



Northern Ireland  
Assembly

**Committee on Standards and Privileges**

# Report on a complaint against Dr Steve Aiken OBE MLA

Together with the Report of the Assembly Commissioner for  
Standards, Minutes of Proceedings of the Committee,  
Minutes of Evidence and other evidence received.

This report is the property of the Committee on Standards and Privileges. Neither the report nor its contents should be disclosed to any person unless such disclosure is authorised by the Committee.

**THE REPORT REMAINS EMBARGOED UNTIL NOON ON THURSDAY 25 NOVEMBER 2021**

Ordered by the Committee on Standards and Privilege to be printed on  
23 November 2021

Report: NIA 142/17-22 Committee on Standards and Privileges

---

## Contents

<b>Report on a complaint against Dr Steve Aiken OBE MLA .....</b>	<b>1</b>
<i>Powers and Membership.....</i>	<i>3</i>
Committee Powers .....	3
Membership.....	4
<i>Introduction.....</i>	<i>5</i>
Role of the Committee.....	5
<i>Background .....</i>	<i>6</i>
The allegations .....	8
Relevant rules in the Members' Code of Conduct .....	9
<i>The Commissioner's investigation .....</i>	<i>9</i>
The Commissioner's reasoned decisions .....	9
<i>The Committee's considerations and conclusions .....</i>	<i>11</i>
Rule of Conduct 15: points to prove .....	13
The Convention and relevant jurisprudence .....	13
Factual background and context .....	16
Examination of the allegations .....	18
The Respect Principle .....	30
<i>Links to Appendices.....</i>	<i>33</i>
Appendix 1: The Commissioner for Standards Report on a complaint against Dr Steve Aiken OBE MLA .....	33
Appendix 2: Minutes of Proceedings.....	33
Appendix 3: Minutes of Evidence - Oral briefing by the Commissioner for Standards.....	33
Appendix 4: Minutes of Evidence - Oral hearing from Dr Aiken .....	34
Appendix 5: Follow up correspondence from the Commissioner for Standards .....	34

# Powers and Membership

## Committee 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)<sup>1</sup>
- Mr Christopher Stalford (Deputy Chairperson)<sup>2</sup>
- Dr Steve Aiken OBE<sup>3</sup>
- Ms Sinéad Bradley<sup>4</sup>
- Mrs Pam Cameron
- Mr Stewart Dickson
- Ms Áine Murphy<sup>5 6 7</sup>
- Mr Declan McAleer
- Mr Patsy McGlone

---

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

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

<sup>3</sup> 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.

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

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

<sup>6</sup> On 2 July 2021 Seán Lynch retired as an MLA.

<sup>7</sup> 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 a complaint against Dr Steve Aiken OBE MLA of alleged breaches of the Assembly Members' Code of Conduct ('the Code'). A link to the Commissioner's investigation report, which includes a copy of the complaint correspondence 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**. In addition, links to the Official (Hansard) Report of the oral briefing which the Committee received on the Commissioner's investigation report and to the slides and video clips which the Commissioner used during her oral briefing are included at **Appendix 3**. Finally, a link to the Official Report of the oral hearing which the Committee held with Dr Aiken is included at **Appendix 4** and follow up correspondence from the Commissioner is included at **Appendix 5**.

## Role of the Committee

3. The arrangements for regulating the standards of conduct of MLAs include: the role of the independent Commissioner in investigating complaints of alleged breaches of the Code; the role of the Committee in considering the Commissioner's investigation reports and adjudicating in light of the Commissioner's findings and any other evidence or information obtained; and the role of the Assembly in plenary in deciding upon any sanctions recommended by the Committee where applicable. It is the Committee, therefore, which ultimately decides on whether any

breach of the Code is established, on the basis of the evidence, the facts and the legal position in respect of each allegation.

4. It is important to note at this juncture that, to inform its decision making on individual complaint cases, the Committee may seek additional advice and information to supplement the evidence and findings presented by the Commissioner. As outlined below, the Committee obtained legal advice on various aspects of this complaint case in order to inform its decision making and to ensure that it fulfils its legal obligations.
5. At the outset, the Committee would also highlight that, while he is a member of the Committee, Dr Aiken recused himself from all of its considerations relating to this complaint.

## **Background**

6. On 1 July 2020, the Commissioner received a complaint from Mr Bill Pauley, a senior civil servant with the Department of Finance (DoF), alleging that Dr Aiken breached Rules 15 and 19 of the Code during an evidence session at the Committee for Finance ('the Finance Committee') on 17 June 2020. Mr Pauley complained that, during the evidence session, Dr Aiken was aggressive towards him in his tone and behaviour on a number of occasions which left him feeling threatened, intimidated and unable to give his evidence effectively.
7. Mr Pauley alleged that further offensive comments were made by Dr Aiken during the plenary session on 2 February 2021, in which Dr Aiken referenced the Finance Committee's evidence session on the 17 June 2020.
8. Mr Pauley alleged that Dr Aiken's behaviour breached Rules 15 and 19 of the Code and provided reasons why he believed the rules were breached.

9. Following her appointment on 7 September 2020, the Commissioner considered the complaint, decided it was admissible and commenced her investigation in November 2020. On 11 May 2021, the Commissioner forwarded her report on the investigation of the complaint to the Committee for consideration (it should be noted that the Commissioner also investigated a complaint by Mr Pauley about the conduct of Mr Jim Wells MLA at the Finance Committee meeting on 17 June 2020 and the Committee is setting out its position on the outcome of that investigation in a separate report).
10. 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, Dr Aiken, 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). Dr Aiken 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.
11. Dr Aiken indicated that he did not wish to make a written response to the Commissioner's report but that he did wish to take up the opportunity to appear before the Committee in relation to the matter. The oral hearing took place on 30 June 2021.

