's comments around the inconsistencies of evidence and the facts that the Complainant and other witnesses were also drinking alcohol. However, the Committee is of the view that the Member's own comments about 'being hazy after the Wetherspoons', plus the evidence of the other witnesses about the Member's state of intoxication is sufficient for the Committee to accept Finding of Fact 5.

55. Turning to Finding of Fact 6, the Member in his initial interview with the Commissioner admits to making disparaging remarks about a fellow Member of the Senedd. However, he denies this finding of fact to the extent that:

*"There is no evidence that any adjoining table heard any of the conversation, which was in Welsh and not comprehensible to the likely customers at this public house."*⁸

56. However, given that a number of witnesses confirm that the Member made these comments, and the Member does not deny making these comments, the Committee has decided to accept this aspect of the Finding of Fact. However, the Committee notes that in his Report dealing with the Member's comments on the draft Findings, the Commissioner states that he accepts there is no direct evidence that what the Member said was in fact, heard by those at the other tables although the Member did accept he was speaking in a loud voice. The Commissioner also states that the comment was heard by the Complainant who was at the same table as the Member, but not in conversation with him.

57. The Committee accepts that it is likely the remarks were confined to a restricted circle. With regard to the remarks themselves, these are considered further in chapter five as they raise issues relating to freedom of speech and expression.

⁸ Members representations to the Commissioner on findings of fact

Findings of fact 7 and 12

58. The Committee notes that these findings were not part of the original complaint, and has set out in paragraphs 72-78 below its approach to these and other such findings.

59. The Committee notes the evidence gathered by the Commissioner relating to the Member's conduct towards witness A, some of which the Member admits to. The Committee also notes that witness A did not want to make a complaint or provide evidence voluntarily in this complaint and was summoned to give evidence under the Commissioner's statutory powers.⁹

60. The Member states in his representations to the Commissioner regarding Finding of Fact 7 that:

'Any touching of Witness A was not meant to be inappropriate¹⁰.'

61. The Committee notes that the Code states that in applying the definitions of unwanted behaviour and harassment that the intention of the person complained about is irrelevant if a reasonable and impartial person would consider the conduct would fall within the definition having regard to the context of the behaviour complained about.¹¹

62. The Member denied calling witness A a "bitch" when called out in the taxi.

63. The Committee therefore makes no finding in relation to a breach of the Code for these findings but notes them as part of the surrounding circumstances.

Findings of fact 8, 9, 10, 11, 18, 22 and 23

64. This group of findings of fact cover the main substance of the original complaint and are central to our decision.

65. When interviewed by the Commissioner, the Complainant provided the Commissioner with a note, handwritten in Welsh. The Complainant stated this was written at home on the morning on 1 July 2021 and sets out the Complainant's recollection of the events. The note states that the Member called the Complainant a 'bitch', grabbed hold of the Complainant, insisted on getting into the taxi despite the Complainant suggesting the Member went with the

⁹ National Assembly for Wales Commissioner for Standards Measure 2009 Section 11

¹⁰ Member's representation on Finding of Fact paragraph 13

¹¹ Paragraph 11, Code of Conduct

others in the group, and in the taxi held the Complainant's thigh and squeezed it hard.

66. The Member submits that in subsequent recollections of events there are variations in the Complainant's account which makes the evidence questionable and there are also variations with other witnesses. The Committee took account of these variations including differing descriptions of the event in the taxi.

67. The Committee had regard to the advice that inconsistencies in cases such as this do not necessarily point to matters being untrue, but instead can reflect differences in recollection as time passes and between people.

68. The Commissioner's report states: "Witness A deponed that the Member 'pushed his way into the taxi,' that she had seen him grope the Complainant and that when she called him out for doing so he had called her a 'bitch'."¹² The Committee notes that Witness A was not a voluntary witness in this complaint on this matter and was summoned to give evidence by the Commissioner.

69. The Committee also took account of the Commissioner's written questions of the taxi driver. The driver was unable to recall the events of the evening, which the Commissioner observed was unremarkable given the behaviours that taxi drivers may observe in the backseats of taxis.¹³ The Committee does not consider this lack of recall significant given the time that has passed from the incident to the Commissioner interviewing the driver.

70. The Member stated that he does not use the word 'bitch' and that none of the other witnesses in the vicinity heard him call the Complainant 'bitch'. However, the Committee also notes witness A's evidence that the Member also called her 'bitch' for calling out his behaviour in the taxi.

71. The Committee considered the differences in the accounts given in evidence but considered them to be within the parameters of expected variation. The Committee considers that the evidence in relation to these findings is of sufficient cogency for the Committee, on the balance of probabilities to accept findings of fact 8,9,10,11, 18, 22 and 23.

¹² Commissioners report

¹³ Commissioners report

Findings 3, 14, 15, and 16

72. This group of findings do not relate to the original complaint made in August 2022, but are matters which emerged during the course of the Commissioner's investigation:

Finding 3 He made lewd comments about [Members of the Senedd and a member of Commission staff at the Côte restaurant].

Finding 14 Whilst there the Member made disparaging comments about [a Member of the Senedd].

Finding 15. He also made disparaging comments about [two Members of the Senedd].

Finding 16 He made a number of wholly inappropriate comments to Witness A [comments redacted].

73. The Committee received representations from the Member regarding the Commissioner's powers to find additional breaches and that the Member did not consider that he was given a prompt and clear statement of the precise additional matters being considered by the Commissioner.

74. The Committee noted that the Commissioner relied on legal advice that he received during the fifth Senedd which sets out the circumstances where the Commissioner could pursue matters outside of the original complaint, if they emerge during the course of the investigation. Legal advice in connection with this complaint stated:

'The Commissioner was bound in his investigative process to consider all evidence relevant to the Member's behaviour during the relevant time period as the foundation for making his "findings" on the matters which are subject of the complaint. It is not evidence of "bad character" but instead is evidence of the surrounding circumstances during the relevant time period. In considering whether the Member behaved as alleged in the complaint, the circumstances at or around the time are relevant to whether or not the Member behaved as alleged. It is unrealistic to expect the Commissioner to make his findings in a vacuum'

75. The Committee noted that as these further findings emerged during the investigation, they could not be put to the Member at the outset. The Committee noted, however, that these were subsequently put to the Member in varying forms, some clearer than others, throughout the investigation. In this regard, the Committee was advised that the advice relied upon by the Commissioner was subject to the Member being given notice of such matters and the opportunity to offer their response.

76. Having regard to the circumstances of the present case, the Committee is of the view that the Commissioner should have made clear to the Member in writing before the end of the investigation and before the submission of the draft findings of fact for comment, those further matters that had emerged and on which he was considering making further findings and, therefore, expressing an opinion regarding breaches of the Code.

77. The Committee also took into account the statements in witness A's interview that they did not want to make a complaint and that they had been summoned to do by the Commissioner using his statutory powers.

78. In light of these points, the Committee decided not to consider whether these findings of fact amounted to breaches of the Code of Conduct. However, the Committee did consider these findings as part of the relevant surrounding circumstances of the original complaint.

5. Procedural Matters and Submissions

Procedural fairness

79. In his first written submission to the Committee, the Member set out that he had highlighted throughout several concerns with the Commissioner's approach, and that he considered the Commissioner's investigation had:

"... not correctly applied the procedure, the principles of natural justice, human rights or good practice followed by other legislatures such as Westminster."

80. The following sections set out the Committee's consideration of the Member's submissions on procedural matters, including submissions made on his behalf by counsel.

Human Rights Act considerations

81. Both the Senedd itself and the Commissioner are bound by the European Convention of Human Rights as applied by the Human Rights Act 1998. The Committee received submissions on behalf of the Member that the complaint engaged Articles 6 (right to a fair hearing), Article 8 (respect for family life) and Article 10 (freedom of expression). The Committee agrees that these articles are engaged in the consideration of this complaint.

82. The procedures adopted by the Senedd and other legislatures in regulating the conduct of Members characterised by an inquisitorial approach to the investigation of complaints by an independent fact finder who is not the decision maker, with the publication of a report of the decision and the final decision taken in public with an opportunity for the Member to be heard, have been considered to be compliant with Article 6. However, the Member also made extensive submissions that his rights to a fair hearing had been denied by the Commissioner's bias towards the Member and the Committee sets out its consideration of these submissions later in this chapter.

83. In relation to the right to respect for private and family life under Article 8, it was submitted that "the events under consideration did not take place within the Senedd or its various offices, or in a work setting, or in the course of the Member's work at the Senedd". After drawing attention to broad definition of private rights adopted by the European Court of Human Rights,¹⁴ it was submitted that this

¹⁴ Citing the case of *Botta v. Italy* 26 EHRR 241

must extend to the right to be “boisterous, argumentative, or rowdy”. The domestic case of *Beckwith*,¹⁵ which concerned allegations of professional misconduct against a solicitor was also cited in support of the proposition that a duty to act with integrity in dealing with others is only breached where “part of a person’s private life realistically touches on his practice of the profession”.

