

**REPORT OF
THE NORTHERN IRELAND ASSEMBLY
COMMISSIONER FOR STANDARDS
FOR 2015 - 2016**

Laid before the Northern Ireland Assembly pursuant to paragraph 7 of Schedule 4 to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011

1. INTRODUCTION

1.1 This is my fourth report on my work as the Northern Ireland Assembly Commissioner for Standards. Paragraph 7 of Schedule 4 to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 ('the 2011 Act') requires that, as soon as practicable after the end of each financial year, the Commissioner shall submit a report to the Assembly. That report on the Commissioner's activities must include information on how resources have been used.

1.2 Having set out the functions of the Commissioner, this report gives information on the complaints considered during the year, the other work undertaken and the resources used. It outlines further action that could be taken by the Assembly to increase confidence in the complaints process before outlining the work planned for 2016-17.

2. FUNCTIONS OF THE COMMISSIONER

2.1 The functions of the Commissioner have not changed since the office was created. They are set out in section 17(1) of the 2011 Act and may be summarised as follows –

- To investigate complaints and referrals.
- To initiate a Commissioner investigation where the Commissioner decides that there is a prima facie case that a breach of the Code of Conduct ('the Code') has occurred.
- To report to the Assembly on the outcome of investigations.
- To give advice on any matter of general principle relating to standards of conduct of Members of the Assembly.

2.2 Although the Commissioner for Standards is independent he is required, by virtue of section 24(1) of the 2011 Act, to comply with directions given by the Assembly under that power. The two directions given under that provision were not amended during the year.

2.3 The Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures) Direction 2012 ('the General Procedures Direction') sets out, inter alia, the admissibility criteria for complaints, the procedure to be followed by the Commissioner when considering complaints and the contents of reports by the Commissioner on his investigations. The Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (Code of Conduct and Requirement to Register Interests) Direction 2012 sets out the

Code of Conduct with which the Commissioner must comply in the performance of his duties and the financial and other interests which he must register.

3. COMPLAINTS, REFERRALS AND COMMISSIONER INVESTIGATIONS

3.1 At the start of the year there were three complaints under investigation.¹ All of these were against Basil McCrea MLA. My report on all but one aspect of one of these complaints was submitted to the Committee on Standards and Privileges ('the Committee') in October 2015 having been delayed by a range of factors including the alleged unfitness of one of the complainants to attend for interview and ongoing police investigations into the conduct of another of the complainants and of a number of the witnesses. I found that there had been no breach of the Code by Mr McCrea. In January 2016 the Committee agreed my decisions.² The one remaining aspect of the complaint by John McCallister MLA remained suspended at the year-end due to the ongoing police investigation into his conduct.

3.2 In April 2015 the complaint against Sammy Wilson MLA arising out of his conduct at a meeting of the Committee for Social Development on 16 October 2014 was also outstanding. Whilst my report on that complaint, finding that Mr Wilson had broken the Respect principle of the Code had been submitted, the Committee had not completed its consideration of the matter. The Committee, after several divisions in which only the DUP Members voted against the motions, agreed my finding that Mr Wilson had breached the Respect principle of the Code.³ However, following a Petition of Concern put down by Mr Wilson's party, the DUP, the Committee's motion to impose a sanction was negated⁴.

3.3 During the year I received 14 new complaints. As shown in Table 1 this represents a significant reduction from previous years. The Table also gives other comparative data. Whilst the reasons for this reduction are uncertain it seems likely that lack of public confidence in the complaints process was a contributory factor.