## The allegations

12. The Committee noted from the Commissioner's investigation report that Mr Pauley raised the following allegations<sup>8</sup>:

**Allegation 1:** Dr Aiken responded to part of Mr Pauley's evidence in an angry and aggressive manner to state his own position on the evidence Mr Pauley had given on behalf of Mr Pauley's Minister and indicated that he did not want to hear the evidence that Mr Pauley had presented again.

**Allegation 2:** Dr Aiken intervened and interrupted a second time, in an angry and aggressive manner and said he didn't want to hear evidence presented on what happened in other jurisdictions.

**Allegation 3:** Dr Aiken did not take sufficient action to protect Mr Pauley from unacceptable person attack from Mr Wells, namely a) Mr Wells' comments 'Do you want to phone a friend?' and b) Mr Wells' persistent questioning on Mr Pauley's personal view in relation to the evidence he was presenting on behalf of his Minister.

**Allegation 4:** Dr Aiken's repeated bullying behaviour was unreasonable and completely unacceptable. It made Mr Pauley feel threatened and intimidated with the result that he was unable to deliver his evidence effectively.

**Allegation 5:** Dr Aiken's description of the evidence session as 'unedifying' while speaking at the 2 February 2021 Assembly Plenary Sitting was insulting and offensive.

---

<sup>8</sup> Commissioner's investigation report: page 9, Annex B1 pages 44-45 and Annex B2 page 50 (see Appendix 1).



## Relevant rules in the Members' Code of Conduct

13. The relevant rules of conduct cited in the complaint against Dr Aiken are as follows:

Rule 15: You shall not subject anyone to unreasonable and excessive personal attack.

Rule 19: You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these rules of conduct.<sup>9</sup>

## The Commissioner's investigation

14. In her investigation report, the Commissioner has detailed her approach to the investigation in paragraphs 4-6 and has set out the findings of fact in paragraphs 7-18.<sup>10</sup>

15. The Commissioner's report also details the evidence she considered and her reasoned decision in relation to each of the allegations made.<sup>11</sup>

## The Commissioner's reasoned decisions

16. The following extracts from the investigation report outline the Commissioner's reasoning in relation to the decisions which she reached on each of the allegations:

---

<sup>9</sup> See page 8 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>

<sup>10</sup> Commissioner's investigation report, pages 6-8 (see Appendix 1).

<sup>11</sup> Commissioner's investigation report, pages 10-28 (see Appendix 1).

### Allegations 1 and 2: Rule 15

*'I am of the view that Dr Aiken's behaviour was unreasonable in that it was not fair or acceptable to treat Mr Pauley in such a way. It was excessive in that the tone and manner was more than necessary, normal or desirable; it was discourteous, disrespectful and aggressive and as such was an unreasonable and excessive attack on Mr Pauley in breach of the Code.*

*In terms of freedom of expression and the enhanced protection for political expression under Article 10, while my finding of a breach of the Code amounts to a prima facie interference with Dr Aiken's Article 10 rights, this interference is prescribed by law and necessary in a democratic society for the protection of the reputation or rights of others, namely Mr Pauley, and therefore justifiable.*

*I uphold this allegation.'*

### Allegation 3: Rule 19

*'Dr Aiken asked Mr Wells to withdraw his 'Do you want to phone a friend?' comment immediately and Mr Wells withdrew the comment.*

*When pressed by Mr Wells on his personal view, Mr Pauley could have stated that he was there to represent his Minister's view as he had stated earlier in the session. While I do not think that this was unacceptable questioning insofar as Rule 15 is concerned, and therefore not something Dr Aiken needed to protect Mr Pauley from, Members including the Chair should know and respect the fact that civil servants appearing before the Committee are there to provide evidence on behalf of their Minister.*

*As Members of the Committee for Finance are not Dr Aiken's staff, Rule 19 is not engaged in the context of this complaint.*

*I do not uphold this allegation in relation to Dr Aiken failing to protect Mr Pauley from Mr Wells' questioning at 17 June meeting.*

*I do not uphold the allegation in relation to a breach of Rule 19 of the Code.'*

### Allegation 4: Rule 15

*'I uphold the allegation that Dr Aiken's repeated unreasonable and excessive behaviour caused Mr Pauley to feel threatened and*

*intimidated and unable to effectively give his evidence in breach of the Code.*

*I am of the view that Dr Aiken's behaviour was unreasonable because it was not fair or acceptable to treat Mr Pauley in such a way. It was excessive in that the tone and manner was more than necessary, normal or desirable; it was discourteous, disrespectful and aggressive and as such unreasonable and excessive attack on Mr Pauley in breach of the Code's Rule 15 and Respect principle.*

*In terms of freedom of expression and the enhanced protection for political expression under Article 10, while my finding of a breach of the Code amounts to a prima facie interference with Dr Aiken's Article 10 rights, this interference is prescribed by law and necessary in a democratic society for the protection of the reputation or rights of others, namely Mr Pauley, and therefore justifiable.*

*I uphold this allegation'*

Allegation 5: Rule 15

*'In relation to the 2 February 'unedifying' comment made by Dr Aiken, it was wholly unnecessary and inappropriate and further offended and insulted Mr Pauley.*

*However, the comment was made in the Chamber and therefore it is not within the Commissioner's remit to consider such comments.*

*I do not uphold this allegation because it is outside the scope of the MLAs Code of Conduct.'*<sup>12</sup>

## **The Committee's considerations and conclusions**

17. At its meeting on 26 May 2021, the Committee received an oral briefing from the Commissioner on her investigation report. To complement its established disclosure arrangements and for enhanced transparency, the Committee agreed that the Commissioner's oral briefing would be recorded

---

<sup>12</sup> Commissioner's investigation report, pages 10-27 (see Appendix 1).

by Hansard and that the Official Report would be sent to Dr Aiken for his information and comment as applicable ahead of his oral hearing on 30 June 2021.

