The Committee will meet at 11.00 am in Committee Room 4.

1. **Item in private:** The Committee will consider whether to take item 5 in private.

2. **Cross-Party Group on Tackling Debt:** The Committee will consider an application to establish a Cross-Party Group in the Scottish Parliament on Tackling Debt.

3. **Replacing the Members’ Interests Order:** The Committee will consider papers on paid advocacy, ceased and future interests, the mechanics of the Register and the purpose of the Register.

4. **Code of Conduct:** The Committee will consider draft amendments to section 10 of the *Code of Conduct of MSPs*.

5. **Complaint:** The Committee will consider a report from the Scottish Parliamentary Standards Commissioner.
Please find attached papers on the following:

**Agenda item 2**
**Cross-Party Group on Tackling Debt** - Registration form
   - ST/S2/04/7/2
   - Alphabetical list of Cross-Party Groups in the Scottish Parliament
   - ST/S2/04/7/2a

**Agenda item 3**
**Replacing the Members’ Interests Order** -
   - Paid advocacy: paper by the Clerk
     - ST/S2/04/7/3a
   - Ceased and future interests: paper by the Clerk
     - ST/S2/04/7/3b
   - The mechanics of the Register: paper by the Clerk
     - ST/S2/04/7/3c
   - The purpose of the Register: paper by the Clerk/NEBU
     - ST/S2/04/7/3d

**Agenda item 4**
**Code of Conduct** –
   - Draft amendments to Section 10.2 of the Code: paper from the Clerk
     - ST/S2/04/7/4
   - Administrative principles – as previously agreed by the Committee
     - ST/S2/04/7/4a
   - Copy of Directions previously issued to the Standards Commissioner
     - ST/S2/04/7/4b
   - Section 10.2 of the Code showing suggested amendments
     - ST/S2/04/7/4c

**Agenda item 5**
**Complaint** -
   - Procedural note by the Clerk *(private paper)*
     - ST/S2/04/7/5
   - Report by the Scottish Parliamentary Standards Commissioner *(private paper)*
     - ST/S2/04/7/5a
1. **GROUP NAME** *Code of Conduct 8.5.6*
Groups that have undertaken to comply with the rules on Cross-Party Groups may use the words *Cross-Party Group in the Scottish Parliament* in their title.

Cross-Party Group in the Scottish Parliament on Tackling Debt

2. **GROUP PURPOSE** *Code of Conduct 8.2.5 and 8.3, Rule 1*
A brief statement of the main purpose of the group. Groups are reminded that the Standards Committee will look very carefully at the proposed purpose of a group to satisfy itself that its purpose is Parliamentary in nature and of genuine public interest.

To provide a forum for the discussion and progression of issues relating to the debt problems of people in Scotland, including discussion between Members of the Scottish, Westminster and European Parliaments and others.
3. GROUP MEMBERS *Code of Conduct 8.3, Rules 2, 3, 8, 9 & 10*

When listing members, who are MSPs, only the MSP’s name need be given. For members from outwith the Parliament, the name of the member and any employer they represent must be given.

<table>
<thead>
<tr>
<th>MSPs</th>
<th>Non-MSPs</th>
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<tbody>
<tr>
<td>Jackie Baillie</td>
<td>Charles Bell, CHAS (community debt project)</td>
</tr>
<tr>
<td>Robert Brown</td>
<td>Michael Connarty MP</td>
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<tr>
<td>Dennis Canavan</td>
<td>Maureen Connor, researcher (Ind.)</td>
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<tr>
<td>Frances Curran</td>
<td>Annabel Ewing MP</td>
</tr>
<tr>
<td>Fergus Ewing</td>
<td>Archie Kirkwood MP</td>
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<tr>
<td>Margaret Ewing</td>
<td>Jim Lally, Learning Teaching Scotland</td>
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<tr>
<td>Trish Godman</td>
<td>Mark Lazarowicz MP</td>
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<td>Donald Gorrie</td>
<td>John MacDougall MP</td>
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<td>Christine Grahame</td>
<td>David Marshall MP</td>
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<td>Carolyn Leckie</td>
<td>Anne McKechn MP</td>
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<tr>
<td>Alex Neil</td>
<td>Michael Moore MP</td>
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<tr>
<td>Nora Radcliffe</td>
<td>Robert Rae, Unison</td>
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<td>Mary Scanlon</td>
<td>Ernie Ross MP</td>
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<tr>
<td>Tommy Sheridan</td>
<td>Roddy Sampson, Granton Information Centre</td>
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<tr>
<td>Jamie Stone</td>
<td>Bill Scott, researcher (SSP)</td>
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<tr>
<td>Karen Whitefield</td>
<td>Michael Weir MP</td>
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<td>Jenni Wilkie, GPC</td>
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<td>Individuals</td>
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<th>Individuals</th>
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<tr>
<td>Charles Bell, CHAS (community debt project)</td>
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<td>Jenni Wilkie, GPC</td>
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### Organisations

<table>
<thead>
<tr>
<th>Debt on our Doorstep</th>
<th>(Graham Blount)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Church Action on Poverty</td>
<td>(Alister Blades)</td>
</tr>
<tr>
<td>Citizens Advice Scotland</td>
<td>(Susan McPhee, David McNeish, Lindsay Isaacs)</td>
</tr>
<tr>
<td>Money Advice Scotland</td>
<td>(Yvonne Gallacher)</td>
</tr>
<tr>
<td>Scottish League of Credit Unions</td>
<td>(John Patton)</td>
</tr>
<tr>
<td>Scottish Local Government Forum Against Poverty</td>
<td>(John Mulvey)</td>
</tr>
<tr>
<td>Scottish Consumer Council</td>
<td>(Sarah O'Neill)</td>
</tr>
<tr>
<td>ABCUL</td>
<td>(Chris Mallon, David Dugan)</td>
</tr>
<tr>
<td>Energywatch</td>
<td>(Malcolm Sayers)</td>
</tr>
<tr>
<td>Child Poverty Action Group</td>
<td>(John Dickie)</td>
</tr>
<tr>
<td>Poverty Alliance</td>
<td>(Peter Kelly)</td>
</tr>
<tr>
<td>SFHA</td>
<td>(Geralyn Lewis)</td>
</tr>
<tr>
<td>Church of Scotland</td>
<td>(David Sinclair)</td>
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</tbody>
</table>

### 4. GROUP OFFICERS  
*Code of Conduct 8.3, Rule 4*

Please amend titles as necessary e.g. to indicate joint office holders, or preferred titles.

