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Commissioner reply to Dr Steve Aiken written statement to the Committee on Standards and Privileges

The following are points of fact relating to Dr Aiken's written statement to the Committee.

1. Dr Aiken appears to conflate the PSNI investigation with my investigation (Paras 11-12; 23-33)

The PSNI investigation should not be confused with my investigation. I believe Dr Aiken is conflating the two. The PSNI investigation was a criminal investigation separate to my investigation and related to the offence of non-attendance under Notice to Attend as outlined in section 31 of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 ("the 2011 Act"). The PSNI undertook a criminal investigation into Dr Aiken's non-attendance at interview under Notice to Attend. The criminal standard of proof is 'beyond reasonable doubt'. The PPS decision not to prosecute was due to the Notice to Attend which was sent by recorded delivery (as required by the legislation) not being delivered by Royal Mail to Dr Aiken at his constituency address. Instead, there was an informal arrangement between Dr Aiken's office and the Royal Mail to deliver mail to an adjacent commercial premises when his constituency office was closed—and it was closed at 12.41 on 9th July 2021 when Royal Mail delivered it to the adjacent commercial address. The PPS decided not to prosecute Dr Aiken under the criminal law for his failure to attend under Notice because the Notice was not delivered to him by Royal Mail and therefore did not meet the evidential test in respect of section 29(2) and (3) of the 2011 Act that requires Notices to be sent by recorded delivery.

My investigation is entirely different from that of the PSNI. My investigation is not a criminal investigation. It relates to the Code of Conduct and the substantive complaint made against Dr Aiken by Mr McHugh MLA in relation to a breach of confidentiality. The General Procedures Direction ("the 2021 Direction") at paragraph 7.6 states that "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". That is, I must be satisfied that a breach of the Code is more likely than not to have occurred. The facts of this complaint include: Dr Aiken disclosing details of a complaint; Dr Aiken participating and facilitating a lengthy discussion as Chair of the Finance Committee in relation to his complaint against Mr McHugh; Dr Aiken failing to respond to my letters and failing to appear under two Notices to Attend. These events occurred and are not in dispute—they are factual.

Rule 16 states “You shall co-operate at all times with any investigation by or under the authority of either the Northern Ireland Assembly Commissioner for Standards or the Assembly”. Dr Aiken is obliged to cooperate ‘at all times’—not merely some of the time. His failure to respond over a three-week period to two letters inviting him to arrange an interview would, on its own, qualify as a breach of Rule 16.

2. Dr Aiken asserts the complaint was vexatious

That the investigation referred to by the Commissioner was on the complaint by Maoliosa McHugh MLA, which I considered, and indeed have written to the Commissioner saying so, as vexatious, may have inadvertently lowered the level of priority I was giving to the investigation; for which I unreservedly apologise. (Para 16)

Whether the complaint is vexatious or otherwise is for the Commissioner to decide in relation to the consideration a complaint. Vexatious denotes an action that is brought without sufficient grounds for winning, purely to cause annoyance to the defendant. In this case, confidentiality is a vital part of the complaints process and one which must be paramount—the importance of confidentiality is evidenced in the legislation and the Code’s provisions. I did not consider this complaint to be vexatious.

3. Dr Aiken maintains he made a fulsome apology on 5th July

I would not, in any circumstance, have agreed to an interview on the 5th July. Noticing my mistake, when contacted by the Commissioner’s office, I fulsomely apologised; which I note, sadly, that no mention has been made of. (Para 17)

This following correspondence was included in my report which relates to any apology received.

Document 14: Email correspondence between Commissioner’s Office and Steve Aiken MLA 5 July

From: [REDACTED] on behalf of +StandardsCommissioner <standardscommissioner@niassembly.gov.uk>
Sent: Monday, July 5, 2021 1:13:55 PM
To: [REDACTED]
Cc: Aiken, Steve <steve.aiken@mla.niassembly.gov.uk>; +StandardsCommissioner <standardscommissioner@niassembly.gov.uk>
Subject: Meeting with the Commissioner for Standards @ 1pm today in Room 222

Beth

I have tried to contact Steve and I was just checking he is on his way to meet with the Commissioner for Standards? The meeting is meant to start at 1pm in Room 222 and I have not recieved any notification that Steve is unable to attend or may be running late?

I would be grateful if you could confirm if Steve is attending or running late?

