

20220301/SRA/Maoliosa Mc Hugh/Commissioner for Standards

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The Chair and Committee
Standards and Privileges
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01 March 2022

Dear Chair and Committee Members

Case ID: 202100003 – Response to Complaint made by Maoliosa McHugh MLA

Overview

1. The Commissioner for Standards has reported to you on the complaint raised against me by Maoliosa McHugh MLA. These relate to remarks made by me during the Finance Committee - pertaining to the complaint I made about the MLA receiving £10,000 a small business grant loan, and then failing to disclose this fact, during three meetings of the Finance Committee (when LPS was present to discuss the scheme). She also raised further complaint against me that I breached the MLA code of conduct, in failing to behave in a manner consistent with the principles of public life. I was further able to listen to the video recording of the reports by the Commissioner, and to listen to the remarks of my fellow committee members about this report.

2. My following comments will address both the report by the Commissioner, and also to address concerns raised in the questions raised by members.

3. My remarks are laid out in two sections; firstly, to cover the substantive issue of the complaint by Maoliosa McHugh MLA, secondly to place, on record, my position on the responding to request for interview, on the substantial PSNI investigation and its impact on my staff, and finally the decision of the PPS not to prosecute. In the conclusion I raise several issues that I believe are of importance.

Maoliosa McHugh MLA Complaint

4. The Commissioner's report and the video evidence shows the events of the meeting of the Finance Committee on the day in question. The scheduled Committee was due to take place after substantial media interest in the events surrounding the

small business grant loan and there was considerable interest from many MLA's, both amongst Finance Committee members and in other committees.

5. In examining the code of conduct, I believed that Art 4 (5), in that declaring a relevant interest which might reasonably be thought by others to influence my approach on the matter under consideration, was the overriding consideration. While my language in formally declaring an interest lacked legalistic exactitude, I believe, my intent, to declare that I would not lead the questioning within the Committee, on what was clearly a matter of significant, and pertaining public interest, was clear.

6. I also believed that while I did not make a formal declaration of interest, either at the beginning of the meeting, my intent, in keeping the Committee informed, and also make clear, that I would not be leading questioning of the member, was again apparent.

7. As I understand from the Commissioners report, and the video evidence, that it is the Commissioner's view that the requirement to respect confidentiality supersedes, what I believe to be the intent and purpose of the Rules of Conduct. I would respectfully request that the Committee take legal advice on this point to provide clarity for members going forward.

8. I would wish to point to my intent, to deal with a matter of public and MLA's concern, during that meeting of the Finance Committee. It will be up the members of this committee to decide whether I deliberately set out to breach Section 33 of the 2011 Act, which I had no particular or detailed knowledge of, or, whether I was attempting to follow what I believed held precedent, the Code of Conduct, and the public interest.

9. In the video evidence the Commissioner raised the issue of confidentiality. The Committee will be aware, in the evidence I gave in the Pauley Case, the fact that the media reported that Jim Wells MLA and I were being investigated by the Commissioner for Standards. Furthermore, this media reporting happening virtually concurrently with me opening the correspondence from the Commissioner on this investigation. This reporting in the media, about our investigation, was raised both on the Assembly Floor, amongst MLA's and also in the Finance Committee, by SF members, including the member who raised the complaint against me.

10. Whilst this political 'cut' and 'thrust' of the Assembly life is an accepted fact of political life by MLA's, and as pointed out by the Chair during the video evidence to this session, that much of this process can, indeed be deemed 'political'. However, despite my raising the breach of Jim Well's and my own 'confidentiality', there has, to my knowledge, been no investigation by this Committee or the Commissioner, on how this leak in the Pauley case occurred, which resulted in significant media scrutiny and potential embarrassment, to at least two MLA's, and in my case, also to my immediate family.

Request for Interview

11. The Commissioner has determined that I breached Rule 16; further, listening to the comments made by both the Commissioner and members of the Committee,

that there is a sense that I have in some way egregiously, circumvented the rules and sought to undermine the Commissioners investigation. These are serious charges – both to my integrity and to my intent. The Committee will also be aware that the Public Prosecution Service, in their letter to the Commissioner dated, 10 Jan 2022, found that there was insufficient evidence to proceed; this was on the back of a substantial PSNI investigation, which investigated all the facts and circumstances. However, in spite of this, the Commissioner, even in light of the extensive PSNI investigation and PPS report, feels, that at 'all times' I failed to cooperate.

12. It is perhaps worthy of consideration that the PSNI investigation raised many questions about my conduct, during this period, that I satisfactorily answered. These where questions, that clearly show that there was no deliberate attempt to avoid investigation; it is, to me, surprising that Commissioner did not seek to understand these circumstances. The PSNI has had full access to my diaries, examined all of my E Mails, contacted several MLA's and MP's, including I believe the Chair of the NI Select Affairs Committee, examined video recordings of finance committee meetings, discussed the case with the Commissioner and interviewed my work colleagues; I also gave a voluntary statement to the Police. I can surmise from the report of the PPS that the PSNI has conducted a full and rigorous investigation.