<table>
<thead>
<tr>
<th>Role</th>
<th>Name(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convener</td>
<td>Jackie Baillie, Christine Grahame and Jamie Stone (Co-conveners)</td>
</tr>
<tr>
<td>Vice-Convener</td>
<td>Mark Lazarowicz</td>
</tr>
<tr>
<td>Secretary</td>
<td>Graham Blount</td>
</tr>
<tr>
<td>Treasurer</td>
<td>-</td>
</tr>
</tbody>
</table>
5. FINANCIAL OR OTHER BENEFITS RECEIVED  Code of Conduct 8.4.8
The group must register any financial or other material benefit received by the group from whatever source, where the value of the financial sum or benefit from any single source exceeds £250 in any one calendar year. This includes donations, sponsorship, subscriptions, hospitality, gifts, visits, provision of services or accommodation or staff assistance. The value of use of Parliamentary facilities need not be registered.

The details requiring to be registered include a brief description of the benefit, the approximate monetary value, the date on which it was received and the source from which it came. Where a consultancy organisation provides benefits, the client on whose behalf these are provided should be named.

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>NONE</td>
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</tbody>
</table>

6. GROUP SUBSCRIPTION  Code of Conduct 8.3, Rule 7
Where a group charges or proposes to charge a subscription, this must be reasonable and the same for all members. The amount of the subscription should be registered and the purposes for which it is intended to use the subscription.

| Amount per group member per year | None |
7. GROUP STAFF AS PARLIAMENTARY PASS HOLDERS
If a group makes use of staff issued with a Parliamentary pass, any paid activity undertaken by those staff where the employer benefits from the pass holder’s access to the Parliament must be registered. There is no need to state the amount of remuneration. The requirement relates both to staff employed directly by the group and to staff employed by an outside organisation to provide assistance to the group.

<table>
<thead>
<tr>
<th>Staff name</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title of post</td>
<td></td>
</tr>
<tr>
<td>Name and address of employer organisation</td>
<td></td>
</tr>
<tr>
<td>Type of employer organisation</td>
<td></td>
</tr>
</tbody>
</table>

8. GROUP CONTACT  
*Code of Conduct 8.4.4 and 8.5.1 – 8.5.5*
Please give the full details of an elected official of the group who is an MSP who will be the contact for registration matters for the group. Initially this must be the Member who signs the declaration on compliance with the rules on behalf of the group. If a group subsequently changes the designated contact, the office of the Standards Clerk must be informed within 7 days of the change.

<table>
<thead>
<tr>
<th>Name</th>
<th>Jackie Baillie</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parliamentary address</td>
<td>Room 4.6 PHQ</td>
</tr>
<tr>
<td>Telephone number</td>
<td>0131 348 5905</td>
</tr>
<tr>
<td>Constituency Office telephone number</td>
<td>01389 734 214</td>
</tr>
</tbody>
</table>
CROSS-PARTY GROUPS IN THE SCOTTISH PARLIAMENT
(in alphabetical order and as at May 2004)

Affordable Housing
Animal Welfare
Architecture and the Built Environment
Asthma
Autistic Spectrum Disorder
Borders Rail
Cancer
Children and Young People
Chronic Pain
Construction
Crofting
Cuba
Culture and Media
Cycling
Deafness
Disability
Drug and Alcohol Misuse
Epilepsy
Gaelic
Human Rights
International Development Group
Kidney Disease
Learning Disability
M.E.
Men's Violence against Women and Children
Mental Health
Nuclear Disarmament
Oil and Gas
Older People, Age and Ageing
Palestine
Palliative Care
Refugees and Asylum Seekers
Renewable Energy
Scots Language
Scottish Contemporary Music Industry
Scottish Economy
Scottish Traditional Arts
Sexual Health
Sports
Strategic Rail Services for Scotland
Survivors of Childhood Sexual Abuse
Textiles, Clothing and Footwear
Tibet
Tobacco Control
Visual Impairment
Wastes Management
Women

(47 Groups)
SEVENTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER - PAID ADVOCACY

Background

1. This paper outlines the current provisions on paid advocacy in the Members’ Interests Order and details the previous Committee’s recommendation for inclusion in replacement legislation.

2. Paid advocacy takes place where a Member undertakes a Parliamentary action such as lodging a Written Question or proposing a Member’s Bill in return for payment or other benefit.

Current Provision

3. In the first Parliamentary session, the Standards Committee recognised that the provisions in the Members’ Interests Order on paid advocacy are extremely wide and that their strict interpretation could have far reaching consequences for the conduct of Parliamentary business. Specifically, the failure of the MIO to specify a nexus between the remuneration and the action taken by a Member as set out in the Scotland Act 1998 means that a Member could breach the paid advocacy provision if he/she participates in Parliamentary proceedings related to an individual/organisation from whom he/she receives remuneration even where that registrable interest is properly declared. This was the subject of adverse comment in the Court of Session in the Petition of Whaley and others in November 1999, which involved consideration of the paid advocacy rule in the MIO.

4. Article 6 of the MIO states that

   (a) Where at any time after the date on which he was returned as a member, a member receives or expects to receive any remuneration, he shall not:

   (b) do anything in his capacity as a member in any proceedings of the Parliament which relates directly to the affairs or interests of, or which seeks to confer benefit upon, the person from whom the member received or expects to receive remuneration or to the affairs and interests of a client or associate of that person; or

   (c) encourage any other member to do anything mentioned in paragraph (a).

5. In the early months of the Parliament and prior to the drafting of the Code of Conduct, this omission in the Transitional Order generated concerns that an MSP with a registrable interest would be unable to participate in related Parliamentary proceedings without falling foul of the provisions on paid advocacy. This was not the apparent intention of the provision. An interpretation of the paid advocacy provisions based on section 39(4) of the Scotland Act and reflecting the apparent intention of the provision was adopted by the Committee when it drafted the Code of Conduct (see below).
6. In developing proposals for replacement legislation, the previous Committee wished to ensure that Members are able to become well informed on issues and able to draw on their expertise and experience gained from outside interests whilst ensuring that the paid advocacy provisions are an effective prohibition against abuse. This approach received considerable support from MSP respondents to the Committee’s consultation paper published in 2001.