Kind Regards
Elizabeth

From: Aiken, Steve <steve.aiken@mla.niassembly.gov.uk>
Sent: 05 July 2021 13:30
To: +StandardsCommissioner <standardscommissioner@niassembly.gov.uk>; [REDACTED]
Cc: +StandardsCommissioner <standardscommissioner@niassembly.gov.uk>
Subject: Re: Meeting with the Commissioner for Standards @ 1pm today in Room 222

Apologies Elizabeth, I have it in my diary for the 6th, at 1300. I am off work & unavailable

Steve

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4. Notice to Attend

The Commissioner then informed me she was sending a formal notice to attend by recorded delivery, and furthermore, indicated that I would be committing a criminal offence if I didn't attend. I immediately contacted our Party Chief Whip and Party Leader to complain about this approach from the Commissioner as I believed it completely unwarranted. I have requested that our Party Leader raise this issue with the Commissioner, or failing that, with the Assembly Commission, which he has indicated he will do on completion of this investigatory process. (Para 20)

The 2021 Direction at paragraph 7.4 states that "The Commissioner must at all times act in accordance with the principles of natural justice and fairness". The Notice to Attend correspondence includes the information that "Failure to attend is a criminal offence under s31 of the 2011 Act for which you may be prosecuted". This ensures the recipient is aware of the legal ramifications in the event that they fail to attend and is included in the spirit of natural justice and fairness. The Notice itself was warranted as Dr Aiken failed to respond to two letters requesting he arrange to attend for interview.

5. Dr Aiken asserts he believed the Notice would be sent after the July holiday period

I thought the summons would be sent after the holiday period was over. (Para 21)

There was clear communication between Dr Aiken and my Office relating to the Notice to Attend being sent on 7th July 2021. Therefore, Dr Aiken was aware that it would be sent (and was sent) before the holiday period.

Document 15: Email correspondence between Commissioner's Office and Steve Aiken MLA 7 July 2021

From: [REDACTED]
Sent: 07 July 2021 13:39
To: Aiken, Steve <steve.aiken@mla.niassembly.gov.uk>
Cc: [REDACTED]
Subject: Correspondence address
Importance: High

Dr Steve Aiken OBE MLA

The Commissioner for Standards, Dr Melissa McCullough is required to send you a further notice to attend interview and wishes to do so by recorded delivery today. I would be grateful if you could provide me with a suitable address for this to happen. It can be an office address or home address if that is preferable.

Kind regards
Elizabeth

From: Aiken, Steve <steve.aiken@mla.niassembly.gov.uk>

Sent: 07 July 2021 14:57

To: [REDACTED]

Subject: RE: Correspondence address

Hi Elizabeth,

Dr Steve Aiken OBE MLA
Constituency Office
3 The Square
Ballyclare
BT39 9BB

The office will be open until Friday then, we'll be closed for two weeks from 10th July.

Steve

From: [REDACTED] On Behalf

Of +StandardsCommissioner

Sent: 07 July 2021 15:52

To: Aiken, Steve <steve.aiken@mla.niassembly.gov.uk>

Cc: [REDACTED]

Subject: ASSEMBLY RESTRICTED: Formal Notice by recorded delivery from the Commissioner for Standards, Dr Melissa McCullough.

Importance: High

Dear Dr Aiken

You will soon be receiving a formal notice by recorded delivery to your constituency address to attend interview.

I want to draw your attention to the fact that failure to attend is a criminal offence for which you may be prosecuted.

Yours sincerely,



DR MELISSA MCCULLOUGH
Commissioner for Standards

6. Dr Aiken questions why I needed to interview him when in the end I requested a written witness statement. (Para 30)

It is standard practice that I interview MLAs who are subject to an investigation of a complaint. This usually occurs in person or online. In this instance, having attempted to secure an interview with Dr Aiken on four occasions with no success, to avoid further delay and in the spirit of natural justice, I offered him the opportunity to submit a witness statement once I resumed my investigation (after the PSNI investigation was complete). Had he not responded, I would have submitted my report in any event—and I stated that in my letter to him.

7. Dr Aiken has concerns about the legitimacy of the investigatory process

The concerns that I have raised about the investigatory process are legitimate – and are based on the aforementioned and relevant experience; these issues have affected my family, my staff, and I'm fully aware, have affected other MLA's who feel that they're views are not heard or respected either. (Para 34)

In terms of process, the PSNI referral occurred because Dr Aiken failed to attend under Notice to Attend in contravention of s31 of the 2011 Act. The process I follow is prescribed in the legislation and in the 2021 General Procedures Direction which the Committee issues to the Commissioner—so, it is Members themselves who approve the process. If they are unhappy with the process, it is entirely a matter for Members to change or amend the process.

Dr Aiken states that other MLAs feel that their views are not heard or respected in relation to the process, but he fails to back this up with evidence. I have interviewed many MLAs in the past 18 months. I have not received communication from any Members to suggest they believe their views are not heard or respected in relation to the process.

Melissa McCullough
NI Assembly Commissioner for Standards
07.03.22