



Northern Ireland
Assembly

Committee on Standards and Privileges

OFFICIAL REPORT (Hansard)

Review of the Code of Conduct: Northern
Ireland Ombudsman

30 April 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Mr Colum Eastwood
Mr Fra McCann
Mrs Sandra Overend
Mr Mervyn Storey

Witnesses:

Dr Tom Frawley	Northern Ireland Ombudsman
Ms Marie Anderson	Northern Ireland Ombudsman's Office

The Chairperson: Welcome back, Dr Frawley. I suppose that is the appropriate greeting.

Dr Tom Frawley (Northern Ireland Ombudsman): Yes, you should never revisit the scene of the crime, Chairman. *[Laughter.]* Sorry, I should not have said that against myself.

The Chairperson: Whenever you are ready, you can brief us. You are obviously aware of what we are doing, and you will perhaps have more knowledge of the previous code than some of us in the room will have. We look forward to your contribution.

Dr Frawley: Thank you so much. Marie will join me, Chairman. She is my deputy. In fact, I am absolutely astonished that she allowed me out alone. She is striving to get the car parked and will be with me in a moment.

With your permission, Chairman, I will make a few opening comments, and then we can hopefully take questions that members may have. Chair and members of the Committee, thank you for the opportunity to address the Committee on the review of the Assembly code of conduct and the guidance on the code. In my note to the Committee, I explained that I had read the issues paper and proposed only to deal with what I would call the headline issues that concern me when considering the review of the code and guidance. As indicated in the note, I intend to address the issues in more detail in the formal and final response to the Committee's consultation, which, as you know, closes on 16 May 2014. As outlined in my briefing note, I remind the Committee that, as we meet to discuss the code today, there is a parallel consultation initiated by the DOE on the proposed mandatory code of conduct for councillors — the local government code. That consultation is closing today. Therefore it is important, I would suggest to the Committee going forward, that these two critical strands of work should converge and, as far as possible, be based on similar ethical frameworks to ensure public

confidence in elected representatives at all levels of our democracy. It is my view that any divergence could give rise to public criticism and mistrust.

In approaching the review of the code, I respectfully suggest to the Committee that it might be useful to reflect on a quotation from Sir Christopher Kelly CBE in the Committee on Standards in Public Life (CSPL) publication 'Standards Matter', published in January 2013. In that publication, he said:

"High standards are a public good. They improve predictability and promote better outcomes for society, increasing public confidence and the functioning of the economy."

As it undertakes this important task, the Committee should, I believe, also be mindful that it has been almost 20 years since the Nolan principles were first established. As you will remember, they were developed against a background of real difficulty for the Parliament at Westminster, when the need for the public to have its trust in institutions generally, and particularly the Westminster Parliament, had to be restored. It is important to take stock of that experience and, indeed, of the resulting experience over the two decades of establishing and regulating ethical standards.

One wants to acknowledge that much has been achieved. I suggest that a revised MLA code should build upon and take account of all of those previous experiences. I need not remind Committee members of the challenges that you have negotiated, as a Committee, as you have examined and, in a sense, investigated the conduct of Members since the inception of the Assembly. Indeed, in so doing, you have established, I suggest, a set of precedents and principles and rules that comprise the current code, which came into effect in October 2009.

Then, as now, standards of behaviour matter to MLAs, their peers, the Assembly and the citizen at large. Again, quoting from the CSPL publication on the need to build a culture of high standards:

"the leadership of some organisations has been seen to have failed to inculcate a culture of high standards in tune with public expectations."

I therefore urge members of the Committee to ensure that a revised code is in tune with public perception, and that the highest standards continue to be your ambition.

You will be aware, Chair, of the recent resignation of an MP as a result of a damning report from the Standards Commissioner at Westminster. Whatever amendments are brought to the existing code, I consider that they should aim to objectively secure the trust of the public we are all here to serve. I do not underestimate the challenge and responsibility that the Committee bears to ensure that public trust in our elected representatives and the Assembly is maintained. It is important, therefore, that a revised code should provide for clear and unambiguous rules, but also standards of conduct that must be honoured. If the MPs' expenses scandal has taught us anything, it is that rules alone are not sufficient to regulate behaviour.

I am happy to take any questions or to expand on my comments if that would be considered helpful.

