



Northern Ireland
Assembly

Committee on Standards and Privileges

Report on a complaint against Mr Jim Wells MLA

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

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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)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 a complaint against Mr Jim Wells 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 briefing which the Committee held with Mr Wells is included at **Appendix 4** and additional correspondence relating to the case 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. The Committee would also highlight that Dr Steve Aiken OBE MLA recused himself from all of the Committee's considerations relating to this complaint (see paragraph 9).

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 Mr Wells breached Rule 15 of the Code during an evidence session at the Committee for of Finance ('the Finance Committee') on 17 June 2020. Mr Pauley complained that he felt threatened and intimidated by Mr Wells' behaviour towards him and, as a result, he was unable to provide his evidence effectively.
7. Mr Pauley alleged that Mr Wells' behaviour breached Rule 15 of the Code and provided reasons why he believed this rule was breached.
8. Mr Pauley alleged that further offensive comments were made by Mr Wells at the Finance Committee meeting on 24 June 2020 (which Mr Pauley did not attend) relating to his 17 June 2020 evidence session, which he also believes is in breach of Rule 15.

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 Dr Aiken 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, Mr Wells, 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 Wells 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. A written response was received from Mr Wells, dated 25 May 2021, and he also indicated that he would take up the opportunity to appear before the Committee in relation to the matter (the oral hearing took place on 28 September 2021).

The allegations

12. The Committee noted from the Commissioner's investigation report that Mr Pauley raised the following allegations:

Allegation 1: at the Finance Committee meeting on 17 June 2020, Mr Wells treated Mr Pauley with ‘a lack of respect through snide interventions such as “do you want to phone a friend”’; Mr Wells made ‘an unacceptable personal attack’ by pressing Mr Pauley for his personal views on issues even after the basis of his giving evidence on behalf of his Minister had been clarified to the Finance Committee; and the ‘unreasonable and excessive personally threatening behaviour’ from Mr Wells made Mr Pauley feel ‘bullied’, ‘harassed’ and ‘intimidated’, with the result that he was unable to deliver his evidence effectively.⁸

Allegation 2: Mr Wells’ continuation of his treatment towards Mr Pauley at the 24 June 2020 meeting of the Finance Committee was unreasonable and unacceptable causing further insult.

Relevant rule in the Members’ Code of Conduct

13. The relevant rule of conduct cited in the complaint against Mr Wells is as follows:

Rule 15: You shall not subject anyone to unreasonable and excessive personal attack. ⁹

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 7-16.¹⁰

⁸ Commissioner’s investigation report, Document 1, Annex B1, pages 39-41 (see Appendix 1).

⁹ 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>

¹⁰ Commissioner’s investigation report, pages 5-7 (see Appendix 1).

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

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:

Allegation 1: Rule 15

'I am of the view that Mr Wells' behaviour was unreasonable because it was not fair or acceptable to treat Mr Pauley, a witness providing evidence on behalf of his Minister, in such a way. It was excessive in that what Mr Wells said was more than was 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 [of the European Convention on Human Rights ('the Convention')], while my finding of a breach of the Code amounts to a prima facie interference with Mr Wells' 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 the allegation that Mr Wells' behaviour caused Mr Pauley to feel harassed and intimidated and unable to effectively give his evidence and was in breach of Rule 15 of the Code and the Respect principle.'

Allegation 2: Rule 15

'It is my view that Mr Wells' comments on 24 June were a discourteous, disrespectful continuation from the previous meeting and caused further hurt and offense to Mr Pauley. On their own, they arguably may not have breached the Code. Taken in the round however, they further offended and insulted Mr Pauley.

I am of the view that Mr Wells' comment was unreasonable in that it was not fair or acceptable to portray Mr Pauley in such a way. It was excessive in that it was a continuation of the behaviour towards

¹¹ Commissioner's investigation report, pages 9-23 and Annex B (see Appendix 1).

Mr Pauley and was unnecessary and disrespectful and in breach of Rule 15 of the Code and the 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 Mr Wells' 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' ¹²

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 and also considered Mr Wells' written response to the Commissioner's investigation report. To complement its established disclosure arrangements and for enhanced transparency, the Committee agreed that the Commissioner's oral briefing would be recorded by Hansard and that the Official Report would be sent to Mr Wells for his information and comment as applicable ahead of his oral hearing on 28 September 2021.