18. At his oral hearing on 30 June 2021, Dr Aiken asserted that he did not agree with the Commissioner's reasoned decisions in relation to allegations 1, 2 and 4 and detailed why he believed so. The full record of Dr Aiken's oral response to the Commissioner's report and the related question and answer session with the Committee is included in the substantially verbatim Official Report of the hearing (see link at Appendix 4).
19. Following its initial consideration of the Commissioner's investigation report and the oral hearing from Dr Aiken on 30 June, the Committee agreed to commission legal advice on various aspects of the complaint case. The issues included, inter alia, the considerations in relation to Rule of Conduct 15 and Dr Aiken's right to freedom of expression under Article 10 of the European Convention on Human Rights ('the Convention') and how (if at all) this right should inform the Committee's decision on what steps it takes. The Committee was mindful that, as an organ of the Assembly, the Committee is itself a public authority subject to the Human Rights Act 1998 ('HRA'), which means that it has a free-standing obligation to ensure that its actions are compatible with the Convention rights.
20. As part of their considerations, the Committee members also noted applicable points from the Committee's 2015 *Review of the Code of Conduct*, including the following extract (which the Commissioner also cited in her investigation report):

*'101. Despite the scope of the Code extending to committees, the fact that it upholds Members' right to freedom of expression (and to privilege) means committee members should not feel inhibited from subjecting witnesses to challenging questioning. The Committee accepts that it would be entirely wrong if the [Code]*

*required members to modify their behaviour in committee in a way that undermined the democratic process.*

102. *Of course this position does not mean that members are free to subject witnesses, or others, to bullying behaviour. The provisions of Rule 15... continue to apply to Members when they are in committee.*<sup>13</sup>

## **Rule of Conduct 15: points to prove**

21. As alluded to above, Rule 15 prohibits MLAs from subjecting anyone to ‘unreasonable and excessive personal attack’. From the legal advice which the Committee received, it is clear that the four elements of this type of misconduct are conjunctive, not disjunctive. As such, for the Committee to uphold an allegation of a breach of Rule 15, there must be an evidential basis proving an ‘attack’ by the Member complained about, it must be ‘personal’, and the nature of that personal attack must be ‘unreasonable’ and ‘excessive’. The necessity for each of these four elements to be substantiated for a finding of a breach of Rule 15 is notwithstanding any additional considerations in relation to the Member’s right to freedom of expression.

## **The Convention and relevant jurisprudence**

22. Arising from the legal advice which it received, the Committee noted the right in Article 10(1) of the Convention which provides that:

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

---

<sup>13</sup> <http://www.niassembly.gov.uk/globalassets/documents/reports/standards-and-privileges/review-of-code-of-conduct.pdf>

23. The Committee also noted that this right is qualified by Article 10(2), whereby a public authority is entitled to restrict a person's right to free expression provided that the restriction is (i) prescribed by law and (ii) is necessary in a democratic society for (among other things) the protection of the reputation or rights of others.

24. In the instant case, as alluded to above, the Commissioner has concluded that the aforementioned grounds have been met for restricting Dr Aiken's right to freedom of expression. However, the separate obligation on the Committee of ensuring its decisions are compatible with the Convention required to Committee to assess for itself the factual basis of each finding; whether Dr Aiken was engaged in political speech; and whether the limitations on that speech, which would follow from any finding of breach by the Committee, would be compatible with the Convention.

25. To inform its consideration of the legal issues, the Committee took advice on the applicable domestic and European jurisprudence, including cases in which the standards of conduct applicable to elected officials have been considered in light of the Convention. This included the following cases:

- R (Animal Defenders International) v Secretary of State for Culture, Media and Sport<sup>14</sup>
- Castells v. Spain<sup>15</sup>
- Thoma v. Luxembourg<sup>16</sup>
- Mamere v. France<sup>17</sup>
- Calver, R (On the Application Of) v The Adjudication Panel for Wales<sup>18</sup>
- Heesom v Public Services Ombudsman for Wales<sup>19</sup>
- R v Shayler<sup>20</sup>

---

<sup>14</sup> [2008] UKHL 15

<sup>15</sup> (1992) 14 EHRR 445

<sup>16</sup> [2001] ECHR 38432/97

<sup>17</sup> 12697/03 [2011] ECHR 2424

<sup>18</sup> (Rev 2) [2012] EWHC 1172 (Admin)

<sup>19</sup> [2014] EWHC 1504

<sup>20</sup> [2002] UKHL 11 at para 23

- Re Bunting<sup>21</sup>

26. Arising from its consideration of the above, the Committee noted the following points in relation to Article 10 of the Convention:

- Particular protection must be afforded to political speech/expression, the concept of which is to be construed broadly, and extends to all matters of public administration and public concern;
- The enhanced protection for political expression covers not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated;
- Criticism of government, particularly by non-governmental politicians, merits a high level of protection; and any potential interference with such criticism merits the closest scrutiny;
- Civil servants acting as such are organs of government, and any potential limitation on criticism of civil servants also merits close scrutiny (under Article 10, only politicians have less protection against criticism than civil servants);
- Any justification for interference with the right to freedom of expression must be a proportionate response to the legitimate aim pursued (in this case, preventing 'unreasonable and excessive personal attack'); and
- Any interference with the right of political expression must be justified on the facts of the particular allegation – a cumulative approach to justification, restricting the right based on other incidents, will not be appropriate.

