

TYNWALD STANDARDS AND MEMBERS' INTERESTS COMMITTEE

Interim Guidance on the handling of complaints about the conduct of Members of Tynwald

This guidance was adopted by the Committee on an interim basis on 23rd November 2022 with the intention that it should be reviewed after one year.

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I. INTERPRETATION

1. In this Guidance –

- “the Codes” are the Tynwald Members’ Required Standards of Conduct in Annex 4 of Standing Orders and the Code of Conduct for Tynwald Members in Annex 6 of Standing Orders
- “the Committee” is the Tynwald Standards and Members’ Interests Committee
- “C” is a Member of Tynwald who refers a complaint to the Committee (for concerns raised by others, see paragraph 17)
- “D” is the Member of Tynwald whose conduct is the subject of a complaint
- “formal outcome” has the meaning given in paragraphs 50 to 53
- “informal resolution” has the meaning given in paragraphs 20 to 22
- “the IO” is an investigating officer appointed by the Committee
- “the President” means the President of Tynwald
- “Salmon procedure” has the meaning given in paragraph 48
- the “Standing Orders”, unless otherwise stated, are the Standing Orders of Tynwald Court.

II. FORMAL AND INFORMAL PROCEDURES IN OUTLINE

2. If a complaint concerns words used during Tynwald proceedings, it must be made immediately or, in the case of a complainant who was absent when the words were used, as soon as possible. See Schedule to Standing Orders, paragraph 4.4.
3. Other types of complaint should be raised in the first instance with D direct and an informal resolution should be sought, with the assistance of the President if necessary. Only if dissatisfied with D’s response should C refer a matter to the Committee.
4. If the Committee cannot broker an informal resolution it may refer the matter to an IO, who will be asked to investigate and report to the Committee (see paragraphs 27 to 34).

5. Alternatively the Committee may choose to investigate the matter itself (see paragraphs 36 to 53).
6. If, in the light of the IO's report, the Committee cannot broker an informal resolution, the Committee may report to Tynwald recommending a formal outcome (see paragraphs 35 to 53).

III. PRINCIPLES AND SCOPE

General principles

7. Conduct in breach of the Codes by any Member of Tynwald is contrary to the public interest.
8. It is in the public interest and in the interests of all parties for complaints to be resolved fairly, efficiently and with the least possible degree of formality. Everyone handling a complaint (including, in particular, the President, the Committee and the IO) should bear in mind at all stages the desirability of achieving an informal resolution.
9. All Members of Tynwald are expected to uphold the work of the Committee and the operation of the procedures in this Guidance. Any delay or failure to respond to a request for information or attend a meeting under this Guidance may result in adverse inferences being drawn, and ultimately may be investigated as a potential breach of the Codes.
10. Unless they concern words spoken during public proceedings, complaints which have been referred to the Committee should not be referred to in public until the Committee has decided on a course of action. If the Committee decides to undertake an investigation, no comment should be made in public until the investigation has been completed and its outcome is known.

Matters within scope

11. A complaint is in scope if it is made by a Member of Tynwald and if it alleges that the conduct of a Member of Tynwald has been in breach of the Codes.
12. A Member may request that their own behaviour be investigated to establish if a breach of the Code has taken place.
13. Referring to the Committee a frivolous or vexatious complaint, or a complaint which is substantially the same as one which has already been investigated, is itself a breach of the Codes and may be investigated as such at the instigation of the Committee.

Matters outside scope

14. The following are outside the remit of the Committee and will not be considered as complaints for the purposes of this Guidance –
 - an allegation about the merits or otherwise of any policy or operational decision taken by a Member of Tynwald
 - an allegation about the performance or conduct of any person who is not a Member of Tynwald (but see paragraphs 18–19).
15. As a general rule, the Committee will not investigate a matter which could be investigated under the Government Code. However, the Committee reserves the right to investigate such a matter if it determines this to be appropriate in all the circumstances of the case. Where possible the Committee will consult the Chief Minister before making any such determination.
16. The Committee will not investigate any complaint while the police are conducting their own investigation into any related matter, or while related proceedings (for instance, an action for defamation) are before a court of law.

Complaint on behalf of non-Member

17. A complaint can only be referred to the Committee by a Member of Tynwald. If any other person has a concern about the conduct of a Tynwald Member, they may consider –
 - asking one of their MHKs, or an MLC, to refer a complaint to the Committee on their behalf;
 - if they work in a politically led organisation, asking that their Minister, Board Chair or equivalent to refer a complaint to the Committee;
 - if they work in a politically led organisation and their complaint relates to the conduct of their Minister, Board Chair or equivalent, asking the President of Tynwald to refer a complaint to the Committee on their behalf.

Report referring to non-Member

18. A referral may not be made in respect of the conduct of a person who is no longer a Member of Tynwald. However, where a person ceases to be a Member of Tynwald while an investigation is underway, the procedures may continue. As a former Member has no right to speak in debate, the Salmon procedure should be applied (see below).