The Chairperson: Thank you very much. On the first issue that you raised, about the code of conduct for councillors under the new council regime, we understand — not least because the Chairman of the Environment Committee is on our Committee — that it is hoping to get that code through before the council elections at the end of May. You talk about the importance of those two codes converging. Why is that the case? We already have a number of different codes to determine the behaviour of elected representatives at different levels of government. So, why should the code of conduct for our new councils in Northern Ireland be closely aligned to the code of conduct for MLAs? That is aside from the MPs, who are obviously subject to the code of conduct at the House of Commons or House of Lords. Why should we have more convergence between MLAs and councillors than, perhaps, with MPs or Lords?

Dr Frawley: Fundamentally, if I may put it like this: what is right is right. At the end of the day, the principles that apply to one should apply to the other. The public would look with some disbelief if a particular conduct or behaviour were acceptable in this place and yet found to be unacceptable in another place. I am talking about general behaviour and conduct; beliefs are obviously different, emphases are different on some occasions. However, the standards against which people should be judged should be common.

That is particularly important in a jurisdiction the scale and size of ours that they are closely aligned in terms of both the party alignment and configuration, and equally, then, the judgements that are made. Our newspapers may move to a local authority page and an Assembly page, but I think that these stories are told across and beside each other. I think that you could therefore argue that as the senior house, so-called, the Assembly might want to set the standard for others. So it may even want to exceed the standards that councillors might have, because it is clearly where the law is made for this region. I think that it would be very hard to understand how a standard of behaviour in the Assembly would be judged to be acceptable by the Committee and an equivalent standard in a council setting would be considered to be unacceptable. I think that the public would find that difficult. I am not saying that it will always be easy, because you will have to judge each case on its merits, but I think that it is very important for you to be aware of the circumstances that would apply elsewhere, and vice versa: the judgements that you make could well have major implications for those other settings as well.

That is a personal perspective, Chairman. You may take a different view and feel that the nature of the work, the product and the content are different and, therefore, you should act to a different standard. That is your choice to make. However, at the outset, I feel that it is important to look at convergence. That would be my aspiration.

The Chairperson: For what it is worth, I think that it is surprising that the Committee was not asked about the changes to the code of conduct that we may be implementing when the Department decided to have its draft code of conduct for the new councillors. I think that it would have been useful if it had done that at an early stage, but perhaps that —

Dr Frawley: I am sure that that is a question that you might want to put to the Minister of the Environment, Chairman.

The Chairperson: I am not sure that it was a question; it was more of a comment. Hopefully, that will be done through one of our members.

One of the other comments that you made was about ensuring that we are in tune with public perceptions. Obviously, much of that is driven by the media and the newspapers. I recall, when you were Interim Commissioner for Standards, newspaper articles were not enough on their own to substantiate a claim, and correctly so. If we were to write our revised code of conduct based on public perception, is there a danger that we would do ourselves a disservice? As we all know, the perception of politicians is very different to the reality, particularly in the Assembly.

Dr Frawley: Chairman, I would not, in any way, suggest that you should base it on public perception. What I am suggesting is that you should be aware of public perception. I think that it is for the Committee to test the validity of those perceptions. However, those perceptions are very powerful, and I accept entirely that they can be shaped by the media on occasions and some issues can be exaggerated while others, equally, can be understated. You then have to make an objective assessment.

I suggest that it is also important that the public mind as reflected in the media is no longer necessarily the public mind but something that you are aware of and that is taken into account. Having considered that, you may well make the judgement that it is not something that you consider to be fundamental nor, indeed, that you consider accurately reflects the public mood at a particular time. Notoriously in Northern Ireland, I often hear people say, "I read that paper to confirm my prejudices." In that sense, our media potentially represents stories in particular ways, as well. So, there is not one clear view, but nevertheless I think that it is important to be aware of that as a sense of the public mind at any one time.

The Chairperson: On the aims of what we are trying to do with the review of the code, we are perhaps trying to separate the aspiration part from the enforceable part. You and all members of the Committee will be aware of how difficult it is to judge by the aspirational language in the code. You have indicated some concerns about that. Would you care to comment on your concern about the separation that we may be suggesting?

Dr Frawley: It is always clearly tempting to strip issues down to rules. As I mentioned in the final part of my initial remarks, what we found with something like the MPs is that you get rules and people will follow rules, but actually there is an expectation that the context and the emphasis taken in relation to

a rule also needs to be understood. So, there is an aspirational side to this, and people want to demonstrate the highest standards of public conduct and behaviour.