¹ In this Report a complaint is a document submitted to the Commissioner containing one or more allegation that a Member has broken a provision of the Code of Conduct

² NIA 284/11-16

³ NIA 238/11-16

⁴ Official Report (Hansard), 30 June 2015, Volume 106, No 5, page 108, column 1

Table 1 – Complaints received etc

	2013-14	2014-15	2015-16
Complaints received	36	53	14 ⁵
% made by Members	30.6	15.1	21.4
% made by public	69.4	84.9	78.6
% not admissible	69.4	86.8	91.3

3.4 I found, without the need for an investigation, that all but one of the other 12 new complaints did not meet the admissibility criteria set out in the General Procedures Direction. The most common reason was that the conduct complained of was not within the scope of the Code as it was conduct that allegedly took place either in the Assembly Chamber or by a Member whilst acting in a Ministerial capacity. The Committee agreed my decision on all 12 complaints.

3.5 Following a full and thorough investigation I upheld the complaint made by Ross Hussey MLA that Barry McElduff MLA had broken the provisions of the Code of Conduct by improper use of Assembly stationary and pre-paid envelopes. The Committee agreed my decision but, as Mr McElduff had made full re-imbusement following my finding, considered the matter resolved.⁶

3.6 At the year-end, other than the one aspect of Mr McCallister's complaint against Mr McCrea, there were no other complaints under consideration by me.

3.7 I did not consider any referrals or Commissioner complaints during the year.

3.8 Other than my input to the Committee's work on the new Code and General Procedures Direction I did not give any advice on any matter of general principle relating to the standards of conduct of Members of the Assembly.

⁵ Two of these new complaints were made by Sammy Wilson MLA. In view of defamatory comments he had made about me following my decision that he had breached the Code of Conduct I did not consider that I could properly deal with these two complaints without a risk that any decision I reached would be perceived as biased. Gerard Elias QC, the Standards Commissioner at the National Assembly for Wales, was appointed as an Acting Commissioner. I understand that his consideration of these two complaints is ongoing.

⁶ NIA 273/11-16

4. OTHER WORK

4.1 During the year I again contributed to the Committee's work on the revision of the Code and to its work on a revised General Procedures Direction. Because that work was not completed during the year I was again unable to undertake the further planned work on material for the Assembly website on the role of the Standards Commissioner and the complaints process.

4.2 In March 2016 I attended a meeting of the Standards Network hosted jointly by the House of Lords and the House of Commons. The Network is an informal forum where those involved in standards work in legislatures in the United Kingdom and Ireland can discuss matters of mutual interest. Other meetings, not directly related to a particular investigation, were held with the Clerk to the Assembly/Chief Executive, the Comptroller and Auditor General and the Assembly Ombudsman. I assisted the Assembly Ombudsman in the appointment process for an important post in his office.

4.3 Throughout the year I complied with the Code governing my conduct and registered all relevant financial and other interests and all hospitality received.

5. USE OF RESOURCES

5.1 Paragraph 3 of Schedule 4 to the 2011 Act requires the Commission to –

'Provide the Commissioner with such administrative and other support, including staff, services and accommodation, as the Commissioner may reasonably require for the purpose of discharging the functions imposed on the Commissioner by this Act.'

5.2 Paragraph 8 of that Schedule requires the Commission to –

'(a) pay such sums as are payable in accordance with the Commissioner's terms and conditions of appointment;

(b) pay or reimburse any expenses properly incurred by the Commissioner; and

(c)'

5.3 The sums paid under paragraph 8(a), along with the corresponding figures for the previous two years are set out in Table 2.

Table 2 – Commissioner’s Pay and Expenses

	2013 -14	2014-15	2015-16
	£	£	£
Commissioner Pay	41,113	51,477	51,299 ⁷
Employers ERNIC	3,680	6,258	5,970 ⁸
Travel, Subsistence	<u>1,576</u>	<u>2,166</u>	<u>1,777</u>
TOTAL	£ 46,369	£59,901	£59,046

5.4 I continued to be provided with an office within Parliament Buildings and the IT and other office equipment required for my work. I was again greatly assisted by the provision, on a part-time basis, of a Personal Secretary. Transcripts of witness interviews were initially prepared by staff from the Official Report. All this was provided from within existing Secretariat resources and is not reflected in the figures in Table 3. However, due to the large volume of transcription work in connection with the investigation of the complaints against Basil McCrea MLA, the transcription work was later out-sourced to a commercial transcription provider. These transcription costs are included in the figures in Table 3.