18. At his oral hearing on 28 September 2021 (and in his written submission of 25 May 2021), Mr Wells contested certain of Mr Pauley's allegations; however, in relation to the 'Do you want to phone a friend?' comment specifically, Mr Wells stated: 'if I have caused Mr Pauley offence by using that term, I apologise. It was not intended.'¹³ Also, the Committee noted that, in his written submission of 25 May 2021, Mr Wells indicated that he would be willing to write to Mr Pauley to confirm that he withdrew the comment. The full record of Mr Wells' oral response to the Commissioner's

¹² Commissioner's investigation report, pages 9-23 (see Appendix 1).

¹³ See page 5 of the Official Report of the oral hearing on 28 September 2021 at the link provided in Appendix 4.

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). A link to Mr Wells' written submission is included at Appendix 5.

19. Following its initial consideration of the Commissioner's investigation report and the oral hearing from Mr Wells, 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 15 and Mr Wells' right to freedom of expression under Article 10 of 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.

Rule of Conduct 15: points to prove

20. 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

21. Arising from its legal advice, 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...’

22. 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.

23. From its legal advice on Article 10 and the related jurisprudence, the Committee noted the following points in particular:

- The protections afforded under Article 10 extend to comments which *‘offend, shock or disturb’*.¹⁴
- Any interference with Article 10 rights requires the closest scrutiny, particularly in the political context.¹⁵
- Political expression is a *‘broad concept’* which *‘extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others’*¹⁶; it includes not only discussion of political matters *stricto sensu* but any form of communication on a matter of public interest, and speech within this wider category must also attract higher levels of protection.¹⁷

¹⁴ *Re Heesom* [2014] EWHC 1504 (Admin), paragraph 36.

¹⁵ *ProLife Alliance* [2003] UKHL 23, paragraph 6.

¹⁶ *Re Heesom* [2014] EWHC 1504 (Admin), paragraph 38; *R v Secretary of State for the Home Department, ex p Simms* [2000] 2 AC 115 HL, paragraph 125G.

¹⁷ Lester, Pannick & Herberg: *Human Rights Law and Practice*, Chapter 4.10.10.

- Political expression can also include criticism and adverse comment on non-elected public servants.¹⁸
- Any potential limit on the ability to criticise government and civil servants must be narrower than that regarding private individuals, and requires a high level of justification (under Article 10, only politicians have less protection against criticism than civil servants).¹⁹
- Political expression, however, does not extend to '*gratuitous personal comments*'.²⁰

24. The Committee also noted from its legal advice that each allegation has to be considered separately as any interference with the right of political expression must be justified on the facts of the particular allegation (as opposed to a cumulative approach to justification, restricting the right based on other incidents).²¹ Therefore, the Committee deliberated on the case in light of the legal advice received and considered each of the two allegations that Mr Wells had breached the Code separately, in terms of:

- a) Whether it could find, as a matter of fact, that Mr Wells' 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 Mr Wells' 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.²²

25. The detail of the Committee's deliberations on these issues is set out below, as applicable, for each of the two allegations against Mr Wells. The deliberations of the Committee have also been informed by further

¹⁸ *Castells v Spain* (1992) 14 EHRR 445, paragraph 46.

¹⁹ *Thoma v. Luxembourg* [2001] ECHR 38432/97, paragraph 47; *Re Heesom* [2014] EWHC 1504 (Admin), paragraphs 39 - 42.

²⁰ *Re Heesom* [2014] EWHC 1504 (Admin), paragraph 38.

²¹ *Re Bunting* [2019] NIQB 36, paragraph 70; *Heesom*, *ibid.*

²² *Re Calver* [2012] EWHC 1172, paragraph 39

consideration of the factual circumstances of the case as gleaned from the available evidence, including video recordings of the Finance Committee meetings on 17 and 24 June 2020 and the Official Report of the former.