As the elected representatives, you are the exemplars. There are some who would say that, in that circumstance, you become, if you like, the conduit for the judgement of how society itself should be or how it should behave in being respectful towards each other, towards different groups of people and so on. In the cut and thrust of politics, that cannot always be attained. However, I am always struck — this is me having a cheap shot — by how civil you are to each other in the corridors. I then sit down at 11.20 pm on a Monday and a Tuesday — it is a rather sad reflection on me — and watch an incredibly intense exchange going on between two people who, the day before, I had observed being very civil. In that sense, I understand that there is an element of exaggeration to the political exchange in the formal exchanges. When you come to make that judgement here in this room, of course, you have to be able to stand over those judgements, and they have to be robust and rigorous, but I also think that you come to it with a certain personal view of what good conduct is and what the test should be. I think that that is often informed not just by the rules but by the aspirational aspects of what we would like to see, as a society and as a community.

Ms Lo: That is very interesting, Tom. I recall the last session — and I am not going to go over too much of it — when, to me, the complaint against two members of a Committee who were questioning someone who came to give evidence —

The Chairperson: I remind members that we do not want to get into the specifics.

Ms Lo: No, I just want to use it. Clearly, it was deemed not to be a breach of the code. You talk about respect, but, to me, there was a lack of respect and a lack of courtesy to the witness, but it seems that we cannot tie it down to what code the two members have breached. As you said, it is, in some ways, aspirational; it is the spirit of the code rather than the rules. So, when that happens, how do we enforce it? How do we say that a member has breached the code when you cannot say what code it is?

Dr Frawley: At the end of the day, there is a specific issue around Committee meetings and how they are managed. That is a very difficult issue. People come here to give evidence — to be tested on their responsibilities or, for that matter, their performance. That can become quite a challenging and testing environment. As I said in the note, one of the key areas is the chairmanship of a Committee and how that is managed. The spirit in which a Committee undertakes its work will, I think, often be reflected in the atmosphere around how witnesses are engaged with. That becomes important.

This is going to sound incredibly cheeky and impudent of me, but, on one level, I think that we could sometimes be better trained in how we chair meetings. I think that we could be better prepared and equipped for those roles. Everyone thinks that they come here as the finished product. I would argue that there is work to be done in that area. If you do that work, you do what you do in most areas, even in the so-called multinational global companies: you have a chairman to deal with scenarios where there are difficult personalities and people behaving in a particularly aggressive way — sometimes for effect, and sometimes because they do not know any better and are innately rude anyway. I do not believe that there is any place for rudeness. On the other hand, I have no difficulty with robustness or an expectation of an honest, complete and comprehensive answer. If somebody is being evasive or avoiding an answer, it is perfectly reasonable for a Chairman to support a question or to reinforce a question by saying, "We really need this question answered."

In the sadness that is me, I have also watched encounters in some Committees where witnesses have come to be aggressive and to demonstrate that they are not going to be intimidated by you people in any way. I think that that in itself provokes; the human condition is quite capable of behaving in that way as well. However, while it might not necessarily be possible to make a finding given certain circumstances, it might be a reminder to say that a meeting might have been dealt with in a different way. Sadly, the outcome is that someone feels that they have not been treated fairly.

I have dealt with some very serious complaints, as Marie will confirm, about bullying and harassment in public places and in work. It is very hard for elected people to stand up and say, "This bullying and harassment is completely unacceptable". I have representations from Members of the Assembly about bullying and harassment of constituents who work in different settings in the public sector. They rightly say that that is completely unacceptable in schools or wherever it happens, but is permissible in this environment. I think that is irreconcilable. That is not a very helpful answer and is probably very wordy, but it is a complex issue. There is a training issue and a development issue, and there is a

briefing of witnesses as well. You might say I talk too much, which I probably do, but how often do we get an A4 page that says, "This is what is expected of a witness and this is the commitment that the members will bring to their exchanges with you"? That would be a beginning for that relationship so that you can assume this is the way it will feel because we want this place to be as fair as it can be. That is my view, Chairman.

The Chairperson: You said that it may not be possible to make a finding. Do you mean in terms of whether or not a Member has breached the aspirational language in the code?

Dr Frawley: Absolutely.

The Chairperson: Is that not a reason why we have found so much difficulty with some of the aspirational language: because it makes our current commissioner's job much more difficult? You will understand that from having the role before. Through our code, we want to make it as easy as possible for the commissioner to determine whether or not somebody has breached the code.

Dr Frawley: Sometimes things are complicated. I can feel the glare on my back as I speak. It is easy for me to say this now. You cannot strip things down so that they are black and white. Life is not like that. It is complicated. Sometimes I cannot reach a definitive decision, but there is clearly a need for some clarification or for some elaboration on how a situation was arrived at. Those situations do not happen in a minute. You have attended those meetings before, and you can sense when it is all moving into a different atmosphere and a different place. A Chairman should sense that too, and adjourn or whatever. This is all trading. Equally, when you are making a judgement, you might be able to say, "I cannot say definitively that that code was breached, but certainly there was an atmosphere and a general demeanour on the part of individuals involved that is not helpful and does not make for constructive dialogue. That may need to be addressed."

