

**Assembly Members (Independent Financial Review and Standards) Act
(Northern Ireland) 2011**

**Direction by the Committee on Standards and Privileges on General
Procedures**

In exercise of the power conferred by section 24(2)(a) of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 and Standing Order 69A(3)(c), the Committee on Standards and Privileges gives the following Direction to the Northern Ireland Assembly Commissioner for Standards.

1. Citation and commencement

- 1.1. This Direction may be cited as the “Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures) Direction 2021.”
- 1.2. This Direction shall come into force on 14 June 2021 and, subject to subparagraph 1.3, shall apply to all complaints or referrals received and investigations commenced by the Commissioner on or after this date.
- 1.3. This Direction shall apply to all complaints of breaches of the Ministerial Code of Conduct received and investigations commenced by the Commissioner on or after 22 March 2021.

2. Interpretation

2.1. In this Direction—

“the Act” means the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011;

“the Commissioner” means the Northern Ireland Assembly Commissioner for Standards established by section 16 of the Act;

“Commissioner investigation” means an investigation under section 17(1)(b) of the Act;

“the Committee” means the Committee on Standards and Privileges;

“complaint” means a complaint to the Commissioner that, at a relevant time, a breach of the Members Code of Conduct or the Ministerial Code of Conduct or both has occurred, and where there is more than one breach alleged in a single document each breach alleged shall be treated as a separate complaint;

“Day” means calendar day;

“Member” means a Member of the Northern Ireland Assembly, and unless the context otherwise requires includes a former Member;

“the Members Code of Conduct” means “the Code of Conduct” as defined in section 17(3) of the Act;

“Minister” means the First Minister, the deputy First Minister, a Northern Ireland Minister or a junior Minister, and, unless the context otherwise requires, includes a former Minister;

“the Ministerial Code of Conduct” means the Ministerial Code of Conduct set out in Schedule 4 to the Northern Ireland Act 1998;

“Referral” means a referral to the Commissioner made by the Committee or the Clerk to the Assembly under Standing Order 69A(5);

“Relevant time” has the same meaning as in section 17(3) of the Act;

The singular includes the plural.

3. Complaints

3.1. Where the Commissioner receives a complaint, he or she must, as soon as reasonably practicable after receipt of the complaint, notify the Clerk to the Committee and the person who is the subject of the complaint that a complaint has been received and the Commissioner must provide them with a copy of the complaint and any supporting documentation.

3.2. The Commissioner may investigate a complaint only where that complaint is admissible.

3.2A A complaint about any alleged breach of the Ministerial Code of Conduct which occurred before the 22 March 2021 is not admissible.

3.3. Subject to sub-paragraphs 3.6-3.11, an admissible complaint must—

- (a) be made in writing;
- (b) state the name of the complainant;
- (c) state the postal address of the complainant except where the complainant is a current Member;
- (d) name the person who is the subject of the complaint;
- (e) state the acts or omissions of the person complained of which are alleged to have breached the Members Code of Conduct or the Ministerial Code of Conduct or both;
- (f) state the provision or provisions of the applicable code or codes which each act or omission is alleged to have breached;

- (g) in relation to each act or omission complained of, be substantiated by being supported by sufficient evidence to satisfy the Commissioner that there is a prima facie case that a breach of the applicable code or codes has occurred and that the complaint is not frivolous or vexatious or otherwise an abuse of the complaints process.
- (h) relate to alleged conduct which falls within the scope of the applicable code or codes; and,
- (i) be made within six months from the date when a complaint about the alleged conduct could reasonably have been made .

3.4. If the Commissioner considers it necessary, he or she may conduct a preliminary investigation in order to determine whether a complaint is admissible under sub-paragraph 3.3.

3.5. If the Commissioner conducts a preliminary investigation under sub-paragraph 3.4, he or she must write to the complainant, the person who is the subject of the complaint and the Clerk to the Committee advising them that a preliminary inquiry has been commenced.

3.6. The Commissioner must make arrangements to facilitate any complainant who is not able to submit their complaint in writing, for example due to disability or language difficulties.