---

<sup>21</sup> [2019] NIQB 36

27. The Committee deliberated on the case in light of the legal advice received and considered each of the five allegations that Dr Aiken had breached the Code separately, in terms of:

- a) Whether it could find, as a matter of fact, that Dr Aiken's conduct in respect of the allegation was in breach of the Code;
- b) If so, whether that finding in itself was prima facie a breach of Article 10(1) of the Convention (and thus a restriction on Dr Aiken's freedom of expression); and
- c) If so, whether the restriction arising from that finding was justified by reason of the requirements of Article 10(2) of the Convention.

28. The detail of the Committee's deliberations on these issues is set out below, as applicable, for each of the five allegations against Dr Aiken. The deliberations of the Committee have also been informed by further consideration of the factual circumstances of the case as gleaned from the available evidence, including recordings of the event and the Official Report.

## **Factual background and context**

29. As alluded to above, the Commissioner has set out her findings of fact at paragraphs 7-18 of the investigation report. The Committee also noted the following pertinent facts:

- Dr Aiken was at the material time the chairperson of the Finance Committee, a statutory committee established by the Assembly which has a role in considering legislation.
- The Finance Committee was taking the committee stage of the Functioning of Government (Miscellaneous Provisions) Bill ('the Bill'), legislation which was proposed by Mr Jim Allister QC MLA, who was also a member of the Finance Committee.



- The Bill, the principles of which had been agreed by the Assembly at Second Stage, made provision, inter alia, for a statutory basis for the investigation of complaints about Ministers.
- The policy position of the Minister for Finance ('the Minister') was that the Bill was not necessary and that various non-statutory codes governing the behaviour of Ministers, special advisers and civil servants were adequate. It was also the position of the Minister that these codes reflected the contents of the 'New Decade, New Approach' ('NDNA') document.
- In evidence to the Finance Committee on 6 May 2020, the Head of the Civil Service ('HOCS') indicated that the Finance Minister's view on the Bill was shared by other Ministers.<sup>22</sup>
- When Mr Pauley (who is one of eight directors in DoF and a member of the Senior Civil Service) and Mr David Hughes gave evidence to the Finance Committee on 17 June 2020, Mr Pauley reiterated the Ministerial view as it was expressed by HOCS on 6 May 2020 and Mr Pauley also made clear that he was there to represent the view of his Minister.<sup>23</sup>

30. It is clear to the Committee that these factual circumstances meant that the majority of interactions at these proceedings of the Finance Committee involved a tension between government (represented by Mr Pauley and Mr Hughes) and the legislature as to the proper extent and purposes of legislation. This was a particularly clear example of political speech.

31. The Committee also recognises that the passage of legislation is a fundamental part of the functioning of a legislature, and committee scrutiny

---

<sup>22</sup> See page 4 of the Official Report of the evidence session at the following link:

<http://data.niassembly.gov.uk/HansardXml/committee-22224.pdf>

<sup>23</sup> See the Official Report of the evidence session at the following link:

<http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

of legislative proposals is an important part of that role. Moreover, the legislative scrutiny work of Assembly statutory committees can be regarded as all the more important given the absence of an official opposition in the Assembly. It is also notable that Assembly statutory committees, including the Finance Committee, are heavily dependent on their respective departments for the information they require to discharge their functions.<sup>24</sup>

32. Given the circumstances outlined above, the Committee considers that it was to be expected that Mr Pauley would be challenged robustly by the Finance Committee on why government considered the Bill unnecessary.

## Examination of the allegations

33. At its meeting on 13 October 2021, the Committee deliberated on each of the allegations in light of the evidence, the legal advice received by the Committee, the findings of fact and the 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.

34. The Committee noted that **Allegation 1**, which focusses on Dr Aiken's conduct between approximately minute 30 and minute 32 of the Finance Committee meeting on 17 June 2020, comprises the following three elements:

- (i) That Dr Aiken responded to this part of Mr Pauley's evidence in an angry and aggressive manner.

---

<sup>24</sup> A point which was highlighted in the Renewable Heat Incentive Inquiry. See Chapter 13 at the following link: <https://wayback.archive-it.org/11112/20200911092828/https://www.rhiinquiry.org/report-independent-public-inquiry-non-domestic-renewable-heat-incentive-rhi-scheme>

(ii) That Dr Aiken stated his own position on the evidence which Mr Pauley had given on behalf of Mr Pauley's Minister.

(iii) That Dr Aiken indicated he did not want to hear the evidence that Mr Pauley had presented again.

35. The Committee members examined both the applicable video footage of the Finance Committee's meeting on 17 June 2020 and the substantially verbatim record of the relevant exchange contained in the Official Report of the evidence session with Messrs Pauley and Hughes during that meeting.<sup>25</sup> From the latter, it is noted that Dr Aiken said the following:

*'I do not wish to cut across, but just to put this on the record —I have already put this on the record with the Minister and the permanent secretary —unlike anybody else in this Chamber, I sat at the party leaders' group at those talks. The discussion about what we would do to restore accountability and responsibility to the Assembly and to control Ministers and processes is not what ended up in 'New Decade, New Approach' and was not what is in this code. For the record, I make that abundantly clear. Every time I hear an official say, 'This was agreed between the party leaders and by the parties as part of New Decade, New Approach', I say that it was not. That is not what was agreed, and, clearly, the Ulster Unionist Party never signed up to what ended up in 'New Decade, New Approach'. As a party leader, I never signed up to it. Let us make that abundantly clear right now. I do not want to hear that put in front of the Committee again. I am sorry for being angry, but I am getting really fed up with this'.<sup>26</sup>*

36. From its review of the evidence in relation to Allegation 1, the Committee noted that Dr Aiken was clearly irritated by Mr Pauley's opening remarks in relation to NDNA and 'angry and aggressive' would be a reasonable description of Dr Aiken's demeanour during the exchange. Dr Aiken also presented his own view of what had been agreed during the discussion

---

<sup>25</sup> <https://niassembly.tv/committee-for-finance-meeting-wednesday-17-june-2020/>  
<http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

<sup>26</sup> See page 2 of the Official Report of the evidence session at the following link:  
<http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

leading to the NDNA document. However, even if it is accepted that the evidence supports all three elements of Allegation 1, as set out above, all four components of Rule 15 would need to be present for the Committee to uphold the allegation.

