



Northern Ireland
Assembly

Committee on Standards and Privileges

Report on complaints against Mr Maolíosa McHugh MLA

Together with the Report of the Assembly Commissioner for
Standards, Minutes of Proceedings of the Committee and
Minutes of Evidence

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**THE REPORT REMAINS EMBARGOED UNTIL NOON ON THURSDAY 30 SEPTEMBER
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Powers and Membership

Powers

The Committee on Standards and Privileges is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order Nos. 51 and 57. Further provisions on the Committee's functions are also included in Standing Orders 69, 69A, 69B, 69C and 70. The Committee has 9 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The Committee has power:

- to consider specific matters relating to privilege referred to it by the Assembly;
- to oversee the work of the Assembly Clerk of Standards;
- to examine the arrangement for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the Assembly, and to review from time to time the form and content of those registers;
- to consider any specific complaints made in relation to the registering or declaring of interests referred to it;
- to consider any matter relating to the conduct of Members;
- to recommend any modifications to any Assembly code of conduct as may from time to time appear to be necessary.

The Committee is appointed at the start of every Assembly, and has power to send for persons, papers and records that are relevant to its enquiries.

Membership

The membership of the Committee is as follows:

- Ms Linda Dillon (Chairperson)¹
- Mr Christopher Stalford (Deputy Chairperson)²
- Dr Steve Aiken OBE³
- Ms Sinéad Bradley⁴
- Mrs Pam Cameron
- Mr Stewart Dickson
- Ms Áine Murphy^{5 6 7}
- Mr Declan McAleer
- Mr Patsy McGlone

¹ From 20 September 2021 Linda Dillon replaced Sinéad Ennis as Chairperson of the Committee.

² From 14 June 2021 Christopher Stalford replaced William Irwin as Deputy Chairperson of the Committee.

³ From 6 July 2020 John Stewart replaced Doug Beattie as a member of the Committee. From 19 October 2020 Steve Aiken replaced John Stewart as a member of the Committee.

⁴ From 27 September 2021 Sinéad Bradley replaced George Robinson as a member of the Committee.

⁵ From 5 October 2020 Seán Lynch replaced Colm Gildernew as a member of the Committee.

⁶ On 2 July 2021 Seán Lynch retired as an MLA.

⁷ On 27 September 2021 Áine Murphy joined the Committee.

Introduction

1. The Committee on Standards and Privileges ('the Committee') has considered a report from the Assembly Commissioner for Standards ('the Commissioner') on her investigation into complaints against Mr Maoliosa McHugh MLA of alleged breaches of the Assembly Members' Code of Conduct ('the Code'). A link to the Commissioner's investigation report, which includes copies of the complaints together with the evidence gathered during the investigation, is included at **Appendix 1** (the Committee has redacted a limited amount of information from the Commissioner's report to accord with its legal obligations).
2. A link to the applicable minutes of proceedings of the Committee is included at **Appendix 2** and a link to the official (Hansard) reports of the oral briefings which the Committee received on the Commissioner's investigation report is included at **Appendix 3**.

Background

3. On 28 October 2020, the Commissioner received a complaint from Mr Jim Allister QC MLA alleging that Mr McHugh breached provisions of the Code by not returning to the public purse £10,000 received from Land & Property Services (LPS) under the Covid-19 Business Support Scheme. Mr Allister confirmed at a later date that he believed Mr McHugh breached rules of conduct 1, 4, 5 and 19, and provided reasons why he believed there was a breach.
4. On 2 November 2020, the Commissioner received a complaint from Dr Steve Aiken OBE MLA alleging that Mr McHugh breached provisions of the Code by failing on at least three occasions to declare to the Committee for Finance that he was in receipt of a £10,000 Covid-19 Business Support grant while sitting as a member of the Committee for Finance when LPS was giving evidence and on multiple occasions in

September and October 2020, when the Small Business Covid-19 grants were discussed. Dr Aiken confirmed at a later date that he believed Mr McHugh breached rules of conduct 1, 4, 5, 14 and 19, and provided reasons why he believed there was a breach.