I know that you now have a Chairs of Committees forum and so on. There are different forums where those issues could be addressed. The individual might not get the definitive answer that "This man is guilty of this" or whatever, but they would get a sense that the matter was going to be addressed because that atmosphere was not how we would wish it to be.

Mr Agnew: Thank you, Tom. I have a few points that I want your opinion on. You said that politicians are the exemplars, and if —

Dr Frawley: I did not say that they are; I said that they should be.

Mr Agnew: They should be, sorry. I will trust you on that; I am sure you are right. If we start with that principle, do we not set ourselves up to fail, and actually fuel public mistrust of politicians?

Dr Frawley: The alternative is to say that we are not the exemplars and how we behave does not matter at all.

Mr Agnew: If we set ourselves aspirations over and above what people expect of themselves — we are people and, at the end of the day, getting elected is a popularity contest. It does not make you some kind of saint.

Dr Frawley: I am not coming here to seek canonisation for any of you. When I use the word "exemplars", I mean that you start to establish a standard of behaviour. Let us look at these seven principles. In the main, I would absolutely say without any difficulty that the majority of the 108 MLAs come to this task with integrity, honesty and openness and a desire to do the very best they can for the people whom they are elected to represent, and all of those above. Then, things happen or circumstances arise where someone wants to complain, and one tests.

I am trying to say that if you approach this task of the code by setting the standard that you wish to achieve, some of it will inevitably be aspirational. However, to say that you would want to just have a mediocre standard and you just want to be average and get through the day or survive until the next election or whatever it might be — that does not give the stretch that this legislature should have of itself. I have said before — I remember saying it when Carmel Hanna was in the chair, which shows how long this has gone on for — that you are the conscience of this organisation, for better or for worse. You are the guardians of its integrity and you are the one forum to which, across all parties, people arrive at to look for their issue to be properly and fairly heard and addressed. If you say that

that is aspirational, that you are not perfect — no one is perfect — it is all right for you to do that because you did not break a rule as far as anyone can see.

The Chairperson: To take on Steven's point, if we had a part of our code that said that we had to treat each other with respect and use respectful language and all that, and I got particularly heated in a debate in another forum — say, in a town hall meeting with another Assembly Member — and someone felt that I was not treating my opponent with respect, they could make a complaint because I was clearly there as an MLA acting in my capacity as an MLA. The commissioner of the day might say that, according to the code, I had breached that part of the code that says that I have to treat my colleagues with respect. Do I not have a legal recourse, then, to say that under freedom of speech I can say that? Does that not undermine the aspirational part of the code?

Dr Frawley: Marie, do you want to answer that? It is a very difficult question. *[Laughter.]*

Ms Marie Anderson (Northern Ireland Ombudsman's Office): I think that freedom of speech in itself is aspirational, but I do not think that the public would have difficulty in assessing when there had been a lack of an opportunity to freely express. These are difficult areas of balanced judgement. At paragraph 3.5 of the note, the ombudsman has already outlined the fact that, when it comes to freedom of speech, you are elected representatives who are there to put forward the voice of the people who you represent, and no one would deny that. Nevertheless, I do not think that someone who is bullying or harassing an individual necessarily gets into the freedom of expression arena. Those are two different things.

Some of this is around remembering that, in the context of behaviour, if you like, the victim's perception and feelings about that exchange are important also. That might not take you immediately to a judgement but it is important to say, because we know about this already in equality law and established jurisprudence on bullying and harassment. It is not only about the individual who expressed a view; how the victim feels must also be taken into consideration. I would assume that this Committee and the commissioner would take that into account when deciding any issues.

Mr Agnew: I suppose, then, the challenge is how we reflect that in the code. We have certainly been heading towards an idea of having aspirations and rules and that separation. I think, Tom, you expressed some uncertainty about that approach. There is an issue with bullying and harassment; we have mentioned how witnesses are treated in Committees but it is also about how Members treat each other. In my relatively brief experience of the Committee compared with yours, Tom, we have never been able to enforce anything around the issue of respect, because it comes back to free expression and whatever. How could we reflect it in a meaningful way? I am not saying that enforcement is everything, but it is certainly a large part of what we do.