37. Therefore, the Committee would need to be satisfied that Dr Aiken's behaviour during the said exchange, including his 'angry and aggressive manner', amounted to an 'attack', that was 'personal' and which was also 'unreasonable' and 'excessive'. The Committee recognises that this is a high threshold, even aside from considerations in relation to Article 10 of the Convention (and this is an issue which the Committee may revisit as part of the next stage of its review of the Code).
38. Having taken legal advice, the Committee decided that the exchange could not be characterised as a 'personal attack'. Dr Aiken interrupted Mr Pauley to put 'on the record' his view that NDNA does not reflect previous discussions on '*restor[ing] accountability and responsibility to the Assembly and to control Ministers and processes*' (he had made the same point in the evidence session with the Minister and DoF Permanent Secretary on 13 May 2020<sup>27</sup>). While Dr Aiken made his point forcefully to Mr Pauley, there was no 'personal' element given that Dr Aiken was clearly referring to his view that those civil servants giving evidence on behalf of their Minister about the applicable provisions in NDNA all gave the same evidence. Also, while Mr Pauley happened to be the official giving evidence at that point, the Committee did not consider that Dr Aiken would have treated any other official differently in the same circumstances.

---

<sup>27</sup> See pages 4 and 9 of the Official Report of the evidence session on 13 May 2020 at the following link: <http://data.niassembly.gov.uk/HansardXml/committee-22281.pdf>

39. Further to this point, the Committee noted that ‘personal’ means ‘*affecting, or belonging to, a particular person*’.<sup>28</sup> The Committee considered that generic criticism of civil servants and the Ministers they represent, based on a differing understanding of discussions pre-NDNA, was clearly a political/policy disagreement and not a ‘personal attack’ on Mr Pauley.
40. Given that the evidence did not support a finding that Mr Pauley was subject to a ‘personal attack’, the Committee did not require to consider the additional requirements of Rule 15 that any personal attack be ‘unreasonable’ and ‘excessive’. **As regards Allegation 1, the Committee decided that it could not find, as a matter of fact, that Dr Aiken’s conduct was in breach of Rule of Conduct 15.**
41. The Committee noted that **Allegation 2** (i.e. that Dr Aiken intervened and interrupted a second time, in an angry and aggressive manner, and said he didn’t want to hear evidence presented on what happened in other jurisdictions) was focussed on Dr Aiken’s conduct between approximately minute 50 and minute 52 of the Finance Committee meeting on 17 June 2020. Again the Committee members reviewed both the applicable video footage of the Finance Committee’s meeting on 17 June 2020 and the relevant exchange contained in the Official Report of the evidence session during that meeting.<sup>29</sup> The exchange set out in the Official Report is as follows:

*Mr Pauley: The proposed enforcement process that has been agreed by the Executive includes provision for a panel of three, one of whom is, in an ex officio role, the Assembly Commissioner for Standards... The proposed panel is a multiple-person panel, and that is to allow different areas of expertise or knowledge among the individuals who will be appointed. They can then use that to carry out investigations*

---

<sup>28</sup> Concise OED, 11<sup>th</sup> Ed, 2004

<sup>29</sup> <https://niassembly.tv/committee-for-finance-meeting-wednesday-17-june-2020/>  
<http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

*into breaches or complaints and determine the person who is best capable of investigating the matter.*

**Mr Allister:** *Without the powers.*

**Mr Pauley:** *Certainly, it is envisaged that those people will be expected to comply fully with the panel for ministerial standards — I think that that is what we call it — when that panel is carrying out investigations. Certainly, when they needed to come to the Executive secretary for any information, that would be fully complied with [Inaudible.]*

**Mr Allister:** *Mr Pauley, may I demonstrate to you the absurdity of the situation? The independent Commissioner for Standards investigating an MLA has the right to call for documents and call witnesses to take their evidence on oath. That same person, ex officio as one of the trio of ministerial commissioners, if he is performing that role in respect of a Minister, cannot call for evidence, cannot administer an oath and cannot take evidence in the manner in which he can against an MLA... Is that not plainly absurd?*

**Mr David Hughes (Department of Finance):** *If I may just make an observation on how this operates in other jurisdictions—*

**Mr Allister:** *Look, we are worried about here. It is here that had the catastrophe of RHI.*

**The Chairperson (Dr Aiken):** *Just be aware that the Committee has heard time and time again from the permanent secretary and head of the Northern Ireland Civil Service that Northern Ireland is a unique situation. Now, you are trying to tell the Committee that it is not unique. Please, give us the benefit. This is a Northern Ireland situation that was brought about because of RHI, and the aim is to make sure that it does not come happen again. That is why, specifically, we are doing that.*

**Mr Hughes:** *Sorry, if —*

**The Chairperson (Dr Aiken):** *Sorry, Jim is still giving evidence. I will bring you back in a second.*

**Mr Allister:** *I think that the gentleman wants to reply.*

**Mr Hughes:** *I just want to mention the experience of Scotland and Wales, where independent advisers have been appointed. In Scotland, the First Minister made the appointment for the investigation of the First Minister. In that context, it has been publicly acceptable that, of course, the First Minister will appoint an independent adviser; otherwise, that investigation has no credibility. The two current independent advisers have not only that standing but, because of their background as prosecutors, carry standing from their previous employment and background. It is important to recognise that there is*

*precedent for the approach being taken, but an enforcement mechanism here means that the panel has a greater capacity to bring things into the open than is set up in the Scottish context. It is also worth noting that the method of appointment of the panel has not been settled. It is not explicitly set out in the enforcement mechanism.*

**Mr Allister:** *Will it be set in legislation?*

**Mr Hughes:** *I am not aware that there are any plans.*<sup>30</sup>

42. It is clear to the Committee from the above exchange that Dr Aiken did not interrupt or interact with Mr Pauley (instead Mr Hughes is interrupted by Mr Allister). Also, Dr Aiken did not say, either to Mr Pauley or Mr Hughes, that he did not want to hear evidence presented on what happened in other jurisdictions. Dr Aiken forcefully says '*you are trying to tell the Committee that [here] is not unique*', but this is in regard to evidence given by Mr Hughes (it is Mr Hughes who brings up other jurisdictions, not Mr Pauley).