The Current Interpretation

7. The current interpretation of the provision by the Parliament which was developed during the investigation into two complaints against Mike Watson MSP relies on establishing a link or nexus between remuneration and the action taken by the Member: a Member must be shown to have advocated a cause in return for some form of payment. This principle is laid down in section 39(4) of the Scotland Act which states that

Provision shall be made prohibiting a member of Parliament from –

(a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified...... [emphasis added]

8. As indicated above, Article 6 of the Members’ Interests Order, however, does not explicitly refer to ‘in consideration’. The Standards Committee subsequently incorporated this interpretation into the Code of Conduct which was adopted by the Parliament. Paragraph 6.2.3 notes that ‘it is the Member’s reason for undertaking any action .... which is fundamental in applying this rule’.

Proposal of the Previous Committee

9. The previous Committee proposed that the replacement legislation should make it clear that paid advocacy only takes place where there is a nexus between receipt of a payment or benefit which represents a personal gain to the Member and the Member undertaking action in his/her capacity as an MSP. The Committee also proposed that the new provision should also apply in relation to future or expected interests and to remuneration, gifts or other benefits to spouses/partners if these were related to the Member’s Parliamentary duties. The Committee believed that this would prohibit Members from undertaking a Parliamentary action in consideration for remuneration or other benefit which they expect to receive in the future.

10. The previous Committee’s draft Bill specified that the paid advocacy prohibition would not prevent a Member from receiving assistance in connection with the preparation of a Member’s Bill or amendments to any Bill provided that such assistance is neither accepted by, nor given to, the Member in return for that Member promoting the Bill or amendment. The Committee may wish to consider extending this provision to subordinate legislation and Sewell motions.
Decision

- The Committee is invited to agree to the inclusion of its predecessor’s proposal on paid advocacy in its Committee Bill.

- The Committee is also invited to agree that the paid advocacy provision should not prevent a Member receiving assistance in connection with a Member’s Bill, amendments to legislation or matters relating to subordinate legislation providing that assistance is not given to the Member in return for him/her promoting the Bill or amendment.

STANDARDS COMMITTEE CLERKS
MAY 2004
SEVENTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER - CEASED AND FUTURE INTERESTS

Background

1. This paper examines the current provisions on ceased and future interests and the previous Standards Committee’s proposals in its draft Committee Bill.

Ceased Interests

2. Article 4(7) of the MIO sets out the procedure for Members to notify the Clerks of a ceased interest. The MIO does not, however, provide any provision setting out when an interest might be considered to have ceased. In the case of a one-off interest, for example, such as hospitality or a gift, it is not clear when the interest ceases. Paragraph 4.2.23 of the Code of Conduct states that this is a matter for the individual Member's own judgement.

3. The previous Standards Committee proposed that the Clerks would be required to write to Members on an annual basis asking them to review their entry in the Register. In deciding whether or not to remove a one-off interest, the Committee proposed that the legislation should contain an objective test for judging whether the interest can be said to have ceased. Members would be required to consider whether in the view of an impartial observer the interest no longer has or could be perceived as having an influence over the Member's participation in Parliamentary proceedings. In reaching a judgement, Members should take into account the value of a one-off interest. The effect of a substantial gift, for example, could be seen as having greater duration than a mere token.

4. The Committee may also wish to consider whether a Member’s initial registration should include interests no longer held at the time of his or her election but which could be seen by an impartial observer as possibly influencing his or her Parliamentary activities. For example, a benefit such as a gift or overseas visit given to the Member shortly before the election would not be registrable under the current rules, yet it might be seen by an impartial observer to still potentially influence a Member. Alternatively, the Committee may confirm the current approach whereby only interests held at the date of the election or acquired since then as providing greater clarity to Members.

The Declaration of Ceased and Future Interests

5. The previous Committee examined whether Members should be required to declare ceased or future interests when participating in relevant proceedings. At present, Article 5 of the MIO only applies to current interests although section 5.2.10 of the Code of Conduct recommends that Members consider the declaration of past interests. Both the MIO and the
Code are silent on whether interests which a Member expects to have in the future should be declared, although the provisions on paid advocacy apply where a Member ‘expects to receive any remuneration’ (Article 6 refers).

6. The CSG Working Group on the Code of Conduct recommended that past interests which have been held by the Member in the previous twelve months should be declarable. However, the Group decided against recommending that Members should be required to declare expected or future interests ‘because of the difficulty in developing and enforcing a rule that was sufficiently certain to be understood and interpreted in a consistent way’. Instead the Group recommended that MSPs might want to keep in mind when making declarations of interests whether it was appropriate for them to declare interests they expect to receive if it could appear later that their participation in any debate had been affected by the prospective interest.¹

7. The House of Commons requires MPs to declare both relevant past interests and relevant interests which they may be expecting to have. In practice, only interests held in the recent past are required to be declared, that is those contained in the current printed edition of the Register (the House does not utilise a loose-leaf printed copy or ‘live’ version as used in the Scottish Parliament). In terms of future interests, the House of Commons Code of Conduct lays down the following test:

Where, for example, a Member is debating legislation or making representations to a Minister on a matter from which he has a reasonable expectation of personal financial advantage, candour is essential. In deciding when a possible future benefit is sufficiently tangible to necessitate declaration, the key word in the rule which the Member must bear in mind is ‘expecting’. Where a Member’s plans or degree of involvement in a project have passed beyond vague hopes and aspirations and reached the stage where there is reasonable expectation that a financial benefit will accrue, then a declaration explaining the situation should be made.²

8. Both the National Assembly for Wales and the Northern Ireland Assembly also require Members to declare ‘expected’ interests.

9. The previous Committee proposed that the replacement legislation should require the declaration of future or expected interests utilising the same test as is applied in the House of Commons’ Code, that is where there is a ‘reasonable expectation’ that the registrable interest will accrue to the Member. However, the current Committee has indicated in preliminary discussions on the MIO that it sees potential problems in this proposal, for example, it might breach commercial confidentiality.