3.7. If the Commissioner receives a complaint which does not satisfy one or more of the criteria set out at sub-paragraph 3.3 but which would otherwise be admissible, he or she must give the complainant notice in writing—

- (a) Identifying the criterion or criteria which the complainant has failed to satisfy;
- (b) Specifying the additional information necessary to satisfy the criterion or, as the case may be, criteria; and
- (c) informing the complainant that if all the information specified is not provided by a date specified by the Commissioner (such date to be not less than 21 days from the date of the notice), the Commissioner will consider the complaint to be inadmissible.

3.8. If a letter is issued by the Commissioner under sub-paragraph 3.7, and the complainant fails by the date specified by the Commissioner to provide sufficient additional information to render the complaint admissible, the complaint to which that letter relates is inadmissible.

- 3.9. A complaint based on a media report is not substantiated within the meaning of sub-paragraph 3.3(g), except where the Commissioner decides that the media report itself establishes a prima facie case that a breach of the Members Code of Conduct or the Ministerial Code of Conduct or both has occurred.
- 3.10. Where it is alleged that sufficient evidence for a complaint is set out in the Official Report of the Northern Ireland Assembly, it will be sufficient for the complainant to submit reference to the relevant passage as sufficient evidence.
- 3.11. A complaint about a former Member or former Minister is not admissible unless—
- (a) the complaint is made within four weeks of the the person who is the subject of the complaint having ceased to be a Member; and
 - (b) the Commissioner, having due regard to value for money considerations and the nature of the complaint, believes that it is in the public interest for the complaint to be investigated.
- 3.12. Where the Commissioner decides for any reason that a complaint is not admissible, the Commissioner must—
- (a) give written notice of that decision to the person who is the subject of the complaint and the Clerk to the Committee, such notice to include the reasons for the decision; and
 - (b) give written notice of that decision to the complainant, such notice to include the reasons for the decision.
- 3.13. Notice sent to the complainant under sub-paragraph 3.12 must also specify a date (such date to be not less than 14 days from the date of the notice) by which the complainant may give to the Commissioner notice in writing that the complainant is dissatisfied with the decision of the Commissioner.
- 3.14. Where a complainant gives notice to the Commissioner under sub-paragraph 3.13 the Commissioner must refer the complaint to the Committee for further consideration.
- 3.15. Where the Committee decides that a complaint referred by the Commissioner under sub-paragraph 3.14 is admissible, the Commissioner must reconsider the admissibility of the complaint, having regard to the Committee's decision ('reconsideration').
- 3.16. On reconsideration—

- (a) if the Commissioner decides that the complaint is admissible, the Commissioner must investigate the complaint; or
- (b) if the Commissioner again decides that the complaint is not admissible, the Commissioner must write to the Committee and give reasons for that decision.

3.17. A complaint relating to an allegation that a Member has failed to-

- (a) register an interest;
 - (b) register a change to an interest; or
 - (c) declare an interest,
- must be dealt with in accordance with paragraph 9.

4. Discontinuation

- 4.1. The Commissioner must discontinue consideration of a complaint if at any time he or she is satisfied that a complaint is frivolous or vexatious or otherwise an abuse of the complaints process.
- 4.2. The Commissioner may discontinue consideration of a complaint if at any time if he or she is satisfied that-
- (a) the complainant has, without reasonable excuse, failed to co-operate with the Commissioner;
 - (b) the alleged conduct is not sufficiently serious to justify further consideration;
 - (c) the complainant no longer insists upon the complaint;
 - (d) the victim of the alleged conduct, who did not make the complaint, does not wish the complaint to proceed and the complaint relates to a breach of Rule 3 or Rule 15 of the Members Code of Conduct or any comparable provisions of the Ministerial Code of Conduct;
 - (e) the complaint repeats substantially an allegation that has already been considered by the Commissioner and no significant additional evidence has been provided;
 - (f) the complaint would more appropriately be investigated by the police or other public body; or
 - (g) it is not in the public interest to proceed with the consideration of the complaint.
- 4.3. The Commissioner may only discontinue consideration of a complaint under paragraph 4.2 with the approval of the Committee.
- 4.4. Where the Commissioner intends to discontinue consideration of a complaint under paragraph 4.2, the Commissioner must write to the Committee setting out his or her reasons for discontinuation and enclosing a copy of the complaint and all related papers.

5. Referrals

- 5.1. The Commissioner must investigate a referral in accordance with the terms of reference of the referral.
- 5.2. Where the terms of reference of a referral are inconsistent with these Directions, those terms of reference are to prevail.