19. Tynwald Members are entitled to rely on their professional advisers and in particular on accountable officers. Circumstances can arise in which an IO or the Committee may need to make an adverse finding about the performance or conduct of such an officer. In such circumstances the Salmon procedure should be applied (see below).

IV. INFORMAL RESOLUTION

20. In some circumstances an informal resolution may be achieved by way of an apology. If the complaint concerned words used in public proceedings, the apology should normally be made on the parliamentary record by way of a personal statement. If the complaint concerned conduct away from public proceedings, the apology need not necessarily be given in public or in writing.
21. In some circumstances an informal resolution may be achieved by the putting of documentary information into the public domain. Such information may be published by the Clerk of Tynwald.
22. Nothing in this Guidance limits the ways in which informal resolution may be achieved.

V. FORMAL INVESTIGATION

Reference to Committee

23. When referring any matter to the Committee, C should make clear in what respect D is alleged to have breached the Codes and should supply evidence in support of this allegation.
24. A Member of the Committee who is either –
- C;
 - D; or
 - in the case of a complaint about conduct outside public proceedings, a witness to the conduct complained of
- may not sit for the consideration of the complaint or for any connected purposes.
25. When a matter is referred to the Committee, the Committee may –
- seek further and better particulars of the complaint from C

- appoint a Member of the Committee or some other person to attempt to broker an informal resolution
- commission an IO to investigate the complaint
- undertake an investigation of its own without reference to an IO
- consider whether the complaint should be investigated as frivolous, vexatious or repetitious and if so whether to commission or undertake an investigation into the conduct of C
- combine complaints referred by different Members in the interests of efficiency.

26. The Committee should inform both C and D of how it intends to proceed.

Investigation by IO

27. The IO must inform D of the nature of the complaint and provide D with any evidence which has been offered in support of it. The IO must set out the particular provisions of the Codes that appear, either on the basis of the complaint, or their own preliminary assessment of the facts, to have been breached, and must invite D to respond orally or in writing.

28. After considering D's response the IO may pursue the investigation by taking further written and oral evidence from D, C, other Tynwald Members, and anyone else.

29. Records of interviews should normally be in the form of notes agreed by the IO and the interviewee. Only exceptionally should an audio recording be made and then only with the consent of the interviewee.

30. An interviewee may be accompanied to any meeting by a colleague, friend or legal adviser, but there should be no expectation that they should be so accompanied. If an interviewee chooses to bring a colleague, friend or adviser, they are free to consult that person, but will be expected to answer for themselves any question put to them.

31. If necessary the IO may ask the Chair of the Committee to issue an order under the Tynwald Proceedings Act 1876 requiring the production of documents.

32. If the IO's investigation uncovers evidence that is at variance with D's version of events, the IO should put this to D and invite a response.

33. Before finalising their report to the Committee, the IO should share with D a draft of those parts of their report which deal with issues of fact, and give D an opportunity to comment. If, having considered D's comments, the IO considers that there remain significant contested issues of fact, the IO should prepare their own account of the facts of the case, and should draw the attention of the Committee to those points which are contested.
34. The IO should usually report their findings to the Committee in the following form:
- summary of the complaint and of the relevant elements of the Codes;
 - brief account of the key facts in the case, with references to evidence as appropriate and with any contested points of fact highlighted;
 - findings with reasons as to whether or not the Code has been breached;
 - a recommendation as to what action, if any, should be taken;
 - oral and written evidence.

Committee consideration of IO's report

35. On receipt of a report from an IO, the Committee may –
- adopt the IO's findings and recommendations on the basis of the evidence presented by the IO (see paragraphs 47 to 53);
 - take a different view based on the evidence presented by the IO (see paragraphs 47 to 53); or
 - undertake its own further investigation (see paragraphs 41 to 53).

Investigation by the Committee without an IO's report

36. If the Committee decides to investigate a complaint without referring it to an IO, the Committee should inform D of the nature of the complaint and provide D with any evidence which has been offered in support of it. The Committee should set out the particular provisions of the Codes that appear, either on the basis of the complaint, or its own preliminary assessment of the facts, to have been breached, and must invite D to respond orally or in writing.
37. After considering D's response the Committee may pursue the investigation by taking further written and oral evidence from D, C, other Tynwald Members, and anyone else.

38. If the Committee's investigation uncovers evidence that is at variance with D's version of events, the Committee should put this to D and invite a response.
39. Before finalising its report, the Committee should share with D a draft of those parts of its report which deal with issues of fact, and give D an opportunity to comment. If, having considered D's comments, the Committee considers that there remain significant contested issues of fact, the Committee should prepare its own account of the facts of the case and should draw the attention of Tynwald to those points which are contested.
40. If the Committee is minded to make any adverse finding about D's conduct and to recommend to Tynwald any formal outcome, the Committee should first share its report in draft form together with the evidence on which the finding is based, and must give D a reasonable time to respond. The Committee should not publish its report until it has taken into account any response from D, and should append D's response to its report.