10. In relation to ceased interests, the previous Committee proposed that Members should declare such interests where an impartial observer could

² The Guide to the Rules Relating to the Conduct of Members, paragraph 38.
reasonably conclude that the interest might prejudice or give the appearance of prejudicing the Member’s contribution.

The Registration of Future Interests

11. The Committee will also wish to consider whether in addition to declaring future interests, MSPs should also be required to register such interests. In addition to the possible drawbacks highlighted in the previous paragraphs in relation to commercial confidentiality, it might be problematic for Members to describe the interest with sufficient clarity (for example in terms of value) until the interest has actually been acquired. Moreover, the Committee may wish to consider whether such a requirement would impose a burden on Members which is not proportionate to the objective of transparency which it is intended to serve.

Decision

12. The Committee is invited to consider whether:

- The draft Bill should contain an objective test for Members to determine whether or not a one-off interest has ceased;
- Members should be required to register only those interests held at the time of the election or acquired since that time;
- Members should be required to declare future interests when participating in related Parliamentary proceedings where there is a ‘reasonable expectation’ that the interest will accrue;
- Members should be required to register such future interests;
- Members should declare relevant ceased interests where an impartial observer could reasonably conclude that the interest might prejudice or give the appearance of prejudicing the Member’s contribution.

STANDARDS COMMITTEE CLERKS
MAY 2004
SEVENTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER – THE MECHANICS OF THE REGISTER

Background

1. This paper reviews the current provisions in the Members’ Interests Order and Code of Conduct on the mechanics of registration and details the recommendations of the Standards Committee in the first Parliamentary session.

Keeping the Register

2. The previous Committee reviewed the provisions which dictate how the Register should be maintained and updated. Section 39 of the Scotland Act 1998 requires provision to be made for a register but makes no specification of form. Article 3(8) of the MIO gives the Parliament a considerable degree of discretion in deciding what form the Register should be kept:

   The Register may be kept in such form (which need not be documentary form) as the Clerk may consider appropriate and, if it is kept otherwise than in documentary form, it shall be in such form that when printed and displayed it shows the information mentioned in paragraph (2) [that is, details of registrable interests, date of registration, etc].

   The Register is kept in electronic form by the Clerks.

3. Article 3(6) of the MIO states that

   The Register shall be printed and published by the Clerk at such intervals and in such manner as the Parliament may determine.

4. In July 1999, the Parliament approved a motion from the Standards Committee which stated that the Register would be printed and kept in a loose leaf folder in the office of the Clerk of the Parliament and that it would be published on the internet. The previous Committee recommended that the flexibility of Article 3(8) of the MIO be retained as this would enable the Parliament to keep pace with developments in information technology and systems.

Removing Ceased Interests

5. Article 3(4) of the MIO states that the Register may be amended by the Clerk at any time to take account of a statement that a member has ceased to have an interest. Section 4.2.22 of the Code of Conduct provides that the Clerks carry out this function by first adding a statement to the entry that the interest has ceased and later on removing the entry from the register on the annual review. The previous Committee believed that this approach is anomalous since ceased interests notified to the Clerks two weeks before the annual review of the Register only remain for that period whereas ceased interests notified two weeks after the review will remain for fifty weeks. The Committee therefore proposed that ceased
interests should be removed from the Register three months after the Clerks have been notified of the cessation of the interest, given that previous entries are available for public inspection. The Committee also recommended that these changes should be effected through amendments to the Code of Conduct rather than appearing on the face of the Committee Bill. The replacement legislation was intended to make express provision for the maintenance of the historic registers on the basis set out above.

The Format of Statements

6. The current legislation provides that the Presiding Officer may make various determinations in relation to the lodging of statements setting out a Member's registrable interests and the way in which the Member's entry should appear in the Register. The previous Committee agreed that such determinations would be more appropriately made through amendments to the Code of Conduct. It therefore proposed that the Code should provide guidance on the following:

- The standardised form for making an initial registration
- Information to be provided in initial and subsequent statements

Time Limits for Initial Registration and Subsequent Amendments

7. The previous Committee proposed that the existing 30 day limit both for the initial registration of interests following oath taking and after acquiring a new registrable interest should be retained in the replacement legislation.

8. At the beginning of the current session, some MSPs indicated that they were encountering problems in finalising election expenses within the 30 day period. However, this problem was circumvented by entering a provisional figure clearly stated as such or a statement indicating that details of election expenses would be provided in due course.

Decision

9. The Committee is invited to agree the following:

- To retain the current flexibility in how the Register is kept in order to keep pace with technological developments;
- Ceased interests should be removed from the Register three months after cessation;
- Changes to the format of registration statements and the format of the Register should be determined by the Parliament through the Code of Conduct;
- The time limit for initial registration and subsequent changes should remain at 30 days.

STANDARDS COMMITTEE CLERKS
MAY 2004
SEVENTH MEETING OF THE STANDARDS COMMITTEE
REPLACING THE MEMBERS’ INTERESTS ORDER - THE PURPOSE OF
THE REGISTER

Background

1. At its 3rd Meeting 2004 (9 March), the Committee indicated that it was content with the proposed influence test for determining a registrable interest but sought further clarification on how the test is applied. This issues paper provides clarification on how the test is currently applied when declaring interests and how it relates to registrable interests. Information on how the influence test might be applied by the courts is annexed.

Purpose of Register

2. The paper prepared for 9 March set out the purpose of the register as specified at paragraph 4.1.1 in the Code of Conduct as follows:

   The main purpose of the Register is to provide information about certain financial interests of Members which might reasonably be thought by others to influence Members’ actions, speeches or votes in the Parliament or other actions taken in their capacity as Members.

   The paper then noted that the Neill Committee saw disclosure as having two purposes; firstly to indicate personal interests which might reasonably be thought by others to influence a member in his or her conduct and secondly to indicate those personal interests which demonstrate a members’ expertise or involvement in the subject being debated1.

3. In its 7th Report 20022, the previous Standards Committee endorsed this view:

   “The Standards Committee endorses this view of the Members’ interests regime. Registration and declaration should not simply be perceived as a means of ‘policing’ the probity of elected Members. It should also be seen as setting a Member’s contribution to political debate in context.”