43. While the Committee notes that, at its height, the '*you*' may be plural, referring to both Mr Pauley and Mr Hughes, the statement is clearly not directed personally at Mr Pauley. Again, even if it is accepted that Dr Aiken behaved in an angry and aggressive manner in making the said comment, Rule 15 does not prohibit immoderation in tone, and there was no evidence of a personal attack on Mr Pauley. As such, the Committee could not find evidence to substantiate Allegation 2. Therefore, **in relation to Allegation 2, the Committee decided that it could not find, as a matter of fact, that Dr Aiken's conduct was in breach of Rule of Conduct 15.**

44. In terms of **Allegation 3**, the Committee noted that Mr Pauley alleged that Dr Aiken, as Chairperson of the Finance Committee, did not take sufficient action to protect him from unacceptable personal attack from Mr Wells

---

<sup>30</sup> See pages 5-7 of Official Report of evidence session on 17 June 2020 at the following link: <http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

(contrary to Rule 19 of the Code). The Commissioner did not uphold the allegation on the basis that Rule 19 is not engaged in the context of this complaint because members of the Finance Committee are not Dr Aiken's staff. The Committee did not consider that there was any legal or factual issue which would support a different conclusion. Therefore, **in relation to Allegation 3, the Committee agreed with the Commissioner's reasoned decision that there was no breach of Rule 19.**

45. In terms of **Allegation 4**, the Committee noted that Mr Pauley alleged that Dr Aiken engaged in repeated bullying behaviour, that was unreasonable and completely unacceptable, and which he found 'threatening and intimidating', with the result that he was unable to deliver his evidence effectively.

46. The Committee noted that, while Rule 15 did not refer to 'bullying' it was clear that behaviour which was bullying, threatening or intimidating could be behaviour which amounted to an 'unreasonable and excessive personal attack'.

47. The Committee also noted that this was a 'sweeper' allegation, concerning Dr Aiken's behaviour throughout the evidence session, which invites the Committee to take account of allegations 1 and 2 a second time, for the purposes of sustaining a third allegation.

48. The legal advice to the Committee indicated that bullying had both a subjective and objective element. In particular, in *Heesom*, the High Court of Justice (EWHC) stated that:

*'Bullying does not require any lengthy course, but does require (i) some intention ('attempt') on the perpetrator's behalf to undermine the individual who is the object of the conduct, and (ii) some effect on that individual, in terms of intimidation, upset or detriment to his or her confidence, capability or health'.<sup>31</sup>*

---

<sup>31</sup> Paragraph 127, [2014] EWHC 1504



49. The Committee considered that the second, subjective limb of this test was satisfied by the evidence of Mr Pauley. However, in order to establish whether, in being aggressive, Dr Aiken *intended to undermine* Mr Pauley, the Committee examined the three points during the Finance Committee proceedings on 17 June 2020 when Dr Aiken engaged directly with Mr Pauley.
50. The first direct engagement between Dr Aiken and Mr Pauley during the session in question was examined in the analysis of Allegation 1 above. The Committee considered that Dr Aiken's interruption to put 'on the record' his understanding of pre-NDNA discussions, even if ill-tempered, could not objectively be viewed as an attempt to undermine Mr Pauley as an individual. As discussed above, the intervention lacked any personal element and instead was intended to criticise the policy of the government which Mr Pauley represented more generally.
51. The second direct engagement between Dr Aiken and Mr Pauley is recorded on pages 3 to 5 of the Official Report of the evidence session on 17 June 2020 as follows:

**Mr Pauley:** *We have responded to the point about that clause in the comments that we made to the Committee. As we said, we believe that it would remove the power of the First Minister and deputy First Minister to engage any specialised, expert support that they might need in some form of emergency or other situation through such an appointment... We are looking at how we —.*

**The Chairperson (Dr Aiken):** *Excuse me, Bill. Speaking as somebody who has been a chief executive and all the rest of it, I know that, when you have to bring people in at short notice, you bring them in on a consultancy basis; you do not bring them in as full-time employees. You do that in the Civil Service as well. If you need somebody in a specific area, you bring them in as a consultancy service. You spent a fortune on PwC to bring it in as a consultancy service. I do not get that.*

**Mr Pauley:** *That is another route by which temporary specialist appointments can be made for different periods of time.*

**The Chairperson (Dr Aiken):** *What you are talking about is short-circuiting the system so that you can have a full-time appointment. How is that following normal human resources (HR) process?*

**Mr Pauley:** *That is an option that is open under the legislation but that has not been used by this Administration. It has been used once in the past for the individual Mr Allister referred to. As part of our wider thinking about Civil Service reform, we are, indeed, looking at how our Civil Service Commissioners work and the role that they play, and we are looking at, for example, the number of exemptions to the merit principle.*

...