5. Though the complaints were made in October 2020 and November 2020 respectively, the Commissioner had temporarily suspended her consideration whilst the Police Service of Northern Ireland (PSNI) considered a complaint relating to the same issue. Following the conclusion of the PSNI considerations, the Commissioner provided notification in February 2021 that she had decided that the complaints were admissible and initiated her investigation.

6. On 24 May 2021, the Commissioner forwarded her report on the investigation of the complaints to the Committee for consideration (as the complaints were similar, they were covered in one report). Prior to the Committee commencing its adjudication and in accordance with its established disclosure process, the Committee Clerk sent the Commissioner's full investigation report to the respondent, Mr McHugh, for written comment in respect of any matter raised within the report (where applicable, any written comments received from the respondent in such complaint cases are provided to the Committee at the same time as it receives the Commissioner's investigation report). Mr McHugh was also offered the opportunity to appear before the Committee to make his comments in person and to answer any questions that members may have. Mr McHugh indicated that he did not wish to make a written response to the Commissioner's report and he also did not take up the opportunity to appear before the Committee in relation to the matter.

Relevant rules in the Members' Code of Conduct

7. The relevant rules of conduct cited in the complaints made against Mr McHugh are as follows:

Rule 1: You shall base your conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

Rule 4: You shall register in the Assembly's Register of Members' Interests details of all registrable interests. A registrable interest means an interest specified in Chapter 1 of the Guide to the Rules. [The categories of registrable interest are set out in Schedule 1].

Rule 5: You shall declare, whether in Assembly proceedings or in any approach to a Minister, public representative, public body or public official, any relevant interest which might reasonably be thought to influence your approach to the matter under consideration. A relevant interest means an interest to which Chapter 2 of the Guide to the Rules applies, and may include a registrable interest.

Rule 14: You shall not use, or attempt to use, your position as a Member to improperly confer an advantage or preferential treatment for either yourself or any other person; or to avoid disadvantage or create disadvantage for someone else.

Rule 19: You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these rules of conduct.⁸

⁸ See pp. 5 - 6 of the applicable edition of the Code at the following link:
<http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges/reports/20160628-code-of-conduct.pdf>

The Complaints

8. Mr Allister stated the following in relation to the rules of conduct which he alleged to have been breached by Mr McHugh:

Rule 1: 'in that his complicity in failing to return the £10,000 until public exposure, though he had knowledge of its receipt, amounted to a failure to adequately or at all consider the public interest.'

Rule 4: 'in that he failed to register in the Assembly's Register of Members' Interests details of his interest in the subject property which benefitted from a COVID grant of £10,000.'

Rule 5: 'in that he failed to declare in the Assembly Finance Committee his interest in a constituency office in respect of which a £10,000 grant had been paid when the Head of LPS was before the committee on a number of occasions discussing the said payments and scheme.'

Rule 19: 'in that he failed to take reasonable care to ensure that his staff, when acting on his behalf, took adequate steps to ensure the said £10,000 was returned, not least since he had knowledge of the payment and having regard to the expectations of the rules of conduct.'

9. Mr Allister also stated the following (which relates to the first paragraph of the Principles of Conduct section of the Code⁹ and not to an enforceable rule):

⁹ See paragraph 3.1 on p.3 of the applicable edition of the Code at the following link:
<http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges/reports/20160628-code-of-conduct.pdf>

*'By reason of the above I believe Mr McHugh failed to conduct himself in a manner which would tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and thereby he brought the Assembly into disrepute.'*¹⁰

10. Dr Aiken stated the following in relation to the rules of conduct which he alleged to have been breached by Mr McHugh:

Rule 1: *'Given that Mr McHugh had a very personal interest in the shape of £10,000 from LPS in a bank account in his name, he should have declared that on any occasion when Small Business Grants were discussed or LPS officials appeared before the Committee. He did not do and is therefore in breach of this Rule.'*

Rule 4: *'It is my contention that a £10,000 Small Business Grant from LPS deposited in a bank account in Mr McHugh's name constitutes a 'registrable interest' which should have been clearly have declared that in the Register of Members' Interests. He did not do so and therefore is in breach of this Rule.'*