Factual background and context

26. As alluded to above, the Commissioner has set out her findings of fact at paragraphs 6-7 of the investigation report. The Committee also noted the following pertinent facts:

- Mr Pauley is a director in the DoF and a member of the Senior Civil Service.
- Mr Pauley attended the Finance Committee on 17 June 2020, along with his colleague, Mr Hughes, to give evidence on the Functioning of Government (Miscellaneous Provisions) Bill ('the Bill').
- Mr Wells was at the material time a member 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 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'), who had previously given evidence to the Finance Committee on the matter, 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.²³ Also, the Finance Committee had previously been advised that that position on the Bill was shared by other Ministers.²⁴

- When Mr Pauley and Mr David Hughes gave evidence to the Finance Committee on 17 June 2020, Mr Pauley made clear that he was there to represent the view of his Minister and the evidence which he and Mr Hughes provided was consistent with that position.²⁵

27. 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.

28. From the applicable video footage and the, substantially verbatim, Official Report of the Finance Committee's evidence session with Messrs Pauley and Hughes on 17 June 2020, the Committee noted several instances where Mr Wells either referred to Mr Pauley or engaged directly with him.²⁶ During the first exchange, which occurred 42 minutes into the meeting, Mr Wells comments during an exchange between Mr Pauley and Mr Allister regarding prerogative powers in relation to the Bill and the following comments are recorded in the Official Report:

***Mr Wells:** Do you want to phone a friend?*

***The Chairperson (Dr Aiken):** No. Through the Chair, please. Please withdraw that remark.*

²³ See the Official Report of the evidence session on 13 May 2020 at the following link:

<http://data.niassembly.gov.uk/HansardXml/committee-22281.pdf>

²⁴ See page 4 of the Official Report of the evidence session with HOCS on 6 May 2020 at the following link:

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

²⁵ See the Official Report of the evidence session at the following link:

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

²⁶ <https://niassembly.tv/committee-for-finance-meeting-wednesday-17-june-2020/>

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

Mr Wells: OK. Sorry about that.

The Chairperson (Dr Aiken): That is beneath you, Jim. Sorry about that, Bill. I apologise.²⁷

29. The next exchange occurs at approximately 1 hour and 10 minutes into the meeting when Mr Wells questions Mr Pauley in relation to the Bill and this is recorded in the Official Report as follows:

'Mr Wells: You have watched this place collapse for years on the back of absolutely appalling behaviour by spads. You are now sitting here advocating no real change other than a slightly beefed up code to cover the affairs of spads. You have looked uncomfortable throughout the hearing, Mr Pauley. You are a gentleman of vast experience. You have been around here longer than me, and that is saying something. I dare not tell you how long I have been around here. Are you uncomfortable with some of the things that you are being asked to say here this afternoon?'

Mr Pauley: No.

Mr Wells: Having witnessed the absolute chaos that spads have caused to devolved government in Northern Ireland, you are personally standing over what you have been asked to say to the Committee.

Mr Pauley: Subject to the Chair's comments about the New Decade, New Approach agreement. During suspension, the Civil Service, on a number of occasions, through the head of the Civil Service and others, made it clear that it wanted our institutions back and called for that to happen, just as much as — in fact, more than — anyone, and we needed that. I fully concur with all the things that were said and done. We value and appreciate our institutions, because we live here too. These things are important to us. As I intimated in reference to what you said, the New Decade, New Approach agreement acknowledged that change from what had happened in the past was necessary. I do not want to split hairs, but a couple of questions posed by the Committee were framed "in light of" previous events. My understanding is that the reference is to the RHI situation and others. Our Department, my Minister and the Executive have accepted all 377 findings in the RHI inquiry report. We have decided to accept them. I believe that New Decade, New Approach, whatever its standing — doubt has been raised here about whether it was an agreement — indicated that people wanted the institutions to come back to deliver public services again in Northern Ireland, if the approach that emerged during RHI, and more broadly, could be changed. If that can be delivered, do we want our institutions? Yes. Do I want them? Yes, I do. I believe in them.