4. The purpose of the register also reflects the work of the early Consultative Steering Group who recommended a Code of Conduct covering such matters as selflessness, integrity and honesty. Their findings under these headings are incorporated in the current Code of Conduct at paragraphs 2.6 to 2.8.

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1 Seventh Report of the Committee on Standards in Public Life, Standards of Conduct in the House of Lords, CM4903-1.
2 Standards Committee, 7th Report 2002 (Session 1), Report on Replacing the Members’ Interests Order: Proposal for a Committee Bill, SP Paper 621.
The Influence Test

5. In relation to registering an interest each category of interest has been approached differently. In most cases the description of an interest itself is sufficient to trigger the requirement for registration in order to satisfy the main purpose of the register. This is simply because where a member holds an interest of that description there would, at the very least, be the appearance of influence. For the majority of categories, e.g. remuneration and sponsorship, holding such an interest meeting a bare description is enough to raise the possibility of influence. For others, e.g. interest in shares and heritable property, a monetary limit is proposed as a determining factor of whether there would appear to be an influence. It is only currently in relation to registration of gifts that an influence related test has to be satisfied. Annex 1 contains a note of each category of registrable interest with the existing type of criteria for registration.

6. The purpose and effect of having a specific influence related test for registering gifts is to exclude such things as inter-family gifts such as might be given at Christmas or on birthdays. To require registration of such gifts might be considered an unreasonable interference with private and family life. In the absence of such a test it would be necessary to register all such gifts or to list the relationships that would be exempt from the registration requirements. A list approach is possible but problematical given no two family structures are identical. It runs the risk of omission of relevant members or inclusion of relationships where the purpose of a gift might in fact be to influence the member.

Applying the Test and Determining Influences

7. The Committee asked for additional guidance on how the test would be applied. That is where it could reasonably be considered that an interest might prejudice or give the appearance of prejudicing the Member’s participation in Parliamentary proceedings. The test is an objective one meaning that it would be applied by asking whether the fair-minded and informed observer, having considered the facts, would conclude that the impartiality of the member might be prejudiced by the interest in question.

8. Members are well used to applying such an influence test when deciding whether they need to make a declaration of interest prior to participating in proceedings for example contributing in debate.

9. Judgment would have to be made by the individual member but this judgment would have to be exercised on an objective basis as opposed to a subjective one. It will be for each member to ask themselves, not whether they would or might be influenced by the interest but, whether a fair minded and informed observer would conclude that their impartiality would be or appear to be prejudiced by the interest. As noted above this is no different from the current position on declaring an interest prior to participation in parliamentary proceedings when members make such decisions.
10. There are a number of examples of similar types of tests in the common law and in legislation. Ultimately interpretation of the test becomes a matter for the courts. Annex 2 provides information on how the courts have interpreted similar objective tests.

The Committee is invited to note the application of the test as agreed in principle at its meeting on 9 March 2004.

STANDARDS COMMITTEE CLERKS/NEBU
MAY 2004
### Categories of Registrable Interest

<table>
<thead>
<tr>
<th>Category</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remuneration</td>
<td>Description only</td>
</tr>
<tr>
<td>Related Undertaking</td>
<td>Description only</td>
</tr>
<tr>
<td>Election expenses</td>
<td>Description and value as proportion</td>
</tr>
<tr>
<td>Sponsorship</td>
<td>Description only</td>
</tr>
<tr>
<td>Gifts</td>
<td>Description, value and influence related test</td>
</tr>
<tr>
<td>Overseas Visits</td>
<td>Description only</td>
</tr>
<tr>
<td>Heritable Property</td>
<td>Description and value/income</td>
</tr>
<tr>
<td>Interest in Shares</td>
<td>Description and value</td>
</tr>
</tbody>
</table>
Annex 2

How the courts interpret the influence test

The test in Article 5 of the current Members’ Interests Order in relation to declarations of interests has not been the subject of judicial scrutiny.

The courts have, however, been called upon to consider issues of impartiality in the context of cases concerning Article 6 of the European Convention on Human Rights. In those cases the courts have determined that the person who must be satisfied about the ability of a person to participate in a “disinterested manner” as a member of a tribunal is an impartial observer.

The House of Lords in an English case\(^3\) concerning impartiality of a tribunal stated the precise test as being whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

A similar position is adopted in Scotland\(^4\) when challenges to the impartiality of tribunals are considered. The test for partiality has been stated to be what the fair-minded, reasonably informed observer would make of the allegation that there was partiality in the context of the particular case.

More recently the House of Lords in another English case\(^5\) has stated that “public perception of the possibility of unconscious bias” is the key to deciding whether or not there is an impartial tribunal.

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\(^3\) Porter v Magill (2002) AC357
\(^4\) James Skelton v Salvesen Logistics Ltd (2002) EAT 27/6/02
SEVENTH MEETING OF THE STANDARDS COMMITTEE
DRAFT AMENDMENTS TO CODE OF CONDUCT: ADMINISTRATIVE PROCEDURES AND DIRECTIONS TO THE COMMISSIONER

Background

1. The draft amendments annexed to this report are intended to give effect to the administrative procedures bullet points agreed by the Standards Committee on 9th and 23rd March and the Directions to the Standards Commissioner (on Reports of the Commissioner) issued on 21st April 2004. Copies of the administrative procedures and the Directions are attached.

2. The recent Directions to the Standards Commissioner are incorporated into the Code by new paragraphs 10.2.30, 10.2.30A and 10.2.30B.

3. The 1st, 2nd, 3rd and 4th bullet points of the administrative procedures are given effect to by new paragraphs 10.2.2A, 10.2.30B and 10.2.31A. The amendments to paragraphs 10.2.32 and 10.2.33 are a consequence of new paragraph 10.2.31A, and enable the Committee to consider any representations received from the Complainer during its initial consideration of the complaint.

4. No change to the Code is necessary to give effect to the 5th bullet point, since the Committee is already free to issue guidance to parties on the matters referred to in the 5th bullet point.

5. New paragraph 10.2.2B is addressed to the 6th, 7th, 8th and 9th bullet points (lobbying of the Committee by Members and complainers). The new paragraph directly gives effect to the 8th bullet point and lays the ground for the Committee to take, where appropriate, the actions referred to in the 6th, 7th and 9th bullet points. It is recommended that the Code should not refer to any specific course of action that the Committee may take in response to any breach of the new paragraph, as the Committee will wish to deal with each situation on its own facts.