84. The Committee does not accept this submission. The Members’ Code of Conduct applies to Members at all times. However, the Committee recognise that there may be circumstances, such as lawful behaviour in the purely private domestic setting, where the right to respect for family life supersedes the application of the Members’ Code of Conduct. However, this is not such a case. The Committee is satisfied that the circumstances of the evening in question were closely connected with the Member’s position as a Member of the Senedd. He had attended a dinner for Members of the Senedd and the gathering that subsequently took place at the Mount Stuart pub brought together Members who had been at that dinner and staff of Plaid Cymru’s party offices and Senedd staff, who had gathered for a meal at the Hub Box before some went on to the Mount Stuart. The Member then went with other witnesses all of whom were from the Senedd or party staff to the Boom Battle Bar. It is irrelevant that these events took place away from the Senedd; nor is it relevant that the Complainant did not work at the Senedd, given the close connections between the party’s central office staff and the party’s Senedd staff. To all intents and purposes this was an “office party”.

85. The nature of the public and political position of a Member is such that where their conduct falls below the standards of conduct expected of them, it must inevitably reflect on their role as a politician and on the membership of the Senedd as a whole.

86. Article 10 of the ECHR concerns freedom of expression. It states (as relevant here):

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers[...].

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are

¹⁵ [2020] EWHC 3231 (Admin)

necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others[...].

87. Article 10 is therefore a qualified right and as such the right to freedom of expression may only be limited by imposition of sanctions in respect of provisions prescribed by law, such as ones open to this Committee to recommend under Standing Order 22.10, provided the restrictions are necessary and proportionate and are in pursuance of a legitimate aim.

88. Having regard to our decision not to consider the additional matters arising during the course of the investigation, it remains for us to consider the application of Article 10 to the following findings of the Commissioner, which are in or arise from the original complaint:

Finding 6. The Member made disparaging comments about [a Member of the Senedd] in a voice loud enough to be heard by those at adjoining tables. [Comments redacted]

Finding 8. In the street near to Wetherspoons the Member twice called the Complainant a “bitch”.

89. In respect of Finding 6 the Committee took account of the enhanced protection afforded to political expression which has to be widely interpreted and encompasses comments about the adequacy or inadequacy of the performance of public duties by others. Offensive comment that would otherwise be unacceptable outside the political context are also protected.

90. Although the Committee notes that the Member at interview accepted that he should not have made these comments, the Committee has to consider whether a restriction, in the form of a decision that such comments brought the Senedd into disrepute, would amount to an interference with the Member’s freedom of expression. The Committee was advised that this requires it to undertake a balancing exercise between the legitimate aim in a democratic society of protecting the reputation of the Senedd or its Members generally from being brought into disrepute and the Member’s right to freedom of expression both generally and to the enhanced right of freedom of political expression.

91. From the evidence in the Commissioner’s report, the Committee accepts that the Member’s comments fall within the boundaries of protected political speech. However, the Committee considers that the way they were made by the

Member, while the Member was in a state of drunken intoxication and agitation in a public place, namely the outside seating area of the Mount Stuart pub, amounted to conduct that brought the Senedd and its Members generally into disrepute in breach of Rule 3.

92. The Committee is also required to take a proportionate view of the sanction arising from any restriction on the exercise of the right to freedom of speech. Taken in isolation and in the light of the Member's admission and apology when interviewed, the Committee's decision is that the conduct of the Member in making otherwise protected comments would at most be worthy of censure. The Committee consider this would normally be a proportionate sanction which would not restrict the Member further and reflects the fact that this Finding is at the less egregious end of the spectrum of conduct that can justify the imposition of a restriction. However, given the Committee's decisions on the other matters before it, the Committee have decided to take no further action in relation to this Finding, albeit the Member may wish to take the opportunity to offer a public apology to the Member of the Senedd concerned when the opportunity arises.

93. Finding 8 amounts, in the opinion of the Commissioner, to a verbal personal attack which any reasonable person would consider to be grossly excessive and abusive and so broke Rule 6 of the Members' Code of Conduct as well as falling within the Code's definition of harassment and thus breaching Rule 4. The comments, which the Committee is satisfied on the application of the standard of proof, were made, did not constitute political speech or comment on matters of public interest and thus did not qualify for enhanced protection.

94. The provisions of Rule 4 and Rule 6 in this context respond to a pressing social need to protect third parties from offensive and harmful comment and the application of a qualification in Rule 6 confining the restriction to situations a reasonable person would consider to be grossly excessive is considered to be proportionate to this legitimate aim.

95. The Committee's decision that these comments by the Member were grossly excessive and breached Rules 4 and 6 and also brought the Senedd and its members into disrepute contrary to Rule 3 is compatible with Article 10. The Committee has accordingly taken the breach in respect of Finding 8 into account in setting the overall sanction.

Bias

96. The Committee received extensive submissions that the Commissioner had been biased against the Member in his consideration of the complaint.

97. As already noted, the Committee was advised that a procedure or process will not be regarded as fair if it is approached with actual or perceived bias (that is to say, it was not approached with an open mind). The Committee was advised that actual bias is usually difficult to establish. As regards apparent bias, the Committee has already noted above the advice that the test established by the Courts asks whether the relevant circumstances – here the Commissioner’s investigation – would leave a fair-minded and informed observer to conclude that there was a real possibility that the fact finder was biased. The process must therefore be seen to be fair, but equally the fair minded and informed observer adopts a balanced approach and is neither complacent nor unduly sceptical.

98. The Member’s counsel, submitted to the Committee in the oral representations session that:

“... a balanced consideration of this report must, we submit, drive a fair-minded observer to the view that this report and the subsequent material from the Commissioner display a worrying degree of hostility to the Member. No doubt in his own mind the Commissioner attempted to be impartial. It may be what he wrote he did unconsciously, but that cannot avoid the conclusion that it reveals a permeating hostility, perhaps not glaring, but nevertheless discernible.”

99. The Commissioner has strongly refuted the Member’s submission that he was biased and approached the investigation with a pre-disposition against the Member. For example, in his final submission to the Committee on 26 January 2024, the Commissioner states:

“I re-iterate my denial of bias in favour of either the Member or the Complainant. As Commissioner my interest is to investigate a complaint: I have no interest in whether or not a complaint is upheld. I note that despite this very serious allegation the Member has never suggested any reason why I should be biased against him.”

100. However, in view of the advice received the Commissioner’s denial is insufficient and it has also been necessary for the Committee to consider whether

on the facts surrounding the investigation of this complaint there is a sufficient perception of bias to require the Committee to reject the Commissioner's findings on that basis.

101. On 19 October, the Member submitted to the Committee a schedule of 17 points, which the Member considered suggested bias in the Commissioner's interviews, 40 instances of suggested bias in correspondence and 27 instances said to be misleading passages in the Commissioner's report and comments implying bias.

102. The Commissioner returned the schedule with his detailed comments on 3 November. The Member's schedule and the Commissioner's comments are available to Members for inspection on request to the Committee clerk.

103. The Committee was concerned at the extent of the instances alleged to show bias towards the Member and the Committee has considered them carefully, along with the Commissioner's responses. In a small number of instances, the Commissioner accepted errors or corrections to points raised about the correspondence or the Commissioner's Report itself. These are referred to below.

104. The Committee also considered that in a few instances, the opinions expressed by the Commissioner, while in our view justified by the evidence, were expressed in more colourful terms than was necessary to assist the Committee and we found the use of the terms "ridiculous", "absurd" and "appalling" in the Report unhelpful in our deliberations. However, this is not to say that, of themselves, they amount to the creation of a perception of bias.

105. In responding to the Member's submissions on bias the Commissioner accepted that he was in error in relation to two points which the Committee felt were relevant.

106. The first related to the evidence of Witness A about the seating arrangements in the taxi. The Report states that the witness confirmed the Complainant's description of the arrangements. The Commissioner accepted the error and apologised. In consequence of this and following the oral representation session the Committee requested that the Commissioner conducted further investigations regarding this point and about the taxi. The Complainant and Witness A were interviewed again, and questions asked of the taxi driver. The Committee consider it regrettable that this important point was not settled clearly during the initial interviews with these witnesses. A fuller picture was obtained as a result of the further investigations, which provided the clarification

the Committee felt was required, but nothing was disclosed that led the Committee to revise its decision to accept the relevant findings of fact about what took place in the taxi.

107. Secondly, the Member pointed out that the Report states that “*Witness A said she saw the squeezing [of the Complainant’s thigh] and the moving away...*” The Member pointed out that Witness A did not say this. The Commissioner agreed:

“Accepted that Witness A did not say that. Her evidence of the Complainant’s reaction to being groped by the Member was “she was alarmed, erm, I believe it was very clear that that’s not what she wanted. I knew it made her feel really uncomfortable, so I called the behaviour out.””

108. The Committee considered this to be a regrettable mistake in the drafting of the Report. However, the Committee noted the transcript and did not consider that the error sufficiently material to affect their acceptance of the relevant findings of fact.

109. In accordance with the advice received we put ourselves in the position of the fair-minded and informed observer and sought to adopt a balanced approach to the Member’s submissions. On this basis and looking at the proceedings as a whole we concluded that there was not a real possibility that the Commissioner was biased in his approach in relation to these matters.