²⁷ See page 4 of the Official Report of the evidence session on 17 June 2020 at the following link:
<http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

Mr Wells: *That is not the question that I asked. Are you comfortable with what you have been asked to say here today?*

Mr Pauley: *I am comfortable with the basis of New Decade, New Approach. People said that in light of the things that had happened, there had to be change, and they expected that there would be change. In all of this, I personally believe that people have to change and respond to that change, whether that is through legislation or codes. There are those who are committed to behaving badly. Every day, people break laws — that is commonplace — just as they can breach codes, but they have to be committed to all of the institution. That applies to Ministers, spads, civil servants and Members of the Assembly. It is about how we treat each other every day, and there have been questions about that today. There has to be a new approach across the full gamut.²⁸*

30. Mr Hughes answered the next two questions from Mr Wells and the questioning from Mr Wells (which lasted approximately 11 minutes) then concluded with the following exchange:

Mr Wells: *What happens if a Minister decides not to let the Assembly know what has been going on?*

Mr Pauley: *Our response to the Committee states that there would be a key role for the Civil Service in this process, depending on the nature of the behaviour. Certain behaviour, such as bullying and harassment, cannot be tolerated or accepted in our workplace, no matter who the perpetrator is. The Civil Service, if and when necessary, would intervene and go to the Minister and, if necessary, the head of the party. It would then be reported to the ministerial standards panel, and its investigation, carried out according to the outlined enforcement process, would be made public. Parts of our enforcement mechanism are much stronger than those elsewhere, in that anyone can make a complaint. It is not confined to the Prime Minister or head of the Government, as it is elsewhere. There are tight timescales within which any investigation should be carried out. Whatever failing existed, if the Minister was not taking action, it would be the Civil Service's role to call that out and to intervene to say that such behaviour must not continue in our workplace. In the nature of different breaches, the code of conduct covers everything from how we conduct ourselves in our daily interaction with people to behaviour that could be illegal.*

²⁸ See pages 9 - 10 of the Official Report of the evidence session on 17 June 2020 at the following link:
<http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

Mr Wells: *Is that the same radical action that was taken when it was discovered that two super-spads were operating on the Falls Road and that information was being taken from Stormont Castle?*

Mr Pauley: *What happened in the past —.*

The Chairperson (Dr Aiken): *Jim, I think that you have made your point.*

Mr Wells: *OK. I will move on to my last question. The whole argument that you are dying in a ditch over — I think that you are very uncomfortable about dying in a ditch about this — is whether there should be a statutory code or legislation. We are all dancing on the head of that pin. The best legislation is legislation that never has to be used because it is a deterrent. You have not convinced me that we could not have the best of both worlds: a statutory code and, overarching that, legislation. Then, when somebody steps out of line, you have that ultimate deterrent of a court case, with all the evidence having to be collected, the cross-examination and the disclosure of all documents. That is a real deterrent, far more so than any Civil Service investigation. Why can you not accept your idea of a code and Mr Allister's overarching legislation? What is wrong with that?*

Mr Pauley: *I have addressed a question previously as to whether I was uncomfortable with deviating from the basis and principles for which I am here, which is that I am under the direction of my Minister. The position of my Minister is that we do not believe that legislation is necessary in this area. The Executive have agreed new codes. They have agreed that, in other areas, there needs to be a changed approach. They have agreed that increased transparency and accountability need to be applied across a whole range of areas. I am entirely comfortable and agree with the fact that those changes need to happen and need to be taken forward.*

Mr Wells: *If your code will be so successful and so effective, why are you worried about there being legislation that may never have to be used?*²⁹

31. While there were no further exchanges between Mr Wells and Mr Pauley during the session, after the agenda item was concluded and Messrs Pauley and Hughes had left the meeting, the Committee noted from the video footage of the meeting on 17 June 2020 that Mr Wells commented (at

²⁹ See pages 10 - 11 of the Official Report of the evidence session on 17 June 2020 at the following link: <http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

approximately 1 hour and 42 minutes into the meeting) *'they will be quaking in their boots after that'*.³⁰

32. From the applicable video footage of the Finance Committee's subsequent meeting on 24 June 2020, it was noted that Mr Maolíosa McHugh MLA referenced an *Irish News* article published that week which commented negatively on the treatment of witnesses by the Finance Committee at the meeting on 17 June 2020. Mr McHugh urged the members of the Finance Committee to show more respect for each other and to witnesses providing evidence.³¹