6. Commissioner investigations

6.1. The Commissioner must not—

- (a) initiate a Commissioner investigation unless he or she decides that there is a prima facie case that a breach of the Members Code of Conduct or the Ministerial Code of Conduct or both has occurred;
- (b) make generalised or speculative inquiries in relation to the conduct of Members or Ministers or both for the purposes of enabling him or her to initiate a Commissioner investigation;
- (c) initiate a Commissioner investigation more than six months after the date on which he or she could reasonably have initiated that investigation.
- (d) initiate a Commissioner investigation into any alleged breach of the Ministerial Code of Conduct which occurred before 22 March 2021.
- (e) initiate a Commissioner investigation into a former Member or former Minister unless that investigation—
 - (i) is initiated within four weeks of that person having ceased to be a Member; and
 - (ii) the Commissioner, having due regard to value for money considerations and the nature of the breach of the Members Code of Conduct or the Ministerial Code of Conduct or both that the Commissioner believes may have occurred, believes that it is in the public interest for the investigation to be initiated.

7. Investigations: general procedure

7.1. This paragraph applies to an investigation on—

- (a) a complaint;
- (b) a referral, where the terms of reference of that referral require the Commissioner to form a view whether or not a breach of the Members Code of Conduct has occurred; and
- (c) a Commissioner investigation.

7.2. Sub-paragraphs 7.3 and 7.8-7.13 apply to a referral where the terms of reference of that referral do not require the Commissioner to establish whether or not a breach of the Members Code of Conduct has occurred.

7.3. Subject to paragraph 4, the Commissioner must conduct a full and thorough investigation but is not required to investigate any parts of a complaint which have been accepted by the person who is the subject of the complaint.

7.4. The Commissioner must at all times act in accordance with the principles of natural justice and fairness.

7.5. The Commissioner must undertake an investigation with a view to—

- (a) establishing all the relevant facts in relation to the potential breach of the applicable code or codes; and
- (b) forming a view whether or not a breach of the applicable code or codes has occurred.

7.6. The Commissioner may form a view that a breach of the applicable code or codes has occurred only if he or she is satisfied on the balance of probabilities that such a breach has occurred.

7.7. Where the Commissioner begins a complaint investigation, he or she must write to the complainant, the person who is the subject of the complaint and the Clerk to the Committee advising that an investigation into the complaint has commenced.

7.8. Where the Commissioner begins a Commissioner investigation, he or she must write to—

- (a) the person who is to be the subject of the investigation, informing him or her of the decision to initiate an investigation and providing details of the prima facie case that a breach of the applicable code or codes has occurred; and
- (b) the Clerk to the Committee, advising him or her of the decision to initiate an investigation and providing details of the reason for initiating an investigation.

7.9. Before interviewing or requesting any evidence from any person in the course of an investigation, the Commissioner must notify that person in writing of—

- (a) the purpose of the interview or the request;
- (b) the powers of the Commissioner to call for witnesses and evidence; and
- (c) the procedure to be followed in connection with the investigation.

7.10. When interviewing a person ('the interviewee'), the Commissioner—

- (a) must ensure what is said is recorded;
- (b) must provide the interviewee with a transcript of the recording or, where appropriate, a copy of the note of the interview;

- (c) must allow the interviewee not less than 14 days to suggest any revisions to that note or transcript; and
- (d) may in his or her discretion accept or reject any revision proposed by the interviewee.

7.11. Where during an investigation the Commissioner decides that the conduct of a Member or Minister should be investigated by the police or other public body, the Commissioner may liaise with the police or such other public body as he or she deems appropriate.

7.12. Where during an investigation, the Commissioner becomes aware of an investigation or criminal proceedings by a public body which may be prejudiced by his or her investigation, he/she—

- (a) must suspend his or her investigation, in the case of criminal proceedings or a criminal investigation, until satisfied that the risk of prejudice has ended; and
- (b) may suspend his or her investigation, in the case of an investigation by a public body, until satisfied that the risk of prejudice has ended.

7.13. If during an investigation the Commissioner uncovers material evidence which is inconsistent with any statement or other representation made by the person who is the subject of the investigation, the Commissioner must invite that person to make representations on that inconsistency.

7.14. Before finalising his or her report on an investigation, the Commissioner must give the person who is the subject of the investigation not less than 14 days to challenge any findings of fact made by the Commissioner.