Rule 5: *'It is my contention that the £10,000 Small Business Grant received from LPS into a bank account in Mr McHugh's name could reasonably be held to be something which "might be thought to influence your approach to the matter under consideration" - not least if further schemes emerged with new payments. No such interest was declared and so Mr McHugh is in breach of this Rule.'*

Rule 14: *'The failure to declare the £10,000 Small Business Grant from LPS deposited in a bank account in Mr McHugh's name potentially leaves Mr McHugh vulnerable to the charge that in any*

¹⁰ Commissioner's investigation report, Document 3, Annex B3 (see Appendix 1)

comments in the Committee or the Assembly about any grant schemes, he was seeking to “confer an advantage or preferential treatment for either yourself or any other person.” As such he is in breach of this Rule.’

Rule 19: *‘As stated earlier, if Mr McHugh should seek to explain this matter away by claiming he did not know about the account in his name or had no access to it, then that takes us into an even more serious situation requiring a wider investigation.*

If Mr McHugh’s staff or party officials, have acted on his behalf to open a bank account bearing his name, and into which large sums of money have been deposited, and he has no knowledge or control over this account, then he certainly had not taken “reasonable care” to ensure that those staff, acting on his behalf have upheld the rules of conduct. As a result, he is in breach of this Rule.’¹¹

The Commissioner’s investigation and findings of fact

11. In her investigation report, the Commissioner has detailed her approach to the investigation in paragraphs 1-3 and has set out the findings of fact in paragraphs 4-13. Also, in paragraphs 16-34 of the investigation report, the Commissioner has outlined what she established after consideration of the facts and investigation.¹²

12. The Commissioner’s report also details the evidence she considered and her reasoned decision in relation to each of the allegations made.

¹¹ Commissioner’s investigation report, Document 4, Annex B4 (see Appendix 1).

¹² Commissioner’s investigation report, pp. 5 - 6 and 8 - 10 (see Appendix 1).

The Commissioner's reasoned decision

13. In the reasoned decision section of her report, the Commissioner explained in the following terms that she did not uphold any of the allegations made:

Allegation 1 (Rule 1): I am satisfied on the basis of the evidence, that Mr McHugh was not the legal rates payer or the bank account holder for the bank account attached to the rates account and therefore not the legal recipient of the £10,000 grant. Mr McHugh indeed received notification of it, but did not have access to nor was he associated with the bank account where the funds were deposited. As such, he did not breach Rule 1 in relation to the public interest in not returning the funds, as he had no control over the bank account or the funds.

I do not uphold this allegation.

Allegation 2 (Rule 4) Mr McHugh was not the legal bank account holder or recipient of the grant money therefore Mr McHugh did not have an interest to register in the Assembly's Register of Members' Interests and did not breach Rule 4 of the Code.

I do not uphold this allegation.

Allegation 3 (Rule 5) Mr McHugh believed that the grant money was paid back to the LPS in June 2020, well before the Finance Committee meetings of September and October 2020. Had he known the money was not yet paid back, he may have had an interest to declare as a perception may have existed in relation to his name being part of the named LPS account. However, his belief at that time of the Finance Committee meetings in question

(September/October) was that the money had been paid back and therefore he did not have a conflict of interest to declare and did not breach Rule 5 of the Code.

I do not uphold this allegation.

Allegation 4 (Rule 14) Mr McHugh, having not been the legal recipient of the £10,000 grant and having no access to the account into which it was deposited, could not have acted to confer an advantage or preferential treatment to himself or others. Therefore, he did not breach Rule 14 of the Code.

I do not uphold this allegation.

Allegation 5 (Rule 19) Mr McHugh had one member of staff, Mr Ruairi McHugh who was temporary and covering a maternity leave. He also had no access to the West Tyrone Development Fund bank account and was the person who informed Mr McHugh MLA of the LPS notification soon after it arrived. This led to Mr McHugh MLA contacting Mr McColgan, the Constituency Organiser who himself was not a member of Mr McHugh's staff, to make him aware of the notification and the need to return the funds to the LPS.