33. Mr Wells responded to Mr Mc Hugh by stating, amongst other things, that that is the *'nature of politics. I don't agree with a word often he says if he feels offended that is just unfortunate. As far as officials are concerned, they are very senior level civil servants that we are dealing with who are extremely well-paid and had the benefit of the last three years without any public scrutiny because of the suspension of the Assembly. Therefore, part of the deal to get their fabulous salary is to take a very tough and robust questioning from us as MLA's. They expect it, they get it, they take it on the chin, they go home and laugh about it over tea, so therefore had they been some junior rank I could understand what the gentleman is saying but that is just the nature of politics and frankly if he doesn't like it there is always Londonderry and Strabane Council to return to.'*³²

34. The availability of the above extracts from the contemporaneous records (i.e. the video-recordings of the meetings on 17 and 24 June 2020 and the Official Report of the former) enabled the Committee to examine allegations 1 and 2 separately for the purposes of considering, in the first instance,

³⁰ <https://niassembly.tv/committee-for-finance-meeting-wednesday-17-june-2020/>

³¹ See video footage of Finance Committee meeting on 24 June 2020, between minutes 2 to 5 approximately at the following: <https://niassembly.tv/committee-for-finance-meeting-wednesday-24-june-2020/>

³² See video footage of Finance Committee meeting on 24 June 2020, between minutes 5 to 7 approximately at the following: <https://niassembly.tv/committee-for-finance-meeting-wednesday-24-june-2020/>

whether they may reasonably be found to be substantiated. As alluded to above, in the event of establishing a factual basis in respect of each finding, the Committee would also require to assess whether Mr Wells 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.

Examination of the allegations

35. At its meetings on 10 and 17 November 2021, the Committee deliberated on each of the two 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.

36. As outlined above, **Allegation 1** focusses on Mr Wells' conduct at the Finance Committee meeting on 17 June 2020 and is grounded on the following three incidents:

- (i) The 'Do you want to phone a friend?' comment by Mr Wells to Mr Pauley;
- (ii) Mr Wells pressing Mr Pauley for his personal views on issues relating to the Bill; and
- (iii) Mr Wells' comment that witnesses and officials 'will be quaking in their boots after that', which was made after the evidence session with Messrs Pauley and Hughes had concluded.

37. The Committee members reviewed both the applicable video footage of the Finance Committee's meeting on 17 June 2020 and the Official Report of the evidence session with Messrs Pauley and Hughes during that

meeting.³³ This enabled members to assess the particular context in which each of the above three incidents took place.

38. Given the factual context outlined above at paragraph 26, the Committee believes that it was reasonably foreseeable that the questioning of Mr Pauley would be robust and challenging. Also, while Mr Pauley clearly felt that the cited incidents amounted to an ‘unreasonable and excessive personal attack’ on his character and on his capacity to fulfil his duties, it is important that the Committee determines whether Rule 15 has been breached on the basis of each of the four criterion contained in the rule being satisfied. From its legal advice, the Committee noted that its determination also needs to be made against the specific wording in Rule 15 rather than on alternative criteria (such as rudeness or discourtesy).

39. In terms of the first incident, on review of the video footage, the Committee noted that, in making his ‘phone a friend’ comment, Mr Wells interjected shortly after Mr Allister had finished his remarks and before Mr Pauley had a reasonable opportunity to respond to Mr Allister. As such, Mr Wells’ intervention could be viewed as a personal comment directed at Mr Pauley as an individual and not at any issue of policy. It could also reasonably be regarded as a comment which was intended to undermine Mr Pauley to some extent and infer that he was not capable of answering the question and thus fulfilling his duties. The comment could therefore be adjudged to have been a ‘personal attack’ on Mr Pauley, though the Committee recognises that there is a degree of subjectivity involved in making this decision.

40. As regards the other two elements of Rule 15, the Committee noted that the Commissioner’s report cited dictionary definitions for ‘unreasonable’, as

³³ <https://niassembly.tv/committee-for-finance-meeting-wednesday-17-june-2020/>
<http://data.niassembly.gov.uk/HansardXml/committee-22687.pdf>

meaning ‘not fair or acceptable’, and for ‘excessive’, as meaning ‘more than is necessary, normal, or desirable; immoderate’.³⁴ The evidence on the said incident clearly indicates that, by his intervention immediately after the comment was made, the Chairperson of the Finance Committee, Dr Aiken, felt that the comment went beyond an acceptable level in political debate. Also, Mr Wells clearly recognised this because, immediately after the Chairperson’s intervention, Mr Wells said ‘sorry about that’. Moreover, during his subsequent interview with the Commissioner, Mr Wells accepted that he had ‘stepped over the line’ and stated:

‘So just for the record I totally repudiate that comment. I wish to withdraw it and it was never meant to cause offence and on reflection it shouldn’t have been said.’³⁵

Further, as explained above, Mr Wells also apologised for the comment when he appeared before the Committee on 28 September 2021.