**Mr Pauley:** *In relation to the clause, we said that, as an overarching position, we do not believe that legislation is required in this area or around it. If we were to make legislation solely for this clause, we point to the fact that it has been used once and is not used now, and we point to the responses that we made —*

**The Chairperson (Dr Aiken):** *Just for clarification, you said that it has not been used recently and that you think that there is only one example of where it has been used. Are there any other examples of where it has been used?*

**Mr Pauley:** *Not locally, no. This is 2016 legislation that has been used once — that is my understanding — for the individual whom Mr Allister named and has not been used since.*

**The Chairperson (Dr Aiken):** *If it has been used only once, why are you so determined to keep it in? I do not understand the logic.*

**Mr Pauley:** *We pointed out in our response that it would remove this facility from the First Minister and deputy First Minister now, and we have —*

**The Chairperson (Dr Aiken):** *But we have already explained —*

**Mr Pauley:** *No —*

**The Chairperson (Dr Aiken):** *Excuse me: I am the Chair here. I already explained that there is a very normal process that happens across all government of bringing in consultants. There is a process of bringing in consultants at short notice to specific roles. You explained to us that there is an issue here with HR issues. The only thing under HR issues that would protect somebody who did not get that role is that the royal prerogative had been used. Therefore, that would be the defence if somebody who did not get the job and decided to take legal proceedings. If it has only ever been used once, I am really struck by why you want to retain it.*

**Mr Pauley:** *We say in the later responses to the question that there is a broader issue about how the Civil Service can recruit at short notice and, at times, get*

*the expertise that it might need. This is a facility that exists at the moment. It has been used once and not in the most current Administration.*<sup>32</sup>

52. During this exchange Mr Pauley is interrupted several times by Dr Aiken as Mr Pauley provides an explanation of the need to retain power for the First and deputy First Minister to make specialist appointments to the Civil Service without competition. However, while Dr Aiken's behaviour during this exchange could be regarded as aggressive, it is evident to the Committee that the intention (again) was to criticise the government policy which Mr Pauley was representing rather than to 'undermine' Mr Pauley as an individual.

53. The third direct engagement between Dr Aiken and Mr Pauley related to sanctions that may be imposed on Special Advisers (SpAds) and is recorded on page 15 of the Official Report of the evidence session on 17 June 2020 as follows:

***The Chairperson (Dr Aiken):*** *This speaks back to the role of a consultant. If you bring a consultant into an organisation, that consultant abides by the terms, rules and conditions of the organisation. The difference here is that, if a SpAd does something wrong and breaches the Civil Service code, unless the Minister agrees to sanction the SpAd and agrees with the sanction, the process goes all the way to the Minister being hauled in front of the Assembly, and the Assembly has to go through the entire process in order to get to a cross-community vote. That is the problem with the code.*

***Mr Pauley:*** *If we all behave differently —.*

***The Chairperson (Dr Aiken):*** *Yes, but we do not, so —.*

***Mr Pauley:*** *If our parties here say that they are not going to behave differently, yes.*

---

<sup>32</sup> See pages 3-5 of Official Report of evidence session on 17 June 2020 at the following link: <http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

*The Chairperson (Dr Aiken): We have had an example. I am really sorry for keeping you for this length of time, but this is important legislation. I started off quite agnostic about the Bill. The more evidence that I have heard, the more that I am becoming convinced that it is important that we go down the legislative route...'<sup>33</sup>*

54. Again, this exchange is focused on policy differences between Dr Aiken and government and the Committee considers that it could not reasonably be described as an attempt by Dr Aiken to ‘undermine’ Mr Pauley as an individual. Therefore, having examined the three direct interactions between Dr Aiken and Mr Pauley, it was noted that none disclose any reasonable basis on which the Committee could conclude that Dr Aiken bullied Mr Pauley.
55. The legal advice to the Committee also considered the element of Allegation 4 in which Mr Pauley states that he found Dr Aiken’s behaviour ‘threatening and intimidating’, with the result that he was unable to deliver his evidence effectively. The Committee understands how Mr Pauley, despite being a senior civil servant with considerable experience of engaging with Assembly committees, may have felt intimidated given that he was tasked with making difficult arguments on behalf of government to several experienced MLAs who were highly critical of the government’s policy position. However, the Committee finds it more difficult to understand why Mr Pauley found Dr Aiken’s behaviour ‘threatening’. From its review of the abovementioned exchanges, the Committee found no evidence of Dr Aiken ‘threatening’ Mr Pauley as the term would usually be defined.
56. While acknowledging that Mr Pauley may have *felt* threatened and intimidated by Dr Aiken’s behaviour, the Committee must emphasise that it cannot find a breach of the Code simply on the perceptions of a

---

<sup>33</sup> See page 15 of Official Report of evidence session on 17 June 2020 at the following link:  
<http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

complainant. Having considered the evidence carefully, the Committee failed to find evidence that Dr Aiken intended to bully, threaten or intimidate Mr Pauley and the Committee believes that, taken severally or together, the exchanges between Dr Aiken and Mr Pauley do not suggest a 'personal attack', still less a personal attack which was 'unreasonable and excessive'. Therefore, **in relation to Allegation 4, the Committee agreed that it could not find, as a matter of fact, that Dr Aiken's conduct was in breach of Rule of Conduct 15.**

57. As regards **Allegation 5**, the Committee noted that Mr Pauley alleged that Dr Aiken breached Rule 15 because, at the 2 February 2021 Assembly Plenary Sitting, Dr Aiken described the evidence session on 17 June 2020 as 'unedifying', which was insulting and offensive to Mr Pauley.

58. The Commissioner did not uphold this allegation on the basis that the comment was made in the Assembly Chamber and therefore it is outside the scope of the Code (i.e. under Standing Order 65 the responsibility for keeping good order in the Chamber rests with the Speaker). The Committee did not consider that there was any legal or factual issue which would support a different conclusion. Therefore, **in relation to Allegation 5, the Committee agreed with the Commissioner's reasoned decision that there was no breach of Rule 15.**

59. Returning to the issue of **Article 10 of the Convention**, it is clear to the Committee that the proceedings of the Finance Committee in question involved political speech. The Committee is mindful that this is accepted by the Commissioner and also notes the point, which the Commissioner highlighted from the legal advice she received, that Article 10 considerations can ultimately require a 'judgement call'.<sup>34</sup>

---

<sup>34</sup> See correspondence from the Commissioner dated 4 October 2021 at Appendix 5.