Mr McHugh accepted Mr McColgan's word on at least three occasions that the funds had been repaid to the LPS. Arguably, he should instead have sought confirmation of the repayment in writing. However, it is my view that under the circumstances he and his member of staff did what could reasonably have been expected of them in alerting the person that could and should have returned the money to the LPS and seeking assurances from

Mr McColgan on at least three occasions. For this reason, I do not believe that this constitutes a breach of Rule 19 of the Code.

I do not uphold this allegation.¹³

The Committee's considerations and conclusion

14. At its meeting on 9 June 2021, the Committee received an oral briefing from the Commissioner on her investigation report and Committee members had an opportunity to put questions to the Commissioner on the findings. The questioning from Committee members focused on the particulars regarding the remittance and the repayment of the £10,000 grant money.¹⁴
15. Following the Commissioner's briefing on 9 June 2021, the Committee agreed to invite the Commissioner to provide a follow-up oral briefing to clarify a number of issues. The follow-up briefing, which took place on 30 June 2021, provided Committee members with a further opportunity to put questions to the Commissioner on the facts of the case.¹⁵
16. At its meeting on 30 June 2021, the Committee then deliberated on and considered each of the allegations, together with the evidence, findings of fact and reasoned decisions of the Commissioner as set out in her investigation report. In undertaking its adjudication function, the Committee remains mindful that Members will only be found to have breached the Code when they have breached one of the rules of conduct.
17. To complement its established disclosure arrangements and for enhanced transparency, the Committee agreed that the Commissioner's oral briefings on 9 June 2021 and 30 June 2021 would be recorded by Hansard and that

¹³ Commissioner's investigation report, pp.11 - 12 (see Appendix 1).

¹⁴ Hansard report of briefing by the Commissioner on 9 June 2021, pp.5-6 (see Appendix 3)

¹⁵ Hansard report of briefing by the Commissioner on 30 June 2021 (see Appendix 3)

the official reports of the briefings (Appendix 3) would be sent to the Mr McHugh for information and comment as applicable. Mr McHugh subsequently indicated that he had no comment to make on the Hansard reports.

18. As part of its considerations, the Committee further examined the issue of whether Mr McHugh had based his conduct on a consideration of the public interest. The Committee considered, in particular, whether Mr McHugh had met this obligation by verbally seeking assurances regarding the repayment of the £10,000 grant money from the Sinn Féin constituency co-ordinator, Mr Barry McColgan, who had control of and access to the applicable bank account where the funds were deposited. In this regard, the Committee noted the advice from the Commissioner that it had been confirmed in evidence at interview under oath that Mr McHugh had made the repeated requests to Mr McColgan. The Committee also noted the Commissioner's conclusion that Mr McHugh 'did what could reasonably have been expected' and the following further explanation of her reasoning:

*'The real question is this: did he do enough to try to get Mr McColgan to pay it back? I cannot see what more he could have done, other than get it in writing. That is debatable, but my view is that, if he had not asked at all, that would be problematic. He asked three times.'*¹⁶

19. Arising from its deliberations, the Committee decided that, in relation to each of the five allegations, it agreed with the Commissioner's reasoned decision that there were no breaches of the cited rules. Therefore, **the complaints are not upheld and the Committee has concluded that Mr McHugh did not breach the Assembly Code of Conduct.**

¹⁶ Hansard reports of briefings by the Commissioner on 9 June 2021, p.4 and 30 June 2021, p.2 (see Appendix 3)

Links to Appendices

Appendix 1: Commissioner for Standards Report on complaints against Mr Maoliosa McHugh MLA

<http://nia1.me/4or>

Appendix 2: Minutes of Proceedings of the Committee relating to the Report

(Meetings on 9 June 2021, 30 June 2021 and 28 September 2021) can be viewed at the following link:

<http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/standards-and-privileges/minutes-of-proceedings/session-2020---2021/>

Appendix 3: Minutes of Evidence

(Official Reports of briefings by the Commissioner for Standards on 9 June 2021 and 30 June 2021) can be viewed at the following link:

<http://aims.niassembly.gov.uk/officialreport/minutesofevidence.aspx?&cid=17>

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