5.5 The budget for expenses and other goods and services was again set by the Assembly Commission at £7,500: the figure at which it had been set since the Commissioner post was established in September 2012. The expenditure under paragraph 8(b), along with the corresponding figures for the two previous years is shown in Table 3.

Table 3 – Expenditure under Paragraph 8(b)

	2013-14	2014-15	2015-16
	£	£	£
General Business Expenditure	0	63	474
Hospitality	0	0	0
Data Protection Registration	35	35	35
Legal Fees	<u>4,650</u>	<u>6,470</u>	<u>200</u>
TOTAL	£4,685	£6,568	£709

⁷ Includes arrears of £414 for 2013-14 and £848 for 2014-15

⁸ Includes amounts in respect of the pay arrears at Note 10

6. Confidence Building

6.1 The new Code of Conduct and the new General Procedures Direction, which took effect at the start of the new mandate, represent a significant improvement to the framework of the complaints process. They will make it clearer both for those who wish to make a complaint and for those about whom a complaint is made. They will also simplify the process and should, as a result, both speed it up and reduce its cost.

6.2 Whilst the Committee incorporated almost all recommendations I made in the new General Procedures Direction, I think it most regrettable that it again rejected my recommendation to increase the transparency of the process by allowing the publication of brief details of all admissible complaints. I had proposed that, as happens in many other legislatures including the House of Commons, the names of the person who made a complaint and the Member against whom it was made should be published on the Assembly website along with a very brief description of the general nature of the complaint. At present these matters are not made known unless one of the parties chooses to put them in the public domain.⁹ I continue to believe that the public have a right to know the general nature of a complaint that has been made and found to meet the admissibility criteria.

6.3 Yet even when the improved framework is in place it is, I believe, unlikely that the complaints process will command public confidence unless there is a significant change in the attitude of some political parties towards the complaints process and towards conduct issues more generally. At Westminster, Holyrood and Cardiff party politics play no part in the consideration of complaints. Although in 2010 the Committee recognised the need for Stormont to adopt the same approach¹⁰ that has not happened. This year, as noted at paragraph 3.2 above, a Petition of Concern, supported by DUP Members, was used to prevent the imposition of a sanction on a Member who had been found by the Committee, following my report, to have breached the Code. Regrettably this was not the first occasion on which a Petition of Concern had been used to prevent the imposition of a sanction on a Member who had been found to have breached the Code. In 2014 the SDLP supported a Sinn Fein Petition as a result of which no sanction was imposed on Gerry Kelly MLA for his admittedly criminal conduct at a parade the previous year.¹¹ Such an overtly political approach to ethics cannot but tend to undermine confidence in the complaints process.

⁹ Section 33 of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 makes it unlawful for the Commissioner to publish this information

¹⁰ Report on the Committee Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the Appointment of an Assembly Commissioner for Standards paragraphs 31-33. NIA 40/09/10R

¹¹ Official Report (Hansard), Tuesday 17 June 2014, Volume 96, No 4, page 1. column 2

6.4 If the undertaking given in the Protocol on the use of the Petition of Concern set out in Fresh Start Agreement is honoured, it would seem that there will in future be little room for use of a Petition of Concern in relation to a complaint.¹² However, to prevent any potential abuse of the process and to boost public confidence I believe consideration should now be given to an express provision, perhaps in Standing Orders, excluding the use of Petitions of Concern in relation to the complaints process.