Dr Frawley: At the end of the day, the enforcement bit of it is always an issue. In my findings and conclusions of the reports and investigations I do, I cannot always give to the complainant what they want, which is someone's head on a plate. I can honestly say, if I were to survey the attitudes of complainants to my office, that the people who are really happy are the people I found in favour of; the people who are completely dissatisfied are the people I said did not have a case. That is the nature of these situations. On occasions, without making a finding of a definitive breach of the code, one can certainly indicate, "Although that behaviour didn't meet the standard of a breach, it's certainly not behaviour that we would condone or accept or believe is acceptable, and we would ask you to look at that behaviour and how it impacted on the atmosphere of that meeting." If you are in a Committee meeting and you are trying to seek advice, information and clarification, I absolutely would say to you that, once that atmosphere arises, all the clarity and information disappears and we get into defensive positions, and so the whole purpose of the process is lost. It is about how we draft letters, outcomes, reports, findings and so on. They may not necessarily give a definitive decision about a breach of the code, but they might well say, "While that did not constitute a breach of the code, the general atmosphere and the demeanour you adopted was not helpful or conducive, and we would ask you to reflect on that in terms of further involvement or contributions to meetings, etc."

The cynical politician will tear that up and say, "That's not worth the paper it's written on". However, over time, you build up a case file and say, "Here we go again". There is a public audience for everything you do. If people push the line and behave in an unacceptable way all the time and nothing ever happens, there is the sense of it becoming bullying behaviour. There is no consequence: they seem to be able to do whatever they like. That is hugely damaging. You set a standard that you might not be able to say is a breach, but you certainly say, "We'd like to see that circumstance improved".

The Chairperson: Anna wanted to come in on the back of that point.

Ms Lo: Thank you, Chair, for your indulgence. I am very glad that you said that, Tom. Referring back to the previous case, it seemed to be dismissed because it was not admissible; it is not a breach of conduct, but there is no going back to say to the person complained about that perhaps he has not breached the code of conduct, but it certainly was not the best behaviour we would expect. It is kind of like a halfway house rather than for it to be totally dismissed as not admissible.

Dr Frawley: I would hate for the Chairman to have that opportunity to be showing yellow cards and red cards, and, in the case of the GAA, the black card.

The Chairperson: I would not rule it out. *[Laughter.]*

Dr Frawley: It seems that one of the outcomes that you might look at — this is another way to look at this — is whether we can just take reports and maybe develop them a little bit without making a finding. Equally, it might be completely beyond the pale to suggest that we should propose that the Chairman of that Committee should speak to that individual and say, "Disappointing. Concern. There is a public out there observing us, and that does not help our standing with the public. No more; no less, but we have noted it". That would mean that there is a bit of a follow-up and a comeback and a dialogue ongoing. When it comes to the Chairman of Committee meetings, that debate can go on, so there is a constant output from the Committee; it is asking for behaviour to be addressed, changed or altered without definitively saying, "There's a sanction on you for doing that". You might well say to me that there comes a point when that sanction might be applied, but, on the other hand, maybe it will not be applied. I do not think that it is all about the rules being broken, therefore there is a sanction. There have to be some other points along the gradation as well.

Ms M Anderson: I think back to the point about how, in a code, you would have aspirational but nevertheless important principles of standards of behaviour and, alongside those, a set of rules. The Committee, in its issues paper, referred us to the CSPL document 'Standards matter', in which it states — it is a position that the ombudsman endorses — that the principles and the rules are complementary. If you set a code of ethics that is rule-based only, you will never be able to end that list of rules, because in its context, as society moves, standards change and public expectations change, you will always be either adding to those rules or changing them. There needs to be some underpinning of the rules.

I go back to the example that Tom addressed in his opening comments, which was the MPs' expenses. The criminal activity and those MPs who were found to be guilty of fraud apart, many of them, at the beginning of the outing of the MPs' expenses issue, would say, "But those were the House of Commons rules. I faced those rules". However, if you ask a member of the public whether simply producing a receipt, which complies with the rules, for an expensive pen or a second house is enough, a member of the public would say, "No. I am shocked that that is how our public money is being spent. I am shocked and that is because I require openness, transparency and accountability for public money". I am not suggesting for a minute that it is an easy task. It is not, or you would not be asking us here to give evidence. However, I think that a rules only-based approach is an impossible set of rules that would need to be updated and that would actually miss an opportunity to raise standards.

The Chairperson: Obviously, in the paper where we set out where we are heading, we have a catch-all of bringing the Assembly into disrepute. Is that enough to provide comfort to you? Even if somebody has stuck by the letter of the rules, is the catch-all phrase of bringing the Assembly into disrepute enough to address the concerns that you have just outlined?