Further submissions on bias

110. Following the oral representation session on 23 October, the Member and his counsel made a further written submission on 6 November, responding to the Commissioner’s comments to the Committee dated 18 October. The submission listed the reasons that the Member considered the Commissioner’s conduct raised a real possibility of bias in addition to the points already made in the schedules and already described and considered above. The remaining submissions can be summarised as:

- The Commissioner’s discussions with the Complainant to explain the process and the forthcoming change in procedure “*depriving me of a right of appeal*” and notifying the Complainant when she could submit her complaint. No similar offer was made to the Member to explain the process.

- Drafting the Complainant’s witness statement rather than relying on the interview transcript in contrast to taking the Member’s evidence on oath in formal interview and offering to meet the Complainant to discuss amendments to the witness statement.
- The tone of the Commissioner’s communication with the Complainant “Friendly on first name terms with pleasantries” compared to a “robust and formal” approach to correspondence with and questioning of the Member. A lack of respect for a Senedd Member by requiring proof before agreeing to an adjournment.
- The provision of professional support to the Complainant and witnesses and being “dismissive” of the Member’s concerns about his mental health and that of his family.
- Failure to disclose that the Commissioner had met an alleged friend of the Complainant during the investigation.
- The Commissioner’s approach to the disclosure of evidence and dismissal of arguments in favour of fuller disclosure in the light of the “Review of fairness and natural justice within the House of Commons’ standards system by Rt Hon Sir Ernest Ryder.”¹⁶
- The Commissioner’s refusal to ask the Complainant and witnesses reasonable questions.
- The refusal to seek independent evidence from the Crown Prosecution Service in relation to a previous complaint by the Complainant.

111. The Committee considered each of these submissions.

Discussions with the Complainant

112. The Committee recalled that under the Measure one of the Commissioner’s functions is to advise Members and members of the public about the procedures for making and investigating complaints.¹⁷

113. The Committee consider that deciding to engage with the Senedd Standards process in a case as sensitive as this one is a daunting prospect for anyone considering making a complaint. From the evidence of the

¹⁶ [Review of fairness and natural justice in the House’s standards system - Committee on Standards \(parliament.uk\)](https://www.parliament.uk)

¹⁷ National Assembly for Wales Commissioner for Standards 2009, section 6(1)(2)

correspondence provided to us and the other evidence, the Committee considers that the Commissioner behaved properly towards the Complainant in advising her of the process involved when she first approached him and subsequently in adopting a tone that would not be considered “off putting.” To do so was entirely within the discretion afforded to the Commissioner in conducting his investigations. Adopting an approach that enables a Complainant to feel comfortable in raising a complaint, especially when the evidence shows, as it does here, that the experience of doing so was distressing, would not in the Committee’s opinion lead a fair minded and informed observer to conclude there was a real possibility of bias.

114. The Committee also considers that the Commissioner was acting properly and in pursuance of his statutory function in advising the Complainant of the change in the procedure and the time limit for making a complaint. The former rules required a complaint to be made within 12 months of the matter being complained about. The events that are the subject of the complaint took place on the night of the 30 June – 1 July 2021. The Committee noted that the taxi pick up was timed at 00:12 on 1 July 2021. When the Complainant spoke with the Commissioner on the afternoon of 1 July 2022 the complaint was already out of time and had the complaint been made immediately to the Commissioner in writing, he would have been bound to reject it. Thus, the question of the Member being required to answer the complaint and to have had recourse to the former appeal on procedural grounds to an independent lawyer, would never have arisen¹⁸. On the other hand, the Committee thinks the Commissioner would have rightly been subject to criticism and would not have been discharging his functions if he had not informed the Complainant as he did of the change to the former procedure. The Committee takes this view as the new Procedure had already been approved by the Committee on 28 June 2022 and was about to be laid before the Senedd (which took place on 6 July 2022).

115. Following several submissions by the Member and counsel that there was evidence of undisclosed discussions with the Complainant prior to the Commissioner’s telephone conversation on 1 July, the Committee asked the Commissioner for details of any prior contact, noting that the Commissioner’s attendance note referred to his call with the Complainant as being by arrangement. The Committee received the following reply, which has been provided to the Member and which shows that the submission was unfounded:

¹⁸ Standards of Conduct Committee – Review of the Procedure for Dealing with Complaints against Members of the Senedd. As part of this review, the appeal mechanism was removed from the procedure, following public consultation and research showing that the Senedd was out of line with practice in other devolved legislatures in this regard.

“The note of the telephone call on 1 July 2023 was drafted by me and saved at 16:58 that day. It has never been modified.

In relation to the contact with the Complainant referred to in paragraph 5 of my Report the facts are as follows –

1) At 8pm on Wednesday 29 June 2022 my office received an email in Welsh from the Complainant asking for someone to phone her;

2) That email was read on the morning of 30 June. It was referred to a fluent Welsh speaking member of the Commission’s staff, who had previously provided cover and support to my office, to make the call;

3) An email was sent to the Complainant informing her that the staff member would call her at around 9.30am on 1 July;

4) The Complainant responded asking that that the call be at 10am;

5) That call was made and it was agreed that I would call the Complainant at 3pm that afternoon;

6) The call was made at the agreed time.”

116. Turning to the information provided by the Commissioner to the Member from the letter notifying the Member of the complaint on the 11 October onwards, the Committee consider that the Member was provided with ample information about the nature of the inquisitorial process, which has been followed with one (unsuccessful) exception in all complaints since the coming into force of the Measure. The Committee also note that there is a distinction to be drawn between giving information about the current Procedure and replying to the Member’s representations to the Commissioner seeking to secure changes to the procedure followed in this complaint in line with the Member’s views of what the procedure should be.

117. Accordingly, the Committee do not consider that the differing ways information was provided to the Complainant and to the Member could be seen as leading a fair minded and informed observer to conclude there was a real possibility of bias.

The Complainant's Statement

118. The Committee considered the drafting of the Complainant's witness statement and the disclosure of the transcript of the Commissioner's first interview with the Complainant. The Committee notes the Commissioner's comment that the usual methods of taking evidence in Standards complaints where voluntary interviews take place (as distinct from the practice also used, of submitting written questions) has been for an agreed note or statement of the evidence to be prepared by the Commissioner after the interview and submitted for correction and agreement by the witness. Such statements do not follow the question and answer format of a transcript, albeit the information will have been obtained through a process of questioning. The Committee notes that the Commissioner adopted this approach in opening his investigation of this complaint. The Committee also recalls the Commissioner's reply to the Committee's question about the approach adopted to questioning witnesses which is discussed further at paragraphs 128 to 133 below. The transcribing of evidence is reserved for occasions where a witness is examined on oath.

119. In his Report the Commissioner sets out at paragraph 8 the details of his first interview with the Complainant which states:

"With her permission an audio recording of the meeting was made which she was assured would be used solely for the purpose of assisting in the preparation of the draft statement".

120. The Member subsequently requested sight of the transcript and made requests to the Committee to secure the disclosure of the transcript.

121. Following the Member's oral representations session, the Committee asked the Commissioner to find out if the Complainant was willing to allow disclosure of the transcript. The Complainant initially refused, due to the transcript containing personal information. However, the Complainant subsequently agreed to a suggestion by the Member for a redacted version to be produced to the Committee and the secretariat and to the Member. The redactions were independently reviewed by a member of the Senedd Legal Service, to ensure that the redactions were unrelated to the complaint. The Member and his adviser and the members of the Committee and the secretariat have, accordingly, only seen the redacted version.

122. When the transcript was disclosed, it was noted that the Commissioner had contradicted himself during the interview. At the beginning he stated to the Complainant that the audio recording was so the Commissioner *"can just check*

back rather than scribbling away furiously the whole time” and that once the Complainant’s statement was agreed the recording would be deleted. However, a short while later he also said, “At some stage in the process, I have to provide Mr Owen with a copy of your complaint, and indeed with a transcript of this interview.” The Member subsequently submitted that this disclosure ran counter to the Commissioner’s previous assurances that the process of preparing the Complainant’s statement had been fair and transparent. In response to the Member’s representation that the Commissioner had misled the Committee, the Commissioner provided the following explanation, which states in full:

“Misleading the Committee

I refute any suggestion that I deliberately misled the Committee in relation to disclosure of the Complainant’s witness statement. I accept, of course, that I told the Complainant that her statement would be disclosed to the Member and that she raised no objection (page 3). But at the start of the interview, I had told her that the interview was being recorded solely to avoid having to take notes and that the recording would be deleted when her witness statement had been agreed. (page1). The two are not consistent and I have no idea why I made the second statement. It is possible it was a slip of the tongue and that what I meant to say was “At some stage in the process, I have to provide Mr Owen with a copy of your complaint and indeed with a copy of your statement.” That would have made more sense in the circumstances and would have been consistent with what I had told her about deletion of the recording.

Whatever the reason, it was my clear understanding following that meeting that I had undertaken that the recording would be deleted and would not be shared with anyone.

Because of the limited use that was to be made of the recording no transcript was prepared following the meeting. It was not until I began drafting my Report that I became aware that the audio recording had not been deleted. I was minded to include a transcript of it in my Report but was reminded that I had told the Complainant that the recording would be deleted and that she might have issues if it was disclosed. Despite that, it was at that time my view was that I should

share the recording with the Member and the Complainant. On 4 April to facilitate such sharing, I asked that the recording be professionally transcribed. The transcription was received on 11 April.