Decision

6. The Committee is invited to:

   • agree the attached draft amendments to Section 10.2 (Procedure for dealing with a complaint) of the Code of Conduct for MSPs.

   • if agreed, recommend the amended Code of Conduct to the Parliament in the form of a report.

STANDARDS COMMITTEE CLERKS
MAY 2004
Draft Amendments

1. After paragraph 10.2.2, insert:

“10.2.2A Inquiries and correspondence concerning a complaint or the complaints procedure should be directed to the Standards Commissioner at Stages 1 and 2, and to the Clerk to the Standards Committee at Stages 3 and 4.

10.2.2B Members of the Standards Committee should not be contacted directly, regarding a complaint, by the Member who is the subject of the complaint, the Complainer, or anyone acting on behalf of either of them. Any correspondence sent directly to members of the Standards Committee by or on behalf of any party to a complaint will be disregarded by the Standards Committee.”

2. Delete paragraph 10.2.30 and replace it with:

“10.2.30 Before making a report under paragraph 10.2.28, the Standards Commissioner will give a copy of the draft report, excluding the Standards Commissioner’s conclusion, to-

• the Member who is the subject of the complaint, and
• the Complainer,

and will give the Member and the Complainer the opportunity to make representations on the draft report1.

10.2.30A In the event that the Standards Commissioner concludes that the Member who is the subject of the complaint has breached the standing orders, Code of Conduct or Members’ Interests Order, the draft report sent to the Member in accordance with paragraph 10.2.30 will include the Standards Commissioner’s conclusion2.

10.2.30B The Standards Commissioner will annex to the report made under paragraph 10.2.28-

• any written representations made by the Member, and by the Complainer, in as far as they are not given effect to in the report3; and
• any complaint that the Standards Commissioner has received and considers relevant concerning the handling of an investigation at

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1 Scottish Parliamentary Standards Commissioner Act 2002 (Reports of the Commissioner) Directions 2004
2 Section 9(3)
3 Section 9(3), Scottish Parliamentary Standards Commissioner Act 2002 (Reports of the Commissioner) Directions 2004
Stage 1 or 2, together with the Standards Commissioner’s response to such complaints.\textsuperscript{4}"

3. After paragraph 10.2.31, insert:

“10.2.31A The Clerk to the Standards Committee will inform the Complainer that the complaint is now being dealt with by the Standards Committee at Stage 3. Any representations received from the Complainer during Stage 3 will be made available to the Standards Committee.”

4. In paragraph 10.2.32, delete “by the Member concerned” where it appears in the second line.

5. In paragraph 10.2.33, delete “by the Member” where it appears in the first line.

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\textsuperscript{4} Scottish Parliamentary Standards Commissioner Act 2002 (Reports of the Commissioner) Directions 2004
SEVENTH MEETING OF THE STANDARDS COMMITTEE  
DRAFT AMENDMENTS TO CODE OF CONDUCT: ADMINISTRATIVE  
PROCEDURES AND DIRECTIONS TO THE COMMISSIONER  

Administrative procedures – bullet points agreed by the Standards Committee at its meetings on 9th and 23rd March 2004:

1st. Any inquiry or complaint concerning the complaints procedure should be addressed to the Commissioner if the complaint is at Stage 1 or 2 and to the Standards Committee Clerks during Stage 3 or 4. Any complaint that the Commissioner considers relevant concerning the handling of the investigation at Stages 1 and 2 together with his response should be annexed to his Stage 2 report.

2nd. Any additional material relating to the complaint should be directed to the Commissioner during Stage 1 and 2 of his investigation.

3rd. Any additional material relating to a complaint at Stage 3 should be addressed to the Committee Clerks who will make this material available to the Committee when it carries out its initial consideration of the Commissioner’s report.

4th. When the Standards Commissioner’s report is submitted to the Parliament, the Committee Clerks will write to the parties to the complaint to advise them that the complaint is now at Stage 3.

5th. Should the Committee decide to conduct its own investigation at Stage 3, the Committee will provide guidance to the parties to the complaint on the format and timing of any written or oral submissions to be invited by the Committee.

6th. Any contact aimed at influencing members of the Standards Committee either individually or collectively or ‘lobbying’ by any party to a complaint which is under investigation by the Commissioner or consideration by the Committee will be viewed as unacceptable and reported accordingly.

7th. Should a member attempt to influence the Committee in this way, their behaviour would be viewed as discourteous and disrespectful towards the members of the Committee. Such behaviour could, of itself, be the subject of a complaint against that member.

8th. Material sent directly to members of the Standards Committee will be disregarded by the Committee.

9th. Persistent lobbying by the complainer may be considered an abuse of process and could lead to dismissal of the complaint.
SEVENTH MEETING OF THE STANDARDS COMMITTEE
DRAFT AMENDMENTS TO CODE OF CONDUCT: ADMINISTRATIVE PROCEDURES AND DIRECTIONS TO THE COMMISSIONER

SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER
ACT 2002

Scottish Parliamentary Standards Commissioner Act 2002 (Reports of the Commissioner) Directions 2004

The Standards Committee of the Scottish Parliament, in exercise of the power conferred by section 4 of the Scottish Parliamentary Standards Commissioner Act 2002 (1) and by virtue of Rule 3A.3 of the Standing Orders of the Scottish Parliament, gives the following Directions:

Citation, commencement and interpretation

1. These Directions may be cited as the Scottish Parliamentary Standards Commissioner Act 2002 (Reports of the Commissioner) Directions 2004 and shall come into force on 22 April 2004.

2. In these Directions “the Act” means the Scottish Parliamentary Standards Commissioner Act 2002.

Disclosure of draft reports

3. Before making a report to the Parliament in accordance with section 9(1) of the Act the Commissioner shall give a copy of the draft report, excluding the conclusions required by subsection (2)(d) of that section-

(a) to the complainer; and,

(b) except where the Commissioner is required to send a draft report to the member concerned in accordance with section 9(3) of the Act, to the member,

and shall afford to the complainer and the member an opportunity to make representations on the draft report disclosed.