Dr Frawley: I suppose, expressed in the rather stark way that you express it, Chairman — for someone who loves words like I do, that would never do — I think that it needs to be more than that. That is the final catch-all, but I think that, along the way, one does need to talk about standards in a way that is aspirational by its nature, because only by having an aspirational dimension to it can you see that constant seeking after improvement being delivered. That is a very slow process, and sometimes it is two steps forward, three steps back, but that is where I would like to see the aspirational side, not just some stark set of rules and, finally, the catch-all of, "By the way, if we do not get you on any of the above, we will get you on bringing us into disrepute", which seems to me to be very minimalist.

Mr Agnew: Taking us on to a different issue, which is probably a personal favourite of mine, when is an MLA an MLA? It is quite clearly defined in the code at present. I personally think that it is quite narrow. It goes back to that idea of what the public expect of us. They do not just expect us to meet those standards when we are in this Building. You have adjudicated over many complaints. Have you seen a problem there with the scope of when we are judged to be acting in our capacity as Members?

Dr Frawley: I do think that there is a line to be drawn between public and private life. That is the first thing. I think that every MLA is entitled to their private life and their family life in that sense. That is very fundamental. On one level, it sounds difficult, but actually, in most of those instances, it is very clear that that impinges on your role as an MLA. The problem I have quite often — this is where I am supportive of the MLA and the privacy piece — is that the media intrude into private life a lot, particularly when it comes to family. I have particular concerns about the teenage children of MLAs and so on. Thankfully, it has not happened a lot, and, in some ways, our media are much more responsible about this than maybe the national media. There are key areas where I think that protections are needed for MLAs as distinct from the other way around, where there needs to be more openness or more willingness to treat every aspect of an MLA's life as public, which it is not.

Mr Agnew: What about overtly political events that are not necessarily Assembly events? I am referring to rallies, protests and even party conferences.

Dr Frawley: Party conferences have a life of their own. I would not like to try to adjudicate on those. I suppose that, in a sense, by its nature, a party conference's core events are political moments and political events and that, therefore, what goes on in those arenas is part of an MLA's role. They are, to the party and to the external world observing that event, acting as elected representatives of that particular party. So, I think that that is one. I think that the protest is a more challenging type of issue because there are circumstances, no doubt, where an MLA would say that they are there in a private capacity, that it is private and personal to them and that they want to take a position on it in that personal way. Again, perception becomes the important aspect of that and then it is left for maybe the commissioner to judge whether that separation is reasonable, fair and defensible. I think that most of these issues are not as difficult as they look. There are certainly a number that are very difficult.

Mr Agnew: I have one final question, Chair. Thank you for your indulgence. On the matter of how we deal with complainants, from the complainants' point of view, we see the letters and never see the complainants. It is quite a formal judicial process. The complainant is asked, "Please tell the part of the code that you are basing your complaint on, and please give us all the evidence." The complainant will then be told whether their complaint is admissible. Do we give enough support to complainants?

Dr Frawley: Again, I think that that is a judgement call. With most of the complaints that I dealt with when I was in the interim role, I did not sense that complainants were in any way vulnerable or lacking in capacity or ability to articulate their complaint. That was certainly my sense. There may well have been people out there who would have liked to make a complaint but who did not feel confident enough to make it. That is a different issue entirely. That will arise in my work every day. There may well be people who have been failed by the public service who lack either the capacity or the confidence to make the complaint.

One of the things that has come up is interesting. You will not have been aware of this, but Marie has been following it very closely for us. The Public Administration Select Committee (PASC) published a report last week in London about the parliamentary ombudsman saying that there should no longer be any requirement to write a complaint and that a person should be able to make a complaint in whatever form they wish, be it verbal or by SMS, text or email. The way of controlling complaint submission by saying that it must be written and that you must describe the injustice and all the evidence is a huge barrier to complainants. You might want to think about that. It opens up a whole series of issues.

One of the big issues, I think, is geography. If you are out in the Foyle constituency or the Fermanagh and South Tyrone constituency or wherever, getting the help to you might be much more difficult than someone who is living close by in Dundonald coming to make a complaint. So, does that make the MLA in Dundonald much more vulnerable to a complaint than someone who is out somewhere else at a distance? There are lots of issues that you need to consider on that, but, in a modern world where all communication is instant and so many of our young people have real facilities with these

technologies and all of the so-called channels, you may need or want to look at how people submit complaints.

The Chairperson: Would you still be of the view that somebody should substantiate their complaint?