41. Having regard to the particular context in which it was made, the Committee regards the ‘phone a friend’ comment as unreasonable. The Committee is also satisfied that it was ‘excessive’ because it was not made in the course of questions from Mr Wells to Mr Pauley, it had no bearing on how the DoF conducted its business and it contributed nothing to the Committee’s scrutiny functions.

42. In terms of the second incident cited in Allegation 1, the Committee noted that, on four occasions, Mr Wells attempted to tease out the personal view of Mr Pauley on aspects of the Bill. While Mr Pauley twice stated earlier in the session that he was representing the view of the Minister, he nonetheless opted to give his personal opinion, before stating again that he was there to represent the position of the Minister. The Committee is mindful that Mr Pauley is an experienced senior official and that he could

³⁴ See page 11 of Commissioner’s investigation report at link in Appendix 1.

³⁵ See Commissioner’s investigation report, Document 3, pages 2 - 3, at link in Appendix 1.

have continued to decline to give his personal view. Moreover, while it could be argued that it was unreasonable and excessive to ask Mr Pauley for his personal view on more than one occasion, especially in light of his earlier comments, the Committee did not believe that being asked one's personal view could be considered a 'personal attack'.

43.As regards the third incident falling within Allegation 1, the Committee noted that Mr Pauley had left the meeting when the 'quaking in their boots' comment was made. As such, the comment could not have impacted on Mr Pauley's ability to deliver evidence effectively and was also not a personal comment directed at Mr Pauley, still less a 'personal attack'.

44.Returning to the 'phone a friend' comment, during its deliberations on this element of Allegation 1, the Committee recognised that the considerations were context specific and finely balanced. While it was unable to reach agreement unanimously, following a division, the Committee decided that, as a matter of fact, Mr Wells breached Rule 15 by making the 'Do you want to phone a friend?' comment to Mr Pauley. Also, the Committee noted from its legal advice that this comment could reasonably be viewed as a '*gratuitous personal comment*' rather than a form of political expression and, as such, would not attract the enhanced protection which is afforded to political expression under Article 10 of the Convention.

45.Following on from this decision, the Committee accepted that its finding amounted to a prima facie interference with Mr Wells' right to freedom of expression under Article 10 of the Convention and, consequently, considered whether this would be justified under Article 10(2) of the Convention (i.e. whether it is '*prescribed by law and necessary in a democratic society ... for the protection of the reputation or rights of others*').

46.In weighing up the relevant factors, the Committee balanced Mr Wells' right to freedom of expression and the public interest in this freedom against the public interest in protecting the reputation of the Assembly and

its members, as well as preventing gratuitous personal attacks on witnesses before Assembly committees (i.e. Mr Pauley in this instance). On this latter point, the Committee noted from its legal advice that, because Assembly proceedings are absolutely privileged for the purposes of the law of defamation, any witness before an Assembly committee would have limited alternative avenues available to vindicate their rights in the event of any potentially defamatory comment.

47. Therefore, having taken all the relevant factors into consideration, the Committee concluded that its finding of a breach of Rule 15 in relation to Mr Wells' 'phone a friend' comment is a justifiable interference with Mr Wells' right to freedom of expression.

48. Turning to **Allegation 2**, the Committee noted that it was alleged that Mr Wells' continuation of his treatment towards Mr Pauley at the 24 June 2020 meeting of the Finance Committee was unreasonable and unacceptable causing further insult. However, from its review of the applicable video footage of the meeting on 24 June 2020 (at which Mr Pauley was not present), the Committee considers that Mr Wells' comments regarding the role of officials, specifically 'very senior level civil servants', appear to be of a generic nature and not directed specifically or solely at Mr Pauley.