That day it was suggested to me that it might be possible to remove the passages of concern to the Complainant before sharing it. I did not consider that a proper course of action.

The following day [my official] phoned the Complainant and told her of my intention to disclose the transcript. The Complainant made clear her strong objection to its disclosure. She told him that she did not recall being told at the meeting that the transcript would be provided to the Member. Later that day she emailed [my official] asking him to inform me that “I would strongly rather you did not share my interview transcript with the member.”

In view of the undertaking that I considered that I had given at the meeting in August 2022 and the Complainant’s strong views I felt unable to disclose the transcript.

I reject the Member’s assertion in paragraph 9 that I “was trying to protect himself by not disclosing the interview.” Had I wanted to keep the recording secret I could simply, but wholly improperly, never have mentioned that a recording of the meeting had been made.”

123. In addition, when considering this point, the Committee also noted that in his letter to the Member dated 21 December 2022, the Commissioner stated:

“The Complainant’s statement was drafted by me using the transcript of her interview which took place in my office in the Pierhead Building on 30 August 2022. I will consider providing you with a copy of the transcript in due course.”

124. When the reference to a transcript was pointed out the Commissioner responded to the Committee by letter on 15 February:

“The short answer to your query is that the two cannot be reconciled because what I wrote in my letter of 21 December 2022 was incorrect – the reference should have been to the

recording not the transcript. I apologise for the error and any confusion caused.”

125. The Committee consider the position now disclosed to be unsatisfactory. The Committee accept that the Commissioner acted in good faith in declaring in the Report that an audio recording had been made. However, the Committee thinks that when it was realised that the audio recording was still available it would have been better had the Commissioner sought to agree with the Complainant and the Member an approach similar to that which was eventually adopted on the initiative of the Committee at the suggestion of the Member, to disclose a transcript with irrelevant material redacted and independently reviewed. The Committee should not have been put in the position of having to resolve this matter themselves.

126. Nevertheless, the Committee considers that a fair minded and informed observer would conclude that the situation was one that arose through inadvertence on the part of the Commissioner, rather than bias.

127. Having had the opportunity to review the transcript and receive representations on it from the Member, the Committee are of the view that the disclosed transcript does not contain material that would lead the Committee to reject the Commissioner’s findings based on the Complainant’s statement or its decisions on breaches of the Code.

Tone of Commissioner’s communication and questioning

128. The written questions asked by the Committee of the Commissioner following receipt of his Report and the Member’s initial submissions, included a question about whether the Commissioner took any different approach to the questioning of the Member to the questioning of other witnesses, particularly the Complainant. In response, on 1 September 2023, the Commissioner stated:

“My aim when interviewing witnesses including the Complainant and the Member was to get to the truth of what happened. To that end, I considered it appropriate to vary my style of questioning depending on the witness.

My first interview of the Complainant was aimed primarily at satisfying myself that she did not wish to report the matter to the police and to obtaining further information about her reasons for not submitting her complaint earlier. I also took the opportunity of obtaining from her further information in relation to the allegations she had set out in her complaint to enable

me to prepare a draft statement for her consideration. If her allegations she made when she first contacted me were true, she had been the subject of grossly improper conduct by the Member and recounting it could plainly be distressing and embarrassing for her. I considered whether I should take her evidence on oath in view of the serious nature of her allegations. I decided against so doing. The power to take evidence on oath is dependent on service by registered post on the witness of a formal notice requiring attendance to give evidence. I was concerned that service of such a notice on the Complainant and the formality of such an interview might result in her withdrawing from the complaints process. I considered that a soft approach was the most likely way to obtain her evidence.

At her second interview, the Complainant was examined on oath and confirmed the accuracy of what she had said at her first interview. By that time, I was satisfied that the risk of her withdrawing from the process had passed. At that interview the Member's account of what had happened that night and his representations, [redacted: about the Complainant], were put to her. Her responses were put to the Member during his second interview.

My style of interview of other witnesses depended on who they were and the evidence I believed they might be able to provide. For example, my interview of [the then Chief Executive of Plaid Cymru] about the inordinate delay in providing the Complainant with the promised letter of apology could properly be regarded as robust. He was questioned at some length on his email exchanges with the Member, about the wording of the apology letter and why it was watered down. Witness A had to be required to attend to give evidence and the possible consequences of failing to give honest answers to my questions was made clear to her. It has not been normal practice to interview witnesses on oath but after the Member asserted, incorrectly in my view, that equal weight could not be given to sworn and unsworn evidence I interviewed all further witness on oath.

My interviews of the Member were robust but in no way improper. The Member is a person of undoubted intellect, experienced in investigative questioning techniques. He was accompanied at both his interviews by Malcolm Bishop KC. Neither of them took any objection to the manner of questioning or conduct of either interview. Prior to my first interview of the Member, I had obtained evidence from other witnesses as well as documentary evidence. It was my duty to put that evidence to the Member and afford him the opportunity to respond to it. At the end of each of his interviews he was asked if he wished to change any of the answers he had given and was afforded the opportunity to say anything else he considered relevant to my investigation. At the end of his first interview, he made a lengthy statement. By the time of his second interview, I had obtained further evidence which it was my duty to put to him to give him an opportunity to respond."

129. The Member did not accept the Commissioner's reasons for the approach adopted by the Commissioner and referred to the mental distress the process had caused him. The Committee noted that the transcript of the Member's first interview records him becoming distressed when telling the Commissioner of the effect of becoming a Member and related personal issues, but he declined an offer to suspend the interview. The support that was available to the Member is discussed further below.

130. The Committee is under no illusions as to how distressing and difficult this case has been for both the Member and the Complainant and their families. The Committee is satisfied with the Commissioner's explanation of his approach and, in the Committee's view, it falls within acceptable bounds of fairness. The Committee does not consider that the adoption of different approaches when informed by the Commissioner's explanation, would give rise to a perception of bias when viewed by a fair-minded and informed observer.

131. It is the Committee's understanding that the submission relating to lack of respect is concerned with the Commissioner issuing a formal notice on the Member to attend his first interview and requiring evidence of an appointment to agree to adjourn the interview. The Committee recalls that Rule 17 of the Members' Code of Conduct requires that Members co-operate at all times with the Senedd Commissioner in the conduct of an investigation. The Committee has considerable sympathy for the difficult family circumstances of the Member in late November and December 2022, which must have added to the inevitable

stress of the Commissioner's investigation. Nevertheless, the Committee considers the Commissioner was justified in pointing out that while the Member had not found the time to contact him or his office to arrange an interview, the Member had found the time to write a lengthy and complex letter to the Commissioner. Having served a notice on the Member, the Committee does not criticise the Commissioner for seeking documentary confirmation from the Member as to why the specified date was inconvenient.

132. The Member took particular exception to the use by the Commissioner of the expression "*How long is a piece of string*" in response to a question from counsel about the timetable for the investigation at the end of the Member's first interview citing it as an example of the difference in the way he was treated. However, the Committee notes that the Commissioner had used the same turn of phrase in reply to a similar question from the Complainant, which is recorded in the disclosed transcript of the Complainant's first interview.¹⁹

133. Accordingly, the Committee does not consider that the Commissioner's approach to these communications, would, in all the circumstances, be regarded giving rise to a real possibility of bias on the part of a reasonable and informed observer.

Provision of Support

134. The provision of support to Complainants falls within the remit of the Commissioner. The arrangements in relation to Members are different. In his letter informing the Member of the complaint the Commissioner provided a link to an information resource available to Members and staff on the Senedd intranet. This directs Members who are subject to a complaint to seek support through the Senedd Commission's Members Business Services who provide a wide range of support for Member's physical and mental well-being including courses to cover resilience and wellbeing tools, as well as offering individual coaching and mentoring where appropriate /desired.

135. The Committee is satisfied that the existence of different arrangements for Members and complainants does not give rise to any issues of bias.

Failure to disclose meeting an alleged friend of the Complainant.

136. This point was raised by the Member initially in his written submission of 4 October based on a BBC article of 1 October 2023. The Commissioner provided the following response which the Committee accepts as answering the Member's

¹⁹ Page 3, line 1.

submission and shows that no impropriety on the part of the Commissioner was involved:

“As I informed your Clerk shortly after the broadcast, the BBC report ... was inaccurate. The truth is that on 14 November 2022 [individual’s name] contacted my office saying that he had evidence relevant to my investigation into the Member. I met with him on 17 November to hear what he had to say. He had no first-hand evidence that I considered could have any relevance to my investigation. [Matters raised by the individual not directly relevant to the complaint] It was not mentioned in the Report of my investigation or disclosed to the Member because it was of no possible relevance.”

137. The Committee is satisfied that this point does not raise any issues of perceived bias.

Disclosure and the Ryder Review of fairness and natural justice in parliamentary standards

138. The Committee received extensive submissions on the fairness of the disclosure arrangements under the current procedural rules.

139. The current procedural rules are the result of a recommendation of the Standards Committee in the Fifth Senedd that a review of the procedural rules should be undertaken following the adoption by the Fifth Senedd of the revised Members’ Code of Conduct. Following the election of the Sixth Senedd, this Committee undertook a consultation on the revision of the procedure and the present rules were adopted by the Committee on 28 June 2022 and laid before the Senedd on 6 July 2022. They apply to complaints received on or after 18 July 2022.

