

Written Response by the Welsh Government to the report of the Standards of Conduct Committee entitled *Creating the Right Culture*

1. The Ministerial Code sets out the First Minister's expectations in respect of Ministerial conduct underpinned by the *Seven Principles of Public Life*. It provides guidance on a range of matters including relationships with the Civil Service and how to deal with Ministers' constituency, party and private interests. It also contains procedural advice on Cabinet and Governmental processes and obligations.
2. In particular, the Code makes clear that Ministers are expected to be personally responsible for their conduct. However, the First Minister is the ultimate judge of standards of Ministerial behaviour. The First Minister also determines appropriate action in respect of a breach of those standards.
3. Where appropriate, the First Minister may call upon an Independent Adviser to investigate complaints and to provide him with advice on which to base his judgement about any necessary action.

A response to the report's recommendation are set out below:

Recommendation 12

The Committee recommends that the First Minister works with the Standards Commissioner to establish a protocol by Summer 2019 whereby all complaints are referred to the Office of the Commissioner and that the Commissioner subsequently reports to the relevant body.

Response: Reject

1. The First Minister welcomes the Committee's report and the part it will play in promoting a culture of dignity and respect within the Assembly. The Government supports the position that inappropriate behaviour, however and wherever it occurs will not be tolerated.
2. The First Minister has given careful consideration to recommendation 12, which would require the establishment of a protocol whereby the referral of complaints about Ministers would be made to the office of the Standards Commissioner with the Commissioner reporting to the relevant body.
3. There is a comment in paragraph 38 of the report that the requirement under the Ministerial Code which states: ***Ministers must keep separate their roles as Minister and Assembly Member***, is potentially confusing. This is a fundamental clause of the code and the primary purpose of 1.1(viii) of the Ministerial Code is to ensure

that a Minister avoids the potential for an actual or perceived conflict of interest if they are asked to make a decision, within their portfolio, which impacts directly on their own constituency. It is also designed to ensure Ministers do not use Welsh Government facilities and resources for constituency or party political activities outside of the parameters set out in paragraphs 4.1 to 4.4 of the code. The rationale for the Committee's conclusion that there is potential for confusion regarding Assembly Member and Ministerial roles is not evident. To involve the Standards Commissioner, appointed by and accountable to the Assembly, to investigate complaints about the behaviour of Ministers, when clearly operating as Minister rather than Assembly Member, could in itself create the sort of ambiguity of accountability the Committee's report seeks to avoid. The separation of the Executive from the Legislature in 2006 ended the corporate body status and involving an Assembly appointee in such matters could create confusion in the minds of the public about where responsibility for Ministerial conduct lies.

4. However, where a Minister was clearly acting in their capacity as Assembly Member when the alleged misconduct occurred, the First Minister would, under those circumstances, consider it appropriate for the Standards Commissioner to handle the matter rather than it be dealt with under the Ministerial Code.
5. The report rightly refers to the facility the First Minister has to refer any matter regarding Ministerial behaviour to an Independent Adviser to investigate. Having only been asked to investigate and advise on one case, which was undertaken diligently and objectively by a former Director of Public Prosecutions to the Irish Government, the Committee's view that public confidence would be improved if the Standards Commissioner undertook that role, is not one that is shared by the First Minister.
6. Work to identify a number of suitably qualified Independent Advisers is nearing completion and a Written Statement will issue in due course on that.