8. Reports to the Committee

8.1. All reports by the Commissioner to the Committee on a complaint, referral or Commissioner investigation must set out --

- (a) the details of the investigation carried out by the Commissioner;
- (b) the facts established by the Commissioner in his investigation, with references to evidence as appropriate;
- (c) any challenge to a finding of fact under sub-paragraph 7.14;
- (d) any revision proposed by an interviewee in accordance with subparagraph 7.10 and rejected by the Commissioner;
- (e) the Commissioner's reasoned decision, including (except on a referral where sub-paragraph 7.5 does not apply) his or her view as to whether or not a breach of the applicable code or codes has occurred; and

- (f) all evidence (other than the tape or digitally recorded record of an interview where a transcript or note of that interview is provided) which has been obtained as part of the Commissioner's investigation and which was relied upon by him or her in order to reach a decision.
- 8.2. The Commissioner may omit evidence from a report to the Committee on a complaint, referral or Commissioner investigation where—
- (a) That omission is necessary to prevent the disclosure of data which is in the reasonable view of the Commissioner confidential or private data; and
 - (b) The confidential or private data omitted was not relied on by the Commissioner in order to reach a decision
- 8.3. A report by the Commissioner to the Committee on a referral must also set out the terms of reference of the referral.
- 8.4. A report by the Commissioner to the Committee on a Commissioner investigation must also set out the reasons for the investigation, including the detail of the prima facie case that a breach of the applicable code or codes has occurred and the relevant elements of the applicable code or codes to which the investigation relates.
- 8.5. A report made by the Commissioner may also make such recommendations as the Commissioner thinks fit, except that the Commissioner may not include any specific recommendation for the imposition of a sanction.

9. Rectification

- 9.1. Where an admissible complaint relates to an allegation that a Member has failed to-
- (a) register an interest;
 - (b) register a change to an interest; or
 - (c) declare an interest
- and in the opinion of the Commissioner the interest concerned is minor, or the failure to do so may be inadvertent, the Commissioner must seek to resolve the complaint through the procedure set out in this paragraph ('the rectification procedure').
- 9.2. The Commissioner must write to the Member who is the subject of the complaint, indicating that he or she intends to resolve the complaint by use of the rectification procedure, and requiring the Member to show—

- (a) that the interest concerned was minor or that the failure to register, register a change to that interest or declare that interest was inadvertent; and
- (b) that he or she acknowledges the failure and either undertakes to apologise for it or has apologised for it.

9.3. Where, after writing to the Member in accordance with sub-paragraph 9.2, the Commissioner decides that a complaint may be resolved through the rectification procedure, the Commissioner must write to the Committee—

- (a) setting out the details of the complaint, and of the relevant elements of the Code to which the complaint relates;
- (b) setting out the reasons why the Commissioner is satisfied that the failure was minor or inadvertent;
- (c) setting out the evidence that the Member who is the subject of the complaint acknowledges the failure and has either undertaken to apologise for it or has apologised for it; and
- (d) recommending rectification.

9.4. Should the Committee decide that the rectification procedure is not appropriate, the Commissioner must be informed of this decision, and he or she may—

- (a) investigate the complaint in accordance with paragraph 7; or
- (b) decide that the complaint is to be terminated in accordance with sub-paragraph 4.1(b) or 4.1(f) (and sub-paragraphs 4.2 - 4.3 apply to such a decision).

9.5. Where—

- (a) the Commissioner at any stage decides that the interest was not minor or that the failure was not inadvertent; or
- (b) the Member who is the subject of the complaint does not acknowledge the failure or apologise or undertake to apologise for it sub-paragraph 3.17 shall cease to apply.

10. Record Keeping

10.1. The Commissioner must keep full and accurate records in respect of the exercise of any of his or her functions, including investigative functions, and in particular must make and keep a tape or digitally recorded record of any interviews that are carried out in the course of any investigation.

10.2. The Commissioner must transfer all records held in respect of the exercise of any of his or her functions to the Northern Ireland Assembly Commission once he or she determines that the records are no longer required in order to carry out those functions.

11. Transitional

11.1. The Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures) Direction 2016 is revoked but shall continue to apply in relation to complaints of breaches of the Members Code of Conduct received by the Commissioner prior to this Direction coming into force.

Sinéad Ennis, MLA

Chairperson of the Committee on Standards and Privileges