13. As several of these issues are of a personal and family nature I am making you aware of these in the expectation of discretion; however, I would hope that, in any case, the personal names and details of family members and children will be redacted from the record.

14. As several of the longer serving members of the assembly will be aware, I was leader of the Ulster Unionist Party until I stood down on the 27th May. You will note the first request for interview was one week after this event, and whilst it may not be deemed reasonable by some, I was dealing with as substantial amount of political turmoil, as well as contended with numerous media interviews as well as attending Antrim Area Hospital for blood tests related to ongoing medical treatment. The substantial number of E Mails, in excess of several hundred, and the considerable number of calls noted, indicate that for the weeks 7-11, and 14 -18 June, there was very little spare programmed time – to paraphrase the investigating police officers, 'how did you even get any time to sleep'.

15. That I did not prioritise contacting the Commissioner for Standards, in lights of the other activity that was going on, was, I strongly contend, not a matter of 'disrespect', but clearly one of time management. While much was going on during that time, including sensitive discussions on legacy, legal briefings over the Protocol, and dealing with party residual issues, it was clear, judging by the questioning, by the PSNI at least, that this was a particularly busy time, even by MLA standards.

16. 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. In mitigation, at this stage, I had also recently been dealing with very senior members of the Policing Service and their concerns about the handling of the Bobby Storey funeral and the impact that was having on community relations, particularly amongst

the Unionist community and probably did not believe that the complaint against me had any serious merit.

17. On the 28th June the Commissioner again contacted me and I believed I placed in my diary that the interview was on the 6th July. I had arranged to take the 5th July off work [REDACTED]

[REDACTED] I freely admit my priority that day was with my family. 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.

18. The Commissioners' Office offered the 7th July, which I was unable to commit too, as I was due to take part in a joint Assembly/Parliament EU affairs meeting. As I was the only NI Assembly Chair to take part, I deemed it the priority, although others may not judge this was the case. As it transpired the meeting was called off due to the Chair of the NI affairs Select Committee making some very ill-timed and derogatory comments about Unionists and Unionism that was widely reported in the media, and I was directed by my party, not to take part in them. The meeting with the Commissioner could, possibly, have been rescheduled, at short notice, however, as the Finance Committee, of which I am Chair, was sitting that day, I, believed it was more important to concentrate on that, and to hopefully, return home early. [REDACTED]

19. Again, all these events were investigated by the PSNI and reported upon. Since no explanation for non-attendance from the Commissioner was requested, none was extended by me, or by my staff.

20. 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.

21. There was, at that stage, no indication from the Commissioner when that interview would be; however, as the 10 July would see the commencement of the traditional, at least in Unionist communities, beginning of the 12th celebrations - and also the customary closing of our Office for the fortnight period (along with many of the other premises across South Antrim, and especially in Ballyclare), I did not conceive that any interview would be scheduled during this well-established Northern Ireland holiday period. As the Commissioner hadn't informed me when the interview was likely to take place, and as I, assuming wrongly, that the Commissioner would be aware that it was highly unlikely that Unionist politicians or MLA offices would be open, during the 12th fortnight, I thought the summons would be sent after the holiday period was over.

22. There seemed in the Commissioners remarks on the video, and indeed from one of the non-Unionist members of the committee's questions, that it would be

unreasonable that I wasn't seem to be checking my mail and its delivery very day during this established holiday period. I would strongly contend that this is not the case, and it is more than reasonable for me to presume that the Commissioner (and the MLA) would understand, like many others in Northern Ireland, I would be on leave, and not breaking my holiday period to receive mail.

23. On the matter of the recorded Mail – it evidently did not reach me. That a recorded letter, sent on the 7th July, did not arrive the next day, is unusual, to say the least by Royal Mail Standards. There was an implication made in the video that I, as the MLA, who was working at home on the 8th and 9th, [REDACTED] [REDACTED] [REDACTED] [REDACTED] should have been aware of the informal arrangements for the delivery of mail to our landlord. I can categorically state, as I stated to the PSNI, that I was unaware of this arrangement.

24. I have a very competent office staff, who have maintained our MLA service, both through CoVID and before, who have been subject to direct terrorist threats, attacks from Anti-Vac and Anti –Abortion protesters, and I do not micromanage how they run our MLA office, either physically, remotely, or virtually. The opening hours of the office are managed effectively to do this. To insinuate otherwise is derogatory to my team. I do not, as has been suggested, dictate either how the post is collected, the office opening time, s or otherwise. When I gave the address of our office for the delivery of the recorded delivery on the 7th July (when a next day delivery of the 8th would be expected; after all that is what is being paid for) I believed it would arrive then. The PSNI appeared fully satisfied with these explanations; as is apparent, was the PPS.