49. Given that the Finance Committee receives evidence on a regular basis from senior officials, the Committee doubts that it could be proven that Mr Wells' comments on this occasion related solely to Mr Pauley and were not intended to have wider application. The Committee found no evidence of Mr Wells making a 'personal attack' on Mr Pauley during the Finance Committee meeting on 24 June 2020 and, as such, did not require to consider whether the other two elements of Rule 15 were substantiated. Therefore, in relation to Allegation 2, the Committee decided that it could not find, as a matter of fact, that Wells' conduct was in breach of Rule 15.

50. Further, the Committee noted that, even if a factual basis had been established for Allegation 2, its legal advice suggested that a finding by the Committee of a breach of the Code in respect of this allegation would carry a legal risk of being deemed a disproportionate interference with Mr Wells' right to freedom of political expression. In particular, it could be deemed overly restrictive in terms of limiting Mr Wells' ability to comment on the role of officials in a general sense, in his capacity as a member of a scrutiny committee, even if the tone of his comments were considered to be discourteous or offensive.

51. Finally, in light of its finding of a breach in respect of one element of Allegation 1, the Committee considered whether a sanction was merited. Bearing in mind all of the circumstances of the case, the Committee agreed that, rather than recommending to the Assembly that a sanction be imposed, it would seek to resolve the matter by requesting Mr Wells to make a formal apology in writing to Mr Pauley via the Committee. Mr Wells has duly provided the necessary apology, which is included in the **Annex** to this report, and the Committee is satisfied that the matter has been resolved.

52. In summary, following thorough examination and deliberation, and having regard to its legal advice, **the Committee has decided that, given the particular context in which it was made, Mr Wells' 'Do you want to phone a friend?' remark to Mr Pauley at the Finance Committee meeting on 17 June 2020 was a gratuitous personal comment which broke Rule of Conduct 15 and, consequently, was a breach of the Code. As such, the Committee has upheld this one element of the complaint by Mr Pauley. However, the Committee has determined that no further action is required as Mr Wells has apologised for the said comment, formally in writing to Mr Pauley, as set out in the Annex to this report.**

53. Finally, the Committee takes this opportunity to remind all Members of the importance of treating others with courtesy and respect. The Code makes clear that, whilst Members must abide by the enforceable rules of conduct, the Assembly also encourages and expects Members to observe the aspirational principles of conduct, including the Respect Principle which states that Members should show 'respect and consideration for others at all time'. The Committee firmly believes that, by both complying with the rules of conduct and observing the principles of conduct, Members will help to maintain and strengthen the public's trust and confidence in the Assembly and in its commitment to high ethical standards.

Annex – Apology from Mr Wells to Mr Pauley

From: [REDACTED]

Sent: 18 November 2021 09:11

To: McAteer, Shane <**Shane.McAteer@niassembly.gov.uk**>

Subject: Complaint by Mr Bill Pauley

I refer to the complaint lodged by Mr Bill Pauley regarding the meeting of the Finance Committee on 17th June 2020.

The committee will be aware that as soon as the Chairman of the Finance drew my attention to my 'do you want to phone a friend' comment I immediately withdrew that remark. I also made it clear to the Standards and Privileges Committee in my written submission and during the oral hearing that I regret making that comment.

I am therefore writing to you to apologise to Mr Pauley for that comment.

Jim Wells MLA

Sent from my BlackBerry® smartphone on O2

Links to Appendices

Appendix 1: The Commissioner for Standards Report on a complaint against Mr Jim Wells MLA

[View the Commissioner for Standards Report on a complaint against Mr Jim Wells MLA.](#)

Appendix 2: Minutes of Proceedings

View Minutes of Proceedings of Committee meetings related to the report (meetings on 26 May 2021, 28 September 2021, 10 November 2021, 17 November 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 oral briefing by the Commissioner for Standards on 26 May 2021 at the following link:

[Minutes of Evidence – 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 Mr Wells

View Official Report of oral hearing from Mr Wells on 28 September 2021 at the following link:

[Minutes of Evidence – 28 September 2021:](#)

Appendix 5: Correspondence relating to the complaint case:

[Addendum to the Commissioner's Report](#)

[Correspondence dated 25 May 2021 from Mr Wells](#)

[Correspondence dated 4 October 2021 from the Commissioner](#)

[Correspondence dated 5 October 2021 from the Head of the Civil Service](#)

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