Ms M Anderson: That is very important. As I listened to Steven Agnew's question, I was thinking that sooner or later, regardless of how you communicate the initial dissatisfaction with the conduct or behaviour, somewhere along the line that has to be recorded. You said, Steven, about being given all the evidence. It is quite important — we are grappling with this as the local government standards commissioner piece unravels — in admissibility terms, that there is some evidence to substantiate a complaint in order to manage spurious or vexatious complaints. Otherwise, people are accused and left standing to defend themselves.

Mr Agnew: The type of thing that I was alluding to was the case of somebody making a complaint that we might think had some merit, but they do not refer us to a specific aspect of the code. I do not necessarily think that that is the complainant's job. We would not expect that in a court. We would not ask the person to please tell us which law has been breached. Should someone be burgled, we do not ask, "Can you point to the law?", and they say, "No". Then we say, "Sorry". I do not think that we —

Dr Frawley: It is like what we have in our current model, in which we ask the complainant to please indicate the injustice they believe they have experienced. To most ordinary people "injustice" is something that is felt; it is not that they can tell you what paragraph and sub-paragraph of which Act was broken. So, you are right. Should there be a willingness to help and should the language used ask for a little more clarity or a little bit of refinement of the complaint? Probably yes, rather than saying, "I'm stepping back and, until you come up with an answer, you are getting no help from me". There is, I think, a need to engage a little more constructively.

Ms M Anderson: I think that you used the word support. Perhaps, the issues are around accessibility, ease of making a complaint —

Mr Agnew: Not putting up barriers.

Ms M Anderson: Individuals might also get support from Citizens Advice or others. Information is important, so it should be very clear on the Assembly website how to make a complaint or otherwise. Such information should be available to complainants. So, there should be accessibility, information and, I suppose, a degree of flexibility in approach, as Tom said.

Dr Frawley: The other thing to say on that is that one of the great problems for my own office is young people. Young people do not complain. My assumption that they therefore have nothing to complain about is defeated over every evening meal. So, again, how do we reach those people? Part of it is to make ourselves more accessible. I spent this morning with a huge advocate for deaf and hearing impaired people. Again, their lives are limited and public bodies are not good at engaging them. The group that I feel most significantly concerned about is learning disabled people. Tonight's 'Panorama' will highlight the vulnerability of elderly people. So, there are vulnerable people who, even should they wish to complain, would have great difficulty engaging with a complaint.

Mr Storey: Thank you, Tom; good to see you again. You said that compliance with the code should apply not only to Members but, where appropriate, their staff. Where and in what way would that apply beyond the current legislation governing the relationship between the employer — namely the MLA — and the employee — the member of staff?

Dr Frawley: In so many of the instances that I was thinking of in making that point, the employee is acting on behalf of the Member. The assumption is that they are acting on the direction of the Member. They may well not be; maybe they are acting completely on their own initiative. If that is the case and they have caused offence, I think that the Member should be aware of it. Now, the Member may say, "Well, you're very thin skinned, and if that caused you offence that's your problem". However, in a sense, the Member is then picking up the issue and saying, "I have no problem with what that person did". I say this about political advisers, as well as staff who work in your constituency offices and offices here: they only have a status and a standing because they work for you. They have no standing beyond that, other than as employees. So, when they speak, take an action or a decision, or write a letter or a response, they are doing it on your behalf. Other than that, they have no

authority. That, therefore, makes you party to whatever failure or failing that they have allegedly been involved in.

Mr Storey: You are really going into another set of rules or regulations on employment law. Do you think that there is scope for an appendix that can easily sit for that regime, which says that, while you have a contract of employment, you will be subject to all the rules that apply according to the law of the land, but also that you will be subject to the Members' code of conduct, as set out in whatever paragraphs?

Dr Frawley: I think that many employing authorities have those arrangements. Look at trusts and other major employers: there are house rules and internal arrangements that apply to people, as well as the fundamentals of the legal arrangement that exists between the employee and employer. To return to the briefing — I do not want to overdo this, and it should not be for this Committee alone — it seems to me that, for staff working in this Building and staff working for Assembly Members, there needs to be guidance, training and induction. What is the induction like when people come into a constituency office? What is the training? What are the ground rules on health and safety, equality training and all that goes on and should go on? In my view, it gets done once and never again; everyone thinks, "We do not need to do any of this stuff", but, actually, yes we do.

So, there are other issues beyond the rules. There are issues about how we train and equip people. The great strength of Northern Ireland is, in my opinion, its people. I would say that in any company. Despite our worst and darkest moments, which we are capable of having, most people who come here say that it is the openness, friendliness and willingness to engage the stranger that makes us different. That is a strength. I argue that being respectful, concerned for others and willing to go the extra yard is something that you would want your staff to live out every day because it then reflects on you. That is what it says about Mervyn Storey's office or Alastair Ross's office. So, I think that that is important.