Annexation of documents to report

4. The Commissioner shall annex to the report made in accordance with section 9(1) of the Act-

(a) any written representations made by the complainer or the member disputing facts recited in a draft report, except where

(1) 2002 asp16
those representations were accepted by the Commissioner and the draft report amended accordingly;

(b) any complaint that the Commissioner receives and considers relevant concerning the handling of an investigation at Stage 1 or 2 together with the Commissioner’s response to such complaints.

Brian Adam MSP
Convener of the Standards Committee
Scottish Parliament
Edinburgh
21 April 2004
Section 10.2: Procedure for dealing with a complaint

10.2.1 The procedure for dealing with a complaint (other than an Excluded Complaint in terms of paragraph 10.2.43) consists of four stages.

- **Stage 1** - (Admissibility) - The Standards Commissioner will investigate and determine the **admissibility** of the complaint.
- **Stage 2** - (Investigation) - If a complaint is admissible, a further **investigation** into the complaint will be carried out by the Standards Commissioner who will then report his or her findings in fact and conclusion to the Standards Committee.
- **Stage 3** – (Report) - A **report** to the Parliament is made by the Standards Committee following the Committee’s consideration of the Standards Commissioner’s report.
- **Stage 4** – (Decision) - If the Standards Committee has recommended the imposition of sanctions against a Member, a **decision** on sanctions is made by the Parliament on a motion of the Standards Committee.

10.2.2 Stages 1 and 2 of the procedure are set out in detail in the Standards Commissioner Act. This section of the Code is subject to the terms of that Act which is reproduced in its entirety at Annex 7.

10.2.2A Inquiries and correspondence concerning a complaint or the complaints procedure should be directed to the Standards Commissioner at Stages 1 and 2, and to the Clerk to the Standards Committee at Stages 3 and 4.

10.2.2B Members of the Standards Committee should not be contacted directly, regarding a complaint, by the Member who is the subject of the complaint, the Complainer, or anyone acting on behalf of either of them. Any correspondence sent directly to members of the Standards Committee by or on behalf of any party to a complaint will be disregarded by the Standards Committee.
Notification
10.2.3 After receiving a complaint, the Commissioner will notify the Member who is the subject of the complaint (unless the complaint does not name the Member of Parliament concerned). The notification will inform the Member of the nature and details of the complaint. The notification will also inform the Member of the name of the Complainer unless the complaint does not state the name of the Complainer or the Standards Commissioner considers that it would be inappropriate to do so.

10.2.4 In considering whether or not it would be appropriate to inform the Member of the name of the Complainer, the Standards Commissioner will have regard to-

- whether or not the Complainer is or appears to be a vulnerable person;
- any reasons given by the Complainer as to why the Member should not be given the name of the Complainer; and,
- whether giving the name of the Complainer would prejudice an investigation into the complaint.

10.2.5 If the Standards Commissioner considers that it would be inappropriate to give the Member the name of the Complainer, the Standards Commissioner will make a report on the matter to the Standards Committee giving the reasons for that decision.

Admissibility
10.2.6 The Standards Commissioner will investigate and determine whether or not a complaint is admissible.

10.2.7 A complaint is admissible if it appears to the Standards Commissioner that the complaint-
• is relevant, which means
  - the complaint is about the conduct of a Member of the Parliament;
  - the complaint is not an Excluded Complaint under paragraph 10.2.43 or it is subject to a reference by the Standards Committee under paragraph 10.2.44; and,
  - if proved, the conduct complained about would amount to a breach of the standing orders; the Code of Conduct or the Members Interests Order;
• is not a Procedurally Defective Complaint or, as the case may be, is not to be treated as a Procedurally Defective Complaint; and
• warrants further investigation, which means
  - it appears to the Commissioner after an initial investigation that the evidence is sufficient to suggest that the conduct complained about may have taken place.

Stage 1 - Procedure
10.2.8 Paragraphs 10.2.9 to 10.2.13 apply to complaints which are not Anonymous Complaints or Undirected Complaints.

10.2.9 A complaint which appears to the Standards Commissioner to be irrelevant will be dismissed by the Standards Commissioner.

10.2.10 The Standards Commissioner will investigate whether a relevant complaint warrants further investigation.

10.2.11 If the Standards Commissioner finds that a relevant complaint does not warrant further investigation, the Standards Commissioner will dismiss the complaint.

10.2.12 If the Standards Commissioner finds that a Procedurally Defective Complaint other than an Anonymous Complaint or an Undirected Complaint is
relevant and warrants further investigation, the Standards Commissioner will make a report to the Standards Committee. The report will include-

- the reasons why the Standards Commissioner considers that the complaint is a Procedurally Defective Complaint;
- the reasons (if known) for the failure to meet the requirements set out in paragraph 10.1.1;
- any other matters which the Standards Commissioner considers relevant; and,
- the Standards Commissioner’s recommendation as to whether the complaint should be dismissed on the ground that it is a Procedurally Defective Complaint or should be treated as if it were not a Procedurally Defective Complaint.

10.2.13 Following receipt of a report from the Standards Commissioner under paragraph 10.2.12, the Standards Committee will direct the Standards Commissioner either to dismiss the complaint or to treat the complaint as if it were not a Procedurally Defective Complaint. The Standards Commissioner must comply with any such direction.

**Anonymous Complaints and Undirected Complaints**

10.2.14 Paragraphs 10.2.15 to 10.2.17 apply to Anonymous Complaints and Undirected Complaints.

10.2.15 An Anonymous Complaint or an Undirected Complaint which appears to the Standards Commissioner to be irrelevant will be dismissed by the Standards Commissioner.

10.2.16 The Standards Commissioner will make a report to the Standards Committee in respect of a relevant Anonymous Complaint or a relevant
Undirected Complaint without investigating whether it warrants further investigation. The report will include:

- the reasons why the Standards Commissioner considers that the complaint is a Procedurally Defective Complaint;
- the reasons (if known) for the failure to meet the requirements set out in paragraph 10.1.1;
- any other matters which the Standards Commissioner considers relevant; and,
- the Standards Commissioner’s recommendation as to whether the complaint should be dismissed on the ground that it is a Procedurally Defective Complaint or should be treated as if it were not a Procedurally Defective Complaint.