140. Under the current rules, the point at which disclosure of the evidence gathered by the Commissioner takes place is the notification to the Member and the Complainant of the Commissioner’s draft findings of fact. Documents may be disclosed by the Commissioner during the investigation and supporting documents are to be sent to the Member with the complaint.

141. The Committee notes that in considering the present complaint the Commissioner went further than strictly required by disclosing to the Member at the outset of the investigation the Complainant’s statement as well as the documents she had produced to the Commissioner. Although not stated explicitly in the new rules, the Committee also noted that the Commissioner’s

practice, in the interests of fairness, when sending the draft findings of fact to the Member and the Complainant is to disclose the evidence relied upon including statements and transcripts, at which point there is an opportunity for both the Member and the Complainant to make representations to the Commissioner, with the full documentation relied upon before them. The Committee is satisfied that the disclosure of evidence in relation to this complaint was in accordance with (and indeed went some way beyond) the rules which at that time had been very recently adopted.

142. On 4 March 2022 the House of Commons Committee on Standards published a “Review of fairness and natural justice in the House’s standards system,” which included a review and recommendations conducted by Rt Hon Sir Ernest Ryder. That review suggested that modern inquisitorial good practice should provide for disclosure of all evidence that is provided to the Commissioner (divided into used and unused materials) and pointed out that this was the existing practice of the House of Commons Commissioner. The Member submitted that the Commissioner should have adopted the House of Commons approach, notwithstanding the Senedd’s own recently adopted Procedure. The Commissioner, in his reply to questions to the Committee dated 1 September 2023 set out the then current comparative arrangements in other legislatures (House of Commons, House of Lords and the Northern Ireland Assembly²⁰) in relation to disclosure, as follows:

“In none of them is it the normal practice to provide the Member with copy witness statements before being interviewed by the Commissioner. In the House of Lords, the statements are not normally provided to the Member even at the end of the investigation: only relevant extracts quoted in the Commissioner’s report are made available.

In the House of Lords, all written material submitted by the Complainant or any witness, other than witness statements or transcripts and anything that is plainly irrelevant, are provided to the Member prior to interview by the Commissioner.

In the House of Commons, no distinction is made between used and unused material. Normally, the Member receives a copy of all material collected during the investigation, except

²⁰ The Commissioner stated he was unable to obtain information about the position in the Scottish Parliament, but the Committee notes that Scotland is different in having a single Ethical Standards Commissioner with a wider remit “to investigate complaints about the behaviour of MSPs, local authority councillors, and board members of public bodies and about lobbyists.”

administrative materials such as internal team emails or previous versions of statements or reports, at the same time as the Memorandum (equivalent to our report).

In the Northern Ireland Assembly, the Member is given a copy of the complaint and any supporting documents provided by the Complainant at an early stage but normally is given copies of witness statements and other documents only when sent a final draft of the Commissioner's report. Only documents which the Commissioner has relied upon in forming an opinion are provided. Material that was not relied upon i.e., unused material, is not normally provided."

143. The Committee is satisfied that the Senedd's arrangements for disclosure in this complaint were comparable to the arrangements in the examples cited. In addition, the Member has been permitted to make seven written submissions to the Committee, in addition to lengthy oral representations. These include submissions on obtaining additional evidence and material that the Committee accepted.

144. The Committee also notes that the Member received the Commissioner's report and the documents relied upon, in full, on 12 May 2023 and thus had ample time to consider and make submissions in advance of the oral evidence session with this decision-making Committee on 23 October. The Committee also has no doubt that the Commissioner would have afforded further time to the Member to comment on the draft findings had the Member made such a request. The Committee agrees with the Member, however, that responding close to a deadline is not a matter of concern.

145. The Committee considers that taken overall there was fair and ample disclosure to the Member in a manner that was consistent with other legislatures' standards arrangements. Accordingly, the Committee does not accept the submission that the disclosure arrangements would give rise to a perception of bias on the part of the Commissioner by a fair minded and independent observer.

Refusal to ask the Complainant and witnesses reasonable questions.

146. In his first written submission to the Committee, also referred to by his counsel in oral representation, the Member stated:

"When no cross examination of the evidence is allowed, or when it is impossible to produce a list of questions to witnesses as the Commissioner refuses to disclose the evidence, it is paramount that the questioning by

the finder of fact is fair, thorough and measured. This has not happened in this investigation. On a number of occasions the Commissioner failed to ask basic and crucial questions. The Commissioner left many points unnecessarily ambiguous and chose for whatever reason not to pursue many matters raised by me. In addition, the Commissioner asked many leading questions putting words into the mouths of witnesses. Due to the obvious power imbalance between the Commissioner and the witnesses, there is a serious risk that this could well have influenced their evidence.”

147. The Member also submitted that the Commissioner did not ask the Complainant questions arising from the Member’s interview when the Member suggested it would not have been physically possible for the Member to touch the Complainant in the manner described, suggesting that a handbag or seatbelt might have impeded this. The Committee notes, however, that at the second interview the Complainant was asked about another suggestion by the Member, namely that there might have been inadvertent touching, while the Member searched for his mobile ‘phone which he said he always kept in his left pocket.

148. The Committee recalls that in investigating a complaint, the Commissioner has wide discretion and independence, within the bounds of fairness in the way that witnesses are questioned. The Committee also notes the reasons given by the Commissioner rejecting the suggestions by the Member and considers that the Commissioner was entitled to come to the view that the suggestions would not advance the investigation and therefore ought not to be put them to the Complainant. Where there were clear ambiguities in the transcript or missing information that appeared to the Committee to be relevant in the case of the seating arrangements in the taxi and the pick-up arrangements, the Committee availed itself of the power specifically provided for in the Procedure to ask the Commissioner to investigate further.

149. The issue of leading questions is considered separately below. However, otherwise, the Committee does not consider that this submission raises issues of a perception of bias on the part of the Commissioner, when viewed by a reasonable and informed observer.

Past matter related to the Complainant

150. The Member submitted that the Commissioner should have sought information on a past matter related to the Complainant. The Committee sought a further explanation from the Commissioner who set out his reasons in his response of 1 September 2023 to the Committee’s questions. The Committee is satisfied that this was a reasonable and proportionate approach by the

Commissioner and consistent with the requirement under the Procedure to conduct a full and thorough investigation. The Committee has withheld further details as they are not material to the Committee's decision-making on the complaint.

Leading Questions

151. In the Member's submissions to us and in the oral representations made on the Member's behalf by his counsel the Commissioner was criticised for asking leading questions of witnesses and a schedule was submitted citing 30 questions that that were considered to be leading questions.

152. In the Commissioner's response to the Committee, he accepted that seven questions were leading and improper. The Commissioner also submitted to the Committee:

"I do not accept that a number of the questions referenced were leading. A simple test of whether a question is leading would be "Does it introduce into evidence an important fact or suggests the answer to the witnesses", I would remind the Committee that there are no rules of evidence in relation to investigations by the Commissioner and that leading questions are permissible so long as they are not unfair. I accept that the probative value of an answer to a leading question may, depending on the circumstances, be less than that to an open question."

153. The Committee recalled that the Commissioner is not subject to formal rules of evidence so long as the questioning is fair. The Committee agrees with the Commissioner's approach, and it is not surprising that in a lengthy series of investigative interviews that very occasionally leading questions will be put. The Committee considers that this is the case here and does not consider that the isolated instances accepted by the Commissioner as leading, have affected the overall fairness of the proceedings or the Committee's ability to reach a fair decision.

154. In reaching this conclusion the Committee had regard to a decision of the Independent Expert Panel of the Westminster Independent Grievance and Complaints Scheme (IGCS) cited by the Member in connection with the leading of witnesses. However, the Committee noted that IGCS procedure differs

significantly from the arrangements under the Measure and accordingly the Committee did not find the decision of assistance.²¹

Improper questions

155. In addition to the schedules of comments suggesting bias and leading questions produced by the Member on 19 October 2023, in advance of the oral representations session, he also produced a schedule itemising questions that the Member considered to be improper. The Commissioner responded by reminding the Committee and the Member that subject to the Procedure, under the Measure it is for the Commissioner to decide when and how to carry out an investigation and to report on its outcome.

156. The schedule of questions set out 19 questions which the Member considered to be improper. The questions referred to a number of interviews and related to the Member's suggestions and submissions about the Complainant's previous complaint to the police about another matter, whether the Member made sexually inappropriate comments and gestures when drunk; the Complainant's demeanour after the incident and a former member of support staff.

157. Having regard to the latitude given to the Commissioner, the Committee did not agree with the Member that these were improper questions and agreed with the Commissioner's responses that there was nothing improper, save in respect of two matters where the Commissioner agreed that his questions strayed into error.

158. The first related to a question to the Member about his conversations and communications with the then Chief Executive of Plaid Cymru, about the drafting of the Member's letter of apology. The Commissioner is recorded asking the Member:

"So if his evidence is that he [the then Chief Executive of Plaid Cymru] discussed with you the allegations of drunkenness, calling the Complainant a bitch, insisting in getting into a taxi with her and Witness A against their wishes, and squeezing the Complainant's leg...he's wrong about that?"