25. On return to work on the 26th July the Mail held by the Landlord was delivered to my office. I was informed of the letter of summons by the Commissioner, and I immediately rang the Commissioner's Office to explain. I was told that the Police had been informed on the 21st July. The Police, in their investigation, understood that I was on leave, throughout the traditional July fortnight period, and would have been unable to attend the Commissioners interview in any case.

26. I would like to briefly outline the impact that the PSNI investigation had on me, and in particular, on my staff. Members will be aware, but I do not presume the Commissioner does, that I, and my family have been under direct paramilitary threat and I had been advised that my life was under threat, and that our offices, vehicles, and personal security required enhanced and additional protection. In receipt of this threat we received two visits from PSNI and advice totalling around 2-5 hours of police time. I would like to put on record my appreciation for the PSNI and the difficult job that they do and the very limited resources they have; especially in the South and East Antrim Area.

27. In contrast to this, the PSNI devoted at least 20-30 hours of interview time after the Commissioner's complaint, and with two detectives amassed a considerable amount of documentary evidence. Whilst conducting themselves in a highly professional and appropriate manner, the entire process by the PSNI unsettled my staff and family. My staff have expressed incredulity over the level of

public resources expended about this complaint compared to the very real day-to-day threats that we all face working in a constituency office.

28. In both the Commissioners report and on the video evidence showing questions by the members of the committee, there is an inference that in some way I deliberately, avoided being interviewed by the Commissioner.

29. This is further implied despite the PPS saying there is no evidential base for prosecution. It is difficult, for me, having outlined the facts as given to the PSNI above, as corroborated by extensive interviews, examination of E mails, sensitive and other, how the Commissioner could possibly say that she is satisfied on the basis of incomplete facts and evidence - which she was clearly not in possession of or sought to ascertain - but which facts the PSNI and PPS where. The PPS also stated, for the record, that the *'evidential test for prosecution is not met in relation to Dr Aiken for the offence of refusing or failing to attend before you on 21 July 2021 contrary to section 31 of the 2011 Act'*.

30. The Committee will also be aware after the PSNI report was complete, the Commissioner, requested that I respond to her investigation. I submitted, as requested, a witness statement, on the 13 Dec 2021, in writing, to the Commissioner. If it was agreeable to do so in December, the question that I further ask, is why was the Commissioner intent on interviewing me in June and July, when a written statement could easily have been facilitated, so avoiding this entire process?

31. While it is difficult for me to feel dispassionate about this period of investigation, I do feel strongly that I have been badly, if not deliberately, misrepresented, and that my staff and I have been put under significant strain by being investigated by the PSNI. These actions have instigated and exacerbated mental and physical health conditions amongst my staff for which they continue to seek medical treatment. For this misrepresentation, by the Commissioner, an apology, at the very least, would be worthy and welcome, if not to me, but to my distressed staff.

32. With the actual evidence, which I have outlined above, coupled with the PPS report, it is for you as a Committee to determine whether I at *'all times'* failed to cooperate with the investigation by the Commissioner, thereby breaching rule 16 of the MLA Code of Conduct. As the PPS concluded I did not meet any evidential test, it is difficult to see how the Commissioner could conclude otherwise. I strongly contend that I did not breach rule 16 and that in no way can it be deemed that my behaviour could be construed as being inconsistent with any of the seven principles of public life.

Conclusion

33. I have been subject to two extensive investigations by the Commissioner for Standards. In this case I have been investigated for three complaints, one by Maoliosa McHugh in which I am accused of breaching the 2011 Act, and by implication, the code of conduct. It is my contention that, as an MLA, I believed I was acting to the intent and purpose of the Code of Conduct; I freely admit I am not fully

familiar with the 2011 Act, as I would suspect, is the case of many MLA's. I would contend that I did not deliberately contravene Section 33 of the 2011 Act, and therefore breach Rule 12 of the Code of Conduct. The Committee may consider how we clarify the codes of conduct in this case. Secondly, based on my explanation to you, an extensive PSNI investigation, and the PPS stating clearly that there was no case to answer, I cannot understand how the Commissioner could come to her conclusion, especially in determining that I was not cooperating with her at all times; thereby breaching Rule 16. I contend I clearly did not breach the rule and that the investigatory process raises several troubling questions that should be of concern to us all.

34. Finally, I was troubled by the language used within the video evidence which was clearly aimed at my integrity, coupled with remarks that implied that in some way I showed a lack of respect. At all times I have kept my concerns about these investigations within this Committee. I am, and will in all likelihood, continue to be a member of this Committee and it my role to act, without favour, in taking an impartial view – it is our role to bring an MLA's perspective to proceedings. You may, or may not be aware, that I have had considerable experience, often at senior levels, in our Armed Forces, in commercial and NGO roles, and have many years of experience in dealing with employment tribunals, investigatory complaints and disciplinary matters. 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. This is not an issue of disrespect but matters of genuine concern. As a Committee we have a duty of care – not just to the 'process', but also to the members of our assembly. In this, I believe strongly, based on my experience, we are failing.

Yours Faithfully

Steve Aiken