10.2.17 Following receipt of a report from the Standards Commissioner under paragraph 10.2.16, the Standards Committee will direct the Standards Commissioner either to dismiss the complaint or to treat the complaint as if it were not a Procedurally Defective Complaint and to investigate whether the complaint warrants further investigation. The Standards Commissioner must comply with any such direction.

**Determination of Admissibility**
10.2.18 If the Standards Commissioner considers that a complaint is admissible, the Standards Commissioner will proceed to Stage 2 of the procedure for dealing with a complaint.

**Notification of Determination of Admissibility**
10.2.19 The Standards Commissioner will make a report to the Standards Committee informing it that a complaint is proceeding to Stage 2.
10.2.20 The Standards Commissioner will notify the Complainant (unless the complaint is an Anonymous Complaint) and the Member who is the subject of the complaint (unless the complaint is an Undirected Complaint) of the fact that the Standards Commissioner is proceeding to Stage 2.

10.2.21 The Standards Commissioner will notify the Complainant (unless the complaint is an Anonymous Complaint) and the Member who is the subject of the complaint (unless the complaint is an Undirected Complaint) of the fact that a complaint has been dismissed and will set out the reasons for the dismissal as appropriate.

**Time limits for Determination of Admissibility**

10.2.22 If the Standards Commissioner has not determined the admissibility of a complaint within two months of receipt of the complaint, the Standards Commissioner will make a report as to progress to the Standards Committee. The Standards Commissioner will send a copy of that report to the Member who is the subject of the complaint (unless the complaint is an Undirected Complaint).

**Further provisions in respect of Stage 1**

10.2.23 The provisions of paragraphs 10.2.25 and 10.2.26 below will apply to any interview by the Standards Commissioner which is carried out during an investigation at Stage 1.

**Stage 2 - Investigation**

10.2.24 The Standards Commissioner will investigate any complaint which has not been dismissed at Stage 1 with a view to-

- making findings in fact was to whether or not the conduct complained about was committed; and
• reaching a conclusion as to whether or not, as a result of the conduct complained about, there has been a breach of the provisions of the standing orders, the Code or the Members’ Interests Order.

Interviews
10.2.25 If the Standards Commissioner interviews any person in the course of an investigation, the Commissioner will-

• have regard to whether that person is or appears to be a vulnerable person;
• allow that person to have a third party present at the interview;
• allow that person to have his or her views conveyed through an interpreter if that person so requests; and
• tape-record the interview.

10.2.26 At least 48 hours before interviewing any person for the first time in the course of an investigation, the Standards Commissioner will notify that person in writing of-

• the purpose of the interview;
• the powers of the Standards Commissioner to call for witnesses and evidence;
• the procedure to be followed in connection with the investigation of the complaint including that the fact that the interview will be tape-recorded (see paragraph 10.2.25 above);
• the right of that person to have a third party present at the interview; and,
• the right of that person to have his or her views conveyed through an interpreter (see paragraph 10.2.25 above).

Time Limits for completion of Stage 2
10.2.27 If the Standards Commissioner has not completed the investigation of a complaint within six months of the date when the Standards Commissioner found
the complaint to be admissible, the Standards Commissioner will make a report as to progress to the Standards Committee.

**Report at Stage 2**

10.2.28 At the conclusion of an investigation into a complaint at Stage 2, the Standards Commissioner will make a report to the Standards Committee upon the outcome of the investigation.

10.2.29 The report by the Standards Commissioner to the Standards Committee will include-

- details of the complaint;
- details of the investigation carried out by the Commissioner;
- the facts found by the Commissioner in relation to whether or not the conduct complained about was committed by the Member; and,
- the Standards Commissioner’s conclusion in relation to the complaint.

10.2.30 Before making a report under paragraph 10.2.28 above, the Standards Commissioner will give the Member concerned a copy of the draft report and will give the Member concerned the opportunity to make representations about the alleged breach and on the draft report. The representations of the Member will be annexed to the report in as far as they are not given effect to in the report.

10.2.30 Before making a report under paragraph 10.2.28, the Standards Commissioner will give a copy of the draft report, excluding the Standards Commissioner’s conclusion, to-

- the Member who is the subject of the complaint, and
- the Complainer,

and will give the Member and the Complainer the opportunity to make representations on the draft report.

10.2.30A In the event that the Standards Commissioner concludes that the Member who is the subject of the complaint has breached the standing orders, Code of Conduct or Members’ Interests Order, the draft report sent to the Member in accordance with paragraph 10.2.30 will include the Standards Commissioner’s conclusion.
10.2.30B The Standards Commissioner will annex to the report made under paragraph 10.2.28-

- any written representations made by the Member, and by the Complainer, in as far as they are not given effect to in the report; and

- any complaint that the Standards Commissioner has received and considers relevant concerning the handling of an investigation at Stage 1 or 2, together with the Standards Commissioner’s response to such complaints.

Stage 3 – Consideration by the Standards Committee

10.2.31 A copy of any report to the Standards Committee under paragraph 10.2.28 will be made available to the Member concerned by the Clerk to the Standards Committee (“the Clerk”). The Clerk will ask the Member to confirm in writing whether or not the Member agrees with the Standards Commissioner’s findings in fact or the Standards Commissioner’s conclusion. The Clerk will also ask the Member whether or not the Member wishes to appear before the Standards Committee to make representations about the Standards Commissioner’s findings in fact or the Standards Commissioner’s conclusion.

10.2.31A The Clerk to the Standards Committee will inform the Complainer that the complaint is now being dealt with by the Standards Committee at Stage 3. Any representations received from the Complainer during Stage 3 will be made available to the Standards Committee.

10.2.32 The Standards Committee will consider in private any report of the Standards Commissioner under paragraph 10.2.28 and any representations by the Member concerned about the Standards Commissioner’s findings in fact or the Standards Commissioner’s conclusion. This is in order to ensure the privacy of any further investigation into the complaint.

10.2.33 Following consideration of the report and any representations by the Member, the Standards Committee will decide whether-
• to agree with the Standards Commissioner’s findings in fact and conclusion;
• to refer the complaint back to the Standards Commissioner for further investigation or clarification; or
• to conduct its own investigation into the complaint.