159. The Member states that the then Chief Executive of Plaid Cymru did not say this to the Commissioner and the Committee noted that the Agreed Note of the interview with the then Chief Executive of Plaid Cymru states:³

²¹ [Independent Expert Panel report on Conduct of Patricia Gibson MP](#)

“[the then Chief Executive of Plaid Cymru confirmed that he was aware of the claim that RabO had squeezed the leg of [Complainant] in a taxi on 30 June 21 and that was one of the matters he was asking RaO to apologise for, although the conversation with RaO did not involve the specifics of the allegation. [the then Chief Executive of Plaid Cymru] was not aware that RaO was alleged to have called the [Complainant] a “a bitch.”

160. In his response made on 9 November, the Commissioner accepted the point and stated:

“Have already accepted that this was based on an incorrect recollection of the evidence of Witness A and should not have been asked. No prejudice resulted from it.”

161. The second matter relates to questions by the Commissioner to the Member asking firstly in connection with the dinner at Côte Restaurant, whether he made *“sexually inappropriate comments and gestures”*. The Member pointed out that the disclosed evidence made no suggestion of *“sexual gestures”* and an examination of the evidence of a Member of the Senedd shows that while she referred to comments she considered inappropriate being made by the Member, she did not refer to gestures.²² In his response of 9 November the Commissioner stated that:

“I accept that I misspoke and that there was no evidence of gestures at the dinner in the Côte restaurant when these comments were made. The Member has not been prejudiced by my error.”

162. These slips are regrettable and while the Committee recognises that a robust approach to questioning can be within the bounds of fairness, the Committee nevertheless consider that if such an approach is to be adopted there should be no doubt as to the accuracy of the questioning, especially where matters were being put orally to the Member.

163. . In the event, the Committee has decided that these matters were peripheral to their decision-making in relation to the core allegations and the other evidence available and did not affect their view of the overall fairness of the proceedings.

²² Heledd Fychan interview page 2 lines 22 – 25

Further Matters

Translation

164. The Committee has noted that the Report²³ gives details of the Member's requests that the Commissioner recuse himself from the investigation due to his inability to speak Welsh and that all correspondence with him should be in Welsh and English. The Commissioner's inability to undertake the investigation in Welsh was also criticised by counsel on behalf of the Member in the oral evidence session. The Commissioner declined the request and made translation arrangement as described in the Report.

165. The Committee was mindful that when the present Commissioner was appointed by the Senedd the ability to communicate in Welsh was not an essential requirement and the role specification stated as follows:

In addition, candidates should be able to present evidence of one or more of the following:

- *a good understanding of the Senedd and the political, constitutional and cultural context in which Members of the Senedd operate;*
- *a track record of recognising and sharing best practice leading to continuous improvement and/or enhanced accessibility, transparency and public confidence in the work of a relevant organisation or officeholder(s);*
- *the ability to communicate through Welsh and English and/or experience of working in a bilingual organisation.*

166. The Committee therefore considered that the Commissioner's refusal to recuse himself and approach to handling translated material was appropriate and that recusal and seeking the approval of the Senedd to the appointment of an Acting Commissioner would have been disproportionate.

167. Where questions of the use or meaning of Welsh and English words and expressions were relevant to their consideration of the evidence the Committee paid close attention to the advice provided relating to context and the accuracy of the translation.

²³ Paragraph 15, Commissioner for Standards Report

Evidence of a former member of Support Staff

168. The Commissioner's Report states that a former member of support staff approached the Commissioner saying that they had information relevant to the complaint. The Report summarises that evidence. Although the Commissioner states that, having encountered the individual in connection with another investigation and found them to be an unsatisfactory witness he did not rely on the evidence given in connection with this complaint, the Committee consider that the Commissioner was right to disclose the evidence in full to the Member. This enabled the Member to make further submissions to the Committee regarding the Member's relations with the former member of Support Staff. Taking these into account, the Committee concludes that the Commissioner was correct not to rely upon the evidence of this witness and the Committee has similarly noted but placed no reliance upon it. Accordingly, the Committee has redacted references to this evidence from the summary in this Report.

Other witnesses suggested by the Member

169. The Committee notes that the Commissioner interviewed all the witnesses suggested by the Member except for the Member's wife and his twin brother. The Commissioner explained in his report that he did not interview them as it was plain from the interviews with the Member that they would have no new evidence on a contested matter.

170. On 17 October before the oral representations session the Chair received a letter from the Member's wife.

171. The Committee sought the observations of the Commissioner, who expanded upon the reasons set out in his report for not calling the Member's wife. He referred to the distress that such an interview would most likely have caused, and the likelihood that the evidence would have replicated the evidence already provided by the Member.

172. The Committee was content with the explanation and decided not to ask the Commissioner to seek further evidence from the Member's wife.

173. The Member also requested the Commissioner to seek CCTV evidence from the Mount Stuart pub, in the vicinity of the taxi park and at the Boom Battle Bar, which the Member submitted would assist his case. The Committee notes that the Boom Battle Bar advised the Commissioner that any CCTV would have been deleted, that the owners of the Mount Stuart pub did not reply and that there was no CCTV in the taxi. The Committee agree with the Commissioner's conclusion that any CCTV evidence of what took place was almost certainly erased before the

start of 2022 and it is most unlikely that the staff, even if they could be traced, would have any recollection of the events. While recalling the Commissioner's duty to conduct a thorough investigation, the Committee considers that the Commissioner's approach to the possibility of CCTV evidence was proportionate and fair.

Admissibility of complaint

174. This was the first complaint on which the Commissioner was required to decide whether there were good reasons to accept the complaint outside the six-month time limit for making a complaint under the current Procedure.

175. The rules place the decision on whether there was good cause for the delay in bringing the complaint in the hands of the Commissioner. However, the Member and counsel submitted that the Member should have been allowed to make representations on the acceptance of the complaint before the Commissioner reached a decision on whether there was good cause.

176. The Committee finds no reason to doubt the correctness of the Commissioner's decision at the time or in the light of the evidence of the Complainant's experience following the night in question.

177. Furthermore, the Committee draws attention to the provision in the Procedure that the Commissioner may bring consideration of an admissible complaint to an end at any time for a number of reasons, including that it no longer meets the requirements for an admissible complaint which could include a conclusion that the reasons for accepting the complaint out of time no longer apply or were mistaken.²⁴ Had the Member put forward cogent reasons for terminating the complaint on the basis that good cause to accept the complaint no longer existed then the Commissioner could have done so.

Motivation

178. The Commissioner found the actions of the Member to be inappropriate, and the Committee agreed that the conduct found was unwanted behaviour and harassment in line with the definitions in the Code.

179. The Member set out arguments that the conduct complained about would not amount to a sexual offence. The Commissioner made no finding as to

²⁴ See Rule 5.1(a), Procedure for Dealing with Complaints Against Members of the Senedd

whether the touching of the Complainant was sexual, and a sexual element is not essential for a finding of unwanted behaviour or harassment under the Code.

180. The Committee's legal advice is that the Member's argument does not reflect the provisions of the relevant criminal statutes²⁵ and in any event the Committee is concerned here with the application of the provisions of the Code and the balance of probabilities standard of proof.

181. The Committee also received a submission from counsel on behalf of the Member during the oral representations session that:

"We respectfully submit that it [putting a hand on a thigh and squeezing it hard] is as innocuous, if you accept that it happened, as squeezing somebody's arm or hugging somebody around the shoulder or that sort of thing."²⁶

182. The Committee rejects the submission as contrary to the Senedd's Dignity and Respect Policy as well as the definitions of unwanted behaviour and harassment in the Code of Conduct.

183. Given that the Commissioner's finding that this conduct was inappropriate behaviour and the indication that the Complainant did not want to report this matter to the police, and therefore it was not being treated as a criminal matter, the Committee found the Member representations on this question to be unhelpful, as well as incorrect in the light of the Committee's own advice.

184. The Committee also noted representations that this complaint may have been politically motivated in terms of the timing of the complaint and events that happened at the same time. The Committee noted that the Complainant referenced some of the ongoing matters relating to Plaid Cymru as a reason to bring forward this complaint. However the Committee does not consider that this is a relevant consideration in its decision making on the Findings of Fact.

Duration of the Complaint and the Committee's decision making

185. The Committee recognises the significant emotional impact that the complaint, particularly the length of time taken to investigate and reach a decision has had on everybody involved including the Complainant, witnesses, the Member and those close to all these people.

²⁵ Sexual Offences Act 2003. Section 3(1) and section 78 of the Sexual Offences Act 2003

²⁶ Para 116 transcript of meeting 23 October 2023

186. The complaint relates to the conduct of the Member on 30 June – 1 July 2021. The Commissioner received this complaint in August 2022 and reported to the Committee in May 2023.

187. The Committee found that this was a difficult and complex complaint to consider. The need to take advice and seek comments from the Commissioner, together with finding a date convenient to the Member and his counsel, meant that the oral representations session could not take place until 23 October 2023. The submissions made at the meeting resulted in the Committee requesting that further evidence was obtained by the Commissioner. This could not be provided by the Commissioner until 12 January 2024 due to the need to conduct further interviews, correspondence with the Member and the Complainant about the release of the Complainant’s first interview transcript and the Christmas and New Year holiday period.