Committee investigative procedure

41. The following procedures should be followed by the Committee whether or not it has first obtained a report from an IO.
42. Oral evidence should be heard in private in the first instance but should be recorded and transcribed with the expectation that it will be published as part of the Committee's report to Tynwald.
43. A witness giving oral evidence may be accompanied to any oral evidence hearing by a colleague, friend or legal adviser, but there should be no expectation that they should be so accompanied. If a witness chooses to bring a colleague, friend or adviser, they are free to consult that person, but will be expected to answer for themselves any question put to them.
44. If necessary the Chair of the Committee to issue an order under the Tynwald Proceedings Act 1876 requiring the production of documents or the attendance of witnesses.
45. C has no formal right to be called to give oral evidence, though C is expected to co-operate with any investigation and to supply all the evidence in C's possession when asked to do so.
46. Proceedings in the Committee are not adversarial, but inquisitorial in character. D has no entitlement to cross-examine C, though D should be given

an opportunity to review and, if they so wish, challenge the factual basis of any evidence supplied by C or others.

Report to Tynwald

47. If the Committee is minded to make a report to Tynwald containing any adverse finding about D or recommending any formal outcome, the Committee must send to D its findings and recommendations in draft form together with the evidence on which they are based, and must give D a reasonable time to respond. The Committee must not publish its report until it has taken into account any response from D, and D's response must be appended to the Committee's report.
48. The "Salmon procedure" applies in any case where the Committee is minded to make an adverse finding about a person, "P", who is not a Member of Tynwald. Where this procedure applies, the Committee must send to P its findings and recommendations in draft form together with the evidence on which the finding is based, and must give P a reasonable time to respond. The Committee must not publish its findings and recommendations until it has taken into account any response from P. P's response must be appended to the Committee's report.
49. If a report by an IO has been received, it should be appended to the Committee's report. If the Committee's findings and recommendations depart from those of the IO, the Committee should give reasons for this in its report.

VI. FORMAL OUTCOME

50. If the Committee decides to make a report to Tynwald, the formal outcomes which it may include in its report include –
 - a finding that the Codes have been breached
 - a recommendation that D be censured by Tynwald
 - a recommendation that D be required to apologise under paragraph 4.3A of the Standing Orders
 - a recommendation that D be suspended, either for a specified length of time or indefinitely
 - in the case of an MHK, a recommendation that the House of Keys Management and Members Standards Committee make a report which

could lead to recall under the procedures in section 136 of the Elections (Keys and Local Authorities) Act 2020

51. Nothing in this Guidance limits the formal outcomes which the Committee may include in its report.
52. Any report to Tynwald will be debated. D will have the right to speak in debate before any recommendations are voted on.
53. The decision of Tynwald Court is final and there is no appeal.

VII. LEGAL AND PROCEDURAL CONTEXT

54. As component elements of an ancient parliament, Tynwald Court and the Branches have inherent rights to regulate their own internal procedures and to make rules for the conduct of their Members.
55. The Tynwald Standards and Members' Interests Committee, as a Standing Committee of Tynwald Court, has the right to determine its own procedures subject only to the Standing Orders of Tynwald Court and to such statute law as is expressly stated to apply to Tynwald. Tynwald and its Committees is not bound by the rules of any court of justice, nor by any common law rule of legal procedure.
56. The Committee has issued this guidance in order to give potential participants a fair indication of how it intends to handle any complaint about the conduct of a Member of Tynwald which may be referred to it under the procedures in the Standing Orders of Tynwald Court. This guidance is not binding on the Committee, however, and the Committee reserves the right to modify these procedures if, in its opinion, this is necessary in the public interest taking into account the circumstances of any individual case.
57. This guidance should be read in conjunction with the Standing Orders of Tynwald Court and in particular –
 - Standing Orders 3.29 to 3.37 (maintenance of order)
 - Standing Orders 10.1 to 10.3 (interest)
 - Schedule paragraphs 4.1 to 4.8 (the Committee)
 - Annex 4 (Members of Tynwald Required Standards of Conduct)
 - Annex 5 (Standards of conduct: statement by HM Attorney General)

- Annex 6 (Code of Conduct for Members of Tynwald)
- Annex 7 (Register of Members' Interest Rules)

58. Relevant Standing Orders of the House of Keys include –

- Keys Standing Orders 3.31 to 3.40 (maintenance of order)
- Keys Standing Orders 10.1 to 10.3 (interest)

59. Relevant statutory provisions include –

- Payment of Members' Expenses Act, section 7A (suspended Members of Tynwald)
- Elections (Keys and Local Authorities) Act 2020, Part 9 (recall of Members)

Clerk of Tynwald
21st November 2022