Ms M Anderson: If you look at other sectors, you see that there is an increasing tendency to have the requirement — the contractual obligations that an employee will have under a contract of employment — and a code of ethics alongside it. Think of the members of the PSNI: they have a code of ethics, but, in addition to that, they must not breach the criminal law. Think of senior civil servants: they have a code of ethics; in addition to that, they have legal obligations as an employee of the NICS. Tom spoke about the two decades following on from the Nolan principles, and that is one of the areas in which there has been a development, in increasingly rolling out codes of ethics across sectors. That is something to be welcomed.

Mr Boylan: I think that all the questions have been asked by now. Thank you very much for your presentation. I have just one thing to say. I think that you summed it up, Tom, in paragraph 4.2. It is about how you started out and how you finished. You said:

"I depart from the Committee's stance that only a breach of the rules can provide the basis of a complaint to the Assembly Commissioner."

And then you end up by saying that new circumstances and situations continually arise. I think to myself that, obviously, we cannot have a definitive list because clearly new situations arise all the time. Steven touched on that. I was just thinking of all the answers that you have given. One thing that we have not really considered in all of this is how it looks from the public point of view. If we are going to get to the point where we have a good standard, both in principle and in the code of conduct, we have to learn from the complaints made through engagement with the public. As part of the process, I know that you have encountered some of the issues in chairing meetings and all that. In my time, a lot of the complaints — even though most of them have been inadmissible or whatever — are like small case studies of what is coming forward. I wonder how we can better that process or how it could influence our final document. Is that a reasonable question?

Dr Frawley: One of the things is that part of this is resources and part is capacity. I do not think that this process is ever complete. It is no different in my office. My worry is always that we produce great policies, fine documents and principles, and, once they are published and circulated, that is it finished; we have no more to do and our work is done. In fact, we need to continually work at that and to find ways of picking up on the learning from different circumstances. My office does huge, detailed investigations, as some of you will know, and in them I make extensive recommendations. I am terribly smug about what a wonderful finish that was, and yet I never know whether those changes are implemented or ever happen. Did anyone pay any attention, or did the public body just say, "Thank God that is over and we will not hear from Frawley for a while."

There are big issues in all systems about how, having reached conclusions and made recommendations, we ensure that the changes that we proposed are lived out by people. We would like to be able to test that. That is one of the things that is important in the work that you do. As I have always said, the Assembly and the whole devolution dispensation is a project, and, therefore, what you want to be is the exemplar. I go back to that word again. Therefore, when we have cases and outputs, we must ask — it is not for you to do; maybe it is for the Assembly Commission — how we take that learning and make sure that it is communicated to staff, individuals and Committees, if that is what it is related to, so that we demonstrate that we are a learning organisation, one that wishes to evolve but also to improve, as far as it is possible. Without spending our lives navel-gazing and reflecting all the time, we should take things forward. Where we find that there are difficulties, problems or failures, we should address them and continue to be proactive in doing so.

Mr F McCann: My contribution is a comment, rather than a question. We live in an ever-changing world. Whether you are a Chair or a member of a Committee, training is essential. Events change, so you have to change with them and learn how to deal with them. I do not think that, in the running of an advice centre or whatever, the training of staff is any different. We live in an era of ever-changing legislation. There is a responsibility on people who give advice to ensure that the advice that they give is correct. There could be penalties, for politicians or people who run advice centres, who give the wrong information.

All that having been said, to work in a place like this, you need a degree of flexibility to be able to deal with people. Not everybody is the same, not everybody requires the same bit of advice; and you have to give advice in different ways. However, you can ensure that the people who work with or are employed by you are trained to a level that allows them to do that. You spoke earlier about training. I was a member of Belfast City Council for 23 years, and every chair brought a different personality to the job. They each tried to do it to the best of their ability, but I believe that training enhances performance.

As for standards, conduct and a code of conduct, in many ways, we are all new to this level of political life. We are on a learning curve, and, hopefully, we will get there. We would all like to have the standards set as high as possible, but sometimes when you do that, you feel that you are not capable of reaching those standards and that it makes you a lesser person. A happy medium has to be found, and it goes back to the idea of aspiration, which was talked about. We must set a standard and work towards it.

Dr Frawley: Exactly. Thank you, Chairman.

The Chairperson: Does anyone else wish to ask a question?

Mrs Overend: I think that we have covered everything.

The Chairperson: Thank you very much, Tom and Marie. That was very useful.

Dr Frawley: Thank you very much.