6.5 For the same reasons I believe that consideration should now be given to the composition and size of the Committee. At present it is comprised of 11 Members selected in the same manner as the members of other Assembly Committees. There are no lay members of the Committee. The decisions of the Committee to reject over 90% of complaints received as not admissible were undoubtedly correct. Yet these decisions tend to reinforce the perception that Members are marking their own homework and so to undermine public confidence in the independence of the process. Lay members are a vital part of most professional regulation bodies in Northern Ireland including those concerned with the conduct of solicitors, doctors and teachers. The House of Commons added three lay members to its Committee on Standards in 2013. In light of the success of that initiative, in September 2015, the composition of that Committee was changed to seven MPs and seven lay members.

6.6 At the National Assembly for Wales the equivalent committee, the Committee for Standards, has a membership of only four: one from each of the main Assembly parties. I am told that decisions are taken on their merit with party politics playing no part.

6.7 Whatever the composition and size to the Committee it is essential that there is an end to the practice of members voting on party lines rather than according to the merits of the complaint before them.¹³ Such a change could readily be made by the Leaders of those parties who vote on party lines within the Committee.

6.8 As the Speaker made clear the personal comments made about me by Jimmy Spratt MLA and Sammy Wilson MLA during the debate on the motion to impose a sanction on Mr Wilson for his misconduct have *'done significant damage to the reputation of the Assembly.'*¹⁴ There can be little doubt that they undermined public confidence in the complaints process. As the then Chair of the Committee Mr Spratt should have taken greater care before making such an attack based on information which he could readily have ascertained was totally false and which he must have

¹²12121212 Appendix F3 to the Fresh Start Agreement

¹³ During its consideration of the complaint against Sammy Wilson MLA the Committee divided on nine occasions. On each occasion only DUP Members voted in a way that was exculpatory of Mr Wilson. All other Members, whatever their party, voted the other way.

¹⁴ Official Report(Hansard), 30 June 2015, Volume 106, No 5, page 106 ,column 2 – page 107, column 1

known were likely to undermine public confidence in the complaints process. His unjustified personal attack tended to reinforce the perception that he and his party, the DUP, were more interested in ensuring that no sanction was imposed on his colleague Mr Wilson for his misconduct rather than dealing with the merits of the complaint against him.

6.9 As long ago as 2010 the Committee recognised that altering its composition by reducing the number of elected Members and appointing independent lay members could contribute to the aim of a Committee that was both robust and depoliticised.¹⁵ It reported that it had already started work on how it might appoint and hold to account independent lay members. I understand, however, that the Committee decided not to progress that work. Given what has taken place at Stormont and the experience at the Welsh Assembly and the House of Commons I believe that the time is now right for the Committee, the Assembly and the Party Leaders to give consideration to these matters with a view to increasing public confidence in the complaints process.

7. THE YEAR AHEAD

7.1 In addition to completing work on the outstanding matter identified in paragraph 3.1 and considering all new complaints received I will now be able to complete my work on new material for the Assembly website. I intend also to develop new simplified guidance for those who wish to make a complaint and for those Members against whom a complaint is made. I will also publish a form which those making a complaint may find it helpful to use. I shall co-operate fully with any fair process the Committee establishes for dealing with complaints against the Commissioner.¹⁶

¹⁵ Report on the Committee Inquiry on enforcing the Code of Conduct and Guide to the Rules Relating to the Conduct of Members and the Appointment of an Assembly Commissioner for Standards, paragraphs 33-34 NIA 40/09/10R

¹⁶ Three witnesses in the Basil McCrea investigation have made complaints about my conduct of the investigation. Curiously the Committee decided to complete its consideration of the complaints against Mr McCrea before deciding whether or not these complaints had any merit.

8. ACKNOWLEDGEMENTS

8.1 I wish again to place on record my sincere appreciation to all those in the Assembly Secretariat who have assisted me during the reporting year. Paul Gill, the Clerk of Standards, Keith McBride who succeeded him and Sheila McCaughley, my Personal Secretary, undoubtedly deserve particular mention for all the support and assistance they have provided.

Douglas Bain CBE TD Advocate

Northern Ireland Assembly Commissioner for Standards

8 June 2016