188. Having received all the necessary information , the Committee first met to deliberate on its decision on 4 February 2024. It returned to its deliberations at the meetings of 12 and 26 February to finalise the report and recommendations.

6. The Committee's decision and recommendation

189. Having considered all the matters set out above the Committee agreed the following in relation to the Findings of Fact relating to the actions of the Member on 30 June - 1 July 2021.

- Finding 1 - On the evening of 30 June 2021, prior to attending a dinner for Plaid Cymru Members of the Senedd at the Côte restaurant, the Member drank a pint of beer.

Accepted by the Member and the Committee.

- Finding 2 - Whilst there, he drank a quantity of wine.

Accepted by the Member and the Committee.

- Finding 3 - He made lewd comments about [Senedd Members and a Member of Commission staff].

The Committee considered this as part of the surrounding circumstances but made no decision in relation to the Code of Conduct.

- Finding 4 - After the dinner the Member and a number of other Members moved to Wetherspoons where they met up with a number of Plaid Cymru staff who had been attending a separate event.

Accepted by the Member and the Committee.

- Finding 5 -All those present had consumed varying amounts of alcohol and were intoxicated to varying degrees. The Member was more intoxicated than the others present.

Accepted by the Committee.

- Finding 6 - The Member made disparaging comments about [a Member of the Senedd] in a voice loud enough to be heard by those at adjoining tables. [Comments redacted].

Accepted by the Committee.

- Finding 7 - The Member inappropriately touched the waist of Witness A.

The Committee considered this as part of the surrounding circumstances but made no decision in relation to the Code of Conduct.

- Finding 8 - In the street near to Wetherspoons the Member twice called the Complainant a 'bitch'.

Accepted by the Committee.

- Finding 9 - He touched her inappropriately by putting his arm round her [the Complainant] waist and pulling her body close to his.

Accepted by the Committee.

- Finding 10 - Knowing that he was not welcome, the Member got into the rear seat of a taxi and sat next to the Complainant.

Accepted by the Committee.

- Finding 11 - In the taxi he touched the Complainant inappropriately by squeezing her upper thigh hard with his hand.

Accepted by the Committee.

- Finding 12 - When called out by Witness A, the Member called her a 'bitch'.

The Committee considered this as part of the surrounding circumstances but made no decision in relation to the Code of Conduct.

- Finding 13 - At the Boom Battle Bar, the Member, Witness A, Witness B, Witness C and the Complainant sat together for approximately three hours and consumed more alcohol some of which was paid for by the Member.

Accepted by the Member and the Committee.

Finding 14 - Whilst there the Member made disparaging comments about [a Member of the Senedd].

The Committee considered this as part of the surrounding circumstances but made no decision in relation to the Code of Conduct.

- Finding 15 - He also made disparaging comments about [two Members of the Senedd].

The Committee considered this as part of the surrounding circumstances but made no decision in relation to the Code of Conduct.

- Finding 16 - He made a number of wholly inappropriate comments to Witness A [Comments redacted].

The Committee considered this as part of the surrounding circumstances but made no decision in relation to the Code of Conduct.

- Finding 17 - By the time he left the Boom Battle Bar the Member was in his own words 'very, very drunk'.

Accepted by the Member and the Committee.

- Finding 18 - At a virtual meeting with the Chief Whip on 2 July 2021 the Member was given full details of all the allegations against him.

Accepted by the Committee.

- Finding 19 - Later that day the Member sent the Chief Whip an email in which he apologised for 'his drunken behaviour of Wednesday night.

Accepted by the Member and the Committee.

- Finding 20 - The same day the Member emailed Witness A and apologised to her for 'what happened on Wednesday'. [30 June 2021]

Accepted by the Member and the Committee.

- Finding 21 - At about 5pm that day the Member telephoned the Complainant and, speaking in Welsh, told her repeatedly that he was sorry.

Accepted by the Member and the Committee.

- Finding 22 - The Member has admitted that his conduct caused mental pain to the Complainant and others. His conduct continues to adversely affect the Complainant.

Accepted by the Committee.

- Finding 23 - Other than being drunk and making crude comments to Witness A, the Member does not accept any improper conduct towards either the Complainant or Witness A and has shown no remorse for it.

Accepted by the Committee.

The Committee agreed the accepted findings (1,2,4,8,9,10,11 22 and 23) when considered as a whole amount to a breach of the following rules of the Code of Conduct:

Rule 1 Members must uphold the Overarching Principles particularly the principles of Respect, Integrity and Leadership.

Rule 3 Members must not act or behave in a manner that brings the Senedd or its Members generally, into disrepute.

Rule 4 Members must not engage in unwanted behaviour, harassment, bullying, or discrimination.

Rule 6 Members must not subject anyone to personal attack – in any communication (whether verbal, in writing or any form of electronic or other medium) – in a manner that would be considered excessive or abusive by a reasonable and impartial person, having regard to the context in which the remarks were made.

Committee's recommendation on sanction

190. The Committee considers these to be serious breaches of the Code of the Conduct.

191. The reputation of the Senedd as an institution, and the public's trust and confidence in it, rely upon Members adhering to the Members Code of Conduct. In doing so Members must show integrity, leadership and respect in their behaviour and the example they set others.

192. Demonstrating integrity and leadership includes being mindful of the position Members hold in relation to staff either employed directly, employed by other Members or who are employed by their respective political parties and the power imbalance this creates.

193. The Senedd has expressed its commitment to upholding the dignity of other persons and the prohibition of unwanted behaviour and harassment by adopting an additional "Principle of Respect" to the long established "Seven Principles of Public Life". Respect is now a key tenet of public life, and the Committee is satisfied that the Senedd and its members have been brought into disrepute by the Member's breaches of the Code of Conduct.

194. The Committee noted the Member apologised on a number of occasions to the Complainant and witness A for his behaviour on the evening of 30 June 2021. The Committee notes in his written submission the Member sets out that he has apologised and that he is sorry if his conduct has caused mental pain to the Complainant. However, the Member is clear that these apologies relate to his behaviour in terms of being intoxicated rather than the allegation of inappropriate touching which he has denied throughout.

195. In terms of mitigation for his behaviour that evening, the Member said in evidence to the Commissioner that being a newly elected Member, had been the source of a great deal of unexpected pressure and upheaval in his life and led to a period of drinking too much. The Committee also noted the character statements the Member provided which attested to the Member's actions being typically out of character for the Member when sober, and on other occasions when alcohol is present, but not when intoxicated to the extent we accept the evidence shows on the evening in question. The Committee has also noted and taken into account the Member's assurances that he has himself taken steps to ensure this will not happen again.

196. Having considered all the matters presented to them, the Committee has concluded that the breaches that the Committee has found proved warrant a period of exclusion from Senedd proceedings.

197. In reaching its decision on the level of exclusion the Committee considered a number of factors, including the decisions of the Fifth Senedd Standards of Conduct Committee who had also applied sanctions of exclusion, to ensure that the exclusion in this instance is a fair and proportionate sanction in light of the seriousness of this matter.

198. The Committee considered the Member's mitigation and the impact this complaint has had not only on those involved but also on the Senedd as an institution. The Senedd must be a safe and inclusive workplace, where everybody is treated equally, and those working directly for Members cannot feel that they have less power or that they must tolerate behaviour that is not acceptable.

199. In order to be clear about the standards expected of Members, the Committee has concluded this warrants an exclusion from proceedings of 42 days in respect of the breaches found, with the exception of Finding 6 in respect of which the Committee makes no recommendation of sanction for the reasons given in Paragraph 92 above.

Recommendation 1. The Standards of Conduct Committee in accordance with paragraph 8.22(a) of the Procedure for Dealing with Complaints Against Members of the Senedd and Standing Order 22.10 recommends Rhys ab Owen MS is excluded from proceedings of the Senedd for a period of 42 calendar days, not including recesses.

7. Matters of General Principle

200. This is the first complaint considered by the Senedd which addresses matters of harassment and unwanted behaviour since the introduction of the Respect principle in the Code of Conduct and the agreement of the Dignity and Respect Policy. Naturally, there are a number of lessons to be learnt from the conduct in this complaint, which the Committee will reflect on as part of its wider ongoing inquiry into the Senedd's Dignity and Respect policy.

201. However, the Committee wishes to draw attention in this Report to the following matters.

The presence and impact of alcohol

202. The Committee noted that a significant factor in this complaint was the consumption of alcohol. The impact of alcohol is a common theme in complaints in other institutions, having also been noted in the latest annual report of the Westminster Independent Complaints and Grievance Scheme. Drinking alcohol can have a significant impact on behaviour and the ability to recall events. The Committee would like to remind Members to be mindful of this and their responsibility as elected representatives.

Plaid Cymru Party Procedures

203. The evidence gathered by the Commissioner shows that Complainant in this case and witness A raised the matter that day (1 July 2021) within Plaid Cymru. The account of the internal Party process in the Commissioner's report shows that the processes then undertaken by the party in dealing with this matter, were in the Committee's view, inadequate and ineffective. The Commissioner outlines in his report:

"POLITICAL PARTY PROCESSES

122. I had no power to investigate the processes under which the concerns expressed by the Complainant and by Witness A were handled by Plaid Cymru. It was, however, apparent, as was confirmed by the then Chief Executive, that they were very far from satisfactory....