60. However, from the legal advice which it received, the Committee is also clear that there is nothing in the Code which prevents Members from engaging in political speech which is offensive, or exaggerated, immoderate, or aggressive. As outlined above, the Article 10 jurisprudence has recognised that, while ‘gratuitous personal comments’ are not political speech, intemperate or provocative criticism of officials may well be.

61. While accepting that Dr Aiken’s demeanour was ‘angry and aggressive’ at times during the Finance Committee meeting on 17 June 2020, the Committee found no evidence of Dr Aiken engaging in gratuitous personal comments in relation to Mr Pauley. Dr Aiken was clearly engaged in political expression. Moreover, it is evident to the Committee that the public interest in Members being polite to civil servants is outweighed by the public interest in the legislature holding government to account. **The Committee noted that, even if a factual basis had been established for allegations 1, 2 and 4, its legal advice suggested that a finding by the Committee of a breach of the Code in respect of these allegations would constitute a disproportionate interference with Dr Aiken’s right to freedom of expression under Article 10 of the Convention and would therefore be contrary to the duty of the Committee to act in a way which is compatible with the Convention.**

62. In summary, therefore, following thorough examination and deliberation, and having regard to its legal advice, **the allegations of breaches of rules of conduct 15 and 19 are not upheld and the Committee has concluded that Dr Aiken did not breach the Code.**

## **The Respect Principle**

63. As part of its considerations, the Committee also considered Mr Pauley’s assertion that Dr Aiken’s conduct was in direct contravention of Principle of

Conduct 7 (and thereby brining the Assembly into disrepute) and Principle of Conduct 10. The two principles are set out in the Code as follows:

*'7. Leadership: Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.'*

*'10. Respect: Members should show respect and consideration for others at all time.'*<sup>35</sup>

64. The Committee would preface its comments on this aspect of Mr Pauley's complaint by pointing to section 3.2 of the Code which states:

*'whilst these principles will be taken into account when considering the investigation and determination of any potential breaches of the rules of conduct, the principles are not themselves enforceable'*.<sup>36</sup>

65. In terms of Principle 7, it should be noted that the references to exhibiting, promoting and supporting the other 'principles' are specifically in relation to the other six of the Seven Principles of Public Life, which are less relevant (than Principle 10) to the circumstances of the case in question. Also, on a related consideration, in terms of Dr Aiken's role in chairing the evidence session on 17 June 2020, the Committee is mindful that the Code applies universally to all Members and does not require different or higher standards of committee chairpersons. It is also to be noted that committee chairpersons lack the same powers to maintain order conferred on the Speaker by standing orders.

66. As regards Principle 10, however, **the Committee is firmly of the view that, in expressing his disagreement with the policy explained by Mr**

---

<sup>35</sup> See pages 3 - 4 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>

<sup>36</sup> *ibid*, page 3.

**Pauley in an angry and aggressive manner, Dr Aiken acted in a manner that was inconsistent with the Respect Principle.** The Committee believes that Dr Aiken's approach was unnecessary and that he could have scrutinised and challenged the evidence presented by Mr Pauley more effectively and professionally by registering polite disagreement and maintaining a calm and temperate demeanour. However, this fact does not mean that Dr Aiken's behaviour amounted to a breach of the Code.

**67. The Committee further believes that this complaint case highlights the importance of all Members observing the principles of conduct contained in the Code. The Committee encourages and expects Members to observe all the aspirational principles of conduct, which includes showing 'respect and consideration for others at all time', whether that be when they engage with witnesses during committee proceedings specifically or in their conduct as Assembly Members generally.**



## Links to Appendices

### Appendix 1: The Commissioner for Standards Report on a complaint against Dr Steve Aiken OBE MLA

- [View the Commissioner for Standards Report on a complaint against Dr Steve Aiken MLA.](#)

### Appendix 2: Minutes of Proceedings

View Minutes of Proceedings of Committee meetings related to the report (meetings on 26 May 2021, 30 June 2021, 6 October 2021, 13 October 2021 and 23 November 2021) at the following links:

- [Minutes of Proceedings – Session 2020-21.](#)
- [Minutes of Proceedings - Session 2021-22.](#)

### Appendix 3: Minutes of Evidence – Oral briefing by the Commissioner for Standards

- [View Official Report of the oral briefing by the Commissioner for Standards on 26 May 2021.](#)
- [Presentation slides used in the Commissioner’s oral briefing on 26 May 2021.](#)
- [Video slides used in the Commissioner’s oral briefing on 26 May 2021.](#)

## **Appendix 4: Minutes of Evidence – Oral hearing from Dr Aiken**

- [View Official Report of oral hearing from Dr Aiken on 30 June 2021.](#)

## **Appendix 5: Follow up correspondence from the Commissioner for Standards**

- [View the addendum to Commissioner's Report.](#)
- [View correspondence dated 4 October 2021 from the Commissioner.](#)

You may re-use this publication (not including images or logos) free of charge in any format or medium, under the terms of the Open Northern Ireland Assembly Licence. To find out more about this licence visit: <http://data.niassembly.gov.uk/license.aspx>

This Report can be made available in a range of formats including large print, Braille etc. For more information please contact:

Committee on Standards and Privileges  
Northern Ireland Assembly  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

Telephone: 028 90 521 843

Email: ***committee.standardsprivileges@niassembly.gov.uk***

---