123. Lest similarly ineffective processes exist in other political parties, I have written to the Leaders in Wales of all other parties represented in the Senedd asking them to satisfy

themselves that appropriate processes are in place and known to all staff employed by their party and by all support staff employed by Members of their party.”²⁷

204. The Complainant and witness A reported the incident to their line managers, and this was then escalated to the Chief Whip, who spoke with them and the Member. As a result of these conversations the Member agreed to apologise for his behaviour – the Member was provided at this point with the Complainant’s telephone number and subsequently called her to apologise. The Committee does not consider the provision of a phone number in these circumstances to be an appropriate step to have taken in a complaint of this nature.

205. The extensive paperwork that was produced by the Complainant and Plaid Cymru as evidence to the Commissioner shows that there was insufficient support provided for those involved. There is no evidence that there was a proper process in place, and that if there was this was not communicated to anyone involved. Matters such as these need to have a clear and equitable process which is understood by all, it is not sufficient to try and deal with these matters extemporaneously. Alongside a lack of clear procedure, it also appears that there was no process for checking in with those involved to ensure that they were satisfied with the steps taken.

206. The lack of a clear procedure and accompanying paperwork means that it was more difficult to establish what the Member was told when about the complaint, or indeed whether the Complainant was formally complaining to the Party.

New Members adjusting to the Senedd working patterns

207. During the investigation, the Member gave an account of how difficult he found adjusting to becoming a Member, which had manifested itself in increased drinking of alcohol. The Member reflected that he struggled with giving up his legal career and adjusting to being a newly elected Member, particularly given his father was a former Assembly Member who the Member had not seen due to Covid restrictions at his father’s nursing home.

208. The Committee noted the impact this investigation had on the Member and his comments around the lack of support and advice on how to deal with media speculation and the impact this may have on an individual’s mental health. The Committee intends to consider the provisions available to Members as part of its inquiry into Dignity and Respect provisions in the Senedd, and make sure that the

²⁷ Report for the Commissioner for Standards, paragraph 122-123

available information is as clear as possible to make sure Members are fully aware of the support available in the future.

Representation on the Standards of Conduct Committee

209. Cross-party representation is an important part of the Standards of Conduct Committee. The Committee noted the steps taken by Plaid Cymru in this instance to ensure that Peredur Owen Griffiths could be part of considering this complaint, and that it was unfortunate he was unable to consider this report for the reasons already stated. To avoid this happening in future, the Committee would encourage parties when they are considering suspending Members to recuse both their member of the Committee and the named alternate from being involved to minimise the possibility of the party not being able to take part in future Standards Committee proceedings on the complaint.

Procedures of the Commissioner for Standards

210. Section 5 of the Measure sets out that:

Subject to section 19 [Annual Report], the Commissioner is not, in the exercise of any functions, to be subject to the direction or control of the [Senedd]

211. The Committee is mindful of its obligation to respect the Commissioner's independence. However, the Committee has identified a number of matters they wish to draw to the Commissioner's attention and which they invite the Commissioner to consider.

Members' Preferred Language

212. The Committee noted the Member's concerns about the Commissioner being able to deal with this matter in Welsh. Having regard to the bilingual character of the Senedd enshrined in the National Assembly for Wales (Official Languages) Act 2012, the Committee recommends the Commissioner maintains a record of Members' language preferences to ensure that as far as practicable communication can take place in the language of Members' choice.

Initial procedural meeting

213. The Committee recognises that the Commissioner considering a complaint can be a stressful and difficult time for Members, as well as those making a complaint. The Committee believes that holding an initial procedural meeting with the Member to explain the stages in the investigation phase may be beneficial especially in sensitive cases such as the present or where a Member has

not previously been the subject of an investigation. An initial procedural meeting would allow for the Member's questions and concerns to be addressed at the outset and will ensure expectations are clearly articulated and understood.

Additional matters to the initial complaint

214. The Committee notes the legal advice which set out that the Commissioner could follow evidence of further breaches which emerge during the course of the inquiry. The Committee considers that while it is at the discretion of the Commissioner how he carries out investigations, it would be prudent to include a distinct stage mirroring the initial notification of the Member where those matters are put with the same particularity.

Witnesses approaching the Commissioner

215. The Committee noted the media coverage regarding this case, which included an article relating to an individual seeking to provide evidence to the Commissioner. The evidence offered in that instance, was not considered relevant by the Commissioner and therefore not disclosed to the Committee or the Member until the individual approached the media who reported it. The Committee is of the view in the interest of transparency, where the Commissioner receives unsolicited approaches to give evidence but concludes it is not relevant, the Commissioner should consider referring to the fact of the approach but no further details should be recorded in his report.

Annex A: Chronology of Committee proceedings

Chronology following receipt of the report from the Commissioner for Standards, including exchanges of submissions.

Date	Name and Organisation
12 May 2023	Receipt of the Commissioner's report and annexes.
19 May 2023	Recusal of Peredur Owen Griffiths MS and other Plaid Cymru Group members.
22 May 2023	The Committee considered a request from the Member in relation to restricting circulation and delaying consideration of the report. The Committee did not agree the request.
24 May 2023	The Committee wrote to the Member to let him know the reasons for not agreeing the request and to give him details of the support available to him.
24 May 2023	The Committee Clerk circulated the report to the Members of the Committee considering the complaint.
16 June 2023	The Member's first written response was submitted to the Committee.
5 July 2023	The Member's first written response was sent to the Commissioner.
2 August 2023	The Committee submitted written questions to the Commissioner on the conduct of the investigation.
1 September 2023	The Commissioner's reply to the Committee's questions.
18 September 2023	The Committee considered the Commissioner's replies and agreed to provide the Member with an opportunity to comment. To allow the Member enough time to respond and the Committee enough time to consider his response, the oral evidence session was delayed from its original date of 2 October.
4 October 2023	The Member responded to the Commissioner's reply of 1 September.
16 October 2023	The Committee considered the Member's response and agreed that the representation should be shared with the Commissioner.

Date	Name and Organisation
16 October 2023	The Committee asked the Member to provide a schedule of all the information received from the Commissioner during the investigation including dates received.
18 October 2023	The Committee asked the Commissioner for a table setting out when he sent information to the Member relating to the complaint.
18 October 2023	The Commissioner provided his response to the Member's written representations of 4 October.
19 October 2023	The Member provided a table setting out when he received information relating to the complaint, a schedule of witness evidence and a schedule of questions and comments relating to potential bias, misleading comments, improper and leading questions.
23 October 2023	Oral Representation meeting at which the Committee received submissions from Malcolm Bishop KC and the Member also addressed the Committee. The Member and Mr Bishop KC also answered questions from the Committee. Following the Oral Representation meeting the Committee wrote to the Commissioner to ask him to further investigate and report on (i) the pick-up point and seating in the taxi (ii) the availability of the transcript of the interview with the Complainant. The Committee also asked for copies of the section 11 notices served on witnesses.
6 November	The Member provided his response to the Commissioner's comments from 18 October.
7 November	The transcript of the meeting on 23 October was sent to the Member.
15 - 23 November 2023	The Commissioner responded with the information requested by the Committee on 13 November and the Committee considered some of this at its meeting of 20 November. The Committee agreed to provide the Member with the information for comment.
29 November 2023	The Member responded to the Committee with comments on the new evidence.
4 December 2023	The Committee considered the further information received. The Commissioner sent a schedule of additional findings to the Committee.
5 December 2023	The Committee wrote to the Member providing the table of additional matters provided by the Commissioner on 4 December and asking if the Member would be content

Date	Name and Organisation
	with a redacted transcript of the first interview with the Complainant and the proposed arrangements for redaction.
7 December 2023	The Member wrote to the Committee agreeing the redaction of the transcript and commenting on the Commissioner's table of additional matters.
12 December 2023	The Committee wrote to the Commissioner to ask him to approach the Complainant to find out if she was content with the arrangements to redact the transcript. The letter also asked when the Member was first informed of two of the additional findings, and for further information relating to the taxi.
12 January 2024	The Commissioner wrote to the Committee to inform them that the Complainant had agreed to the arrangements for redacting the transcript. The letter also answered the other questions from the Committee on findings and the taxi.
15 January 2024	The Committee wrote to the Commissioner to ask him to approach the Complainant to find out if she was content with the arrangements to redact the transcript. The letter also asked when the Member was first informed of two of the additional findings, and for further information relating to the taxi.
15 January 2024	The transcript was sent to the Member.
23 January 2024	The Member provided comments on the transcript.
29 January 2024	The Committee considered the redacted transcript and the Member's response to the transcript. The Committee met to take its decision on the complaint.
30 January 2024	The Committee Clerk emailed the Member to provide him with the response from the Commissioner on his comments on the transcript. The Committee Clerk also informed the Member that the Committee agreed to move to the report drafting stage.
1 February 2024	The Member responded to the email with further comments, which he asked were shared with the Committee.
2 February 2024	The email was circulated to the Committee.
5 February 2024	The Committee agreed the sanction and considered the first draft of their report.

Date	Name and Organisation
26 February 2024	The Committee considered and agreed the final draft of the report. The Committee also agreed a handling plan which included the use of a reading room. The Committee noted further correspondence from the Member.