



Commissioner for Standards

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**Ms Linda Dillon MLA
Chair of the Standards and Privileges Committee
Parliament Buildings
Ballymiscaw
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BT4 3XX**

8 December 2021

Dear Chair and Committee Members,

I refer to the Committee's determination of the complaint against Dr Aiken and Mr Wells by Mr Bill Pauley of 25th November 2021. In its deliberations and consideration of the facts and evidence, the Committee found that Dr Steve Aiken's behaviour towards Mr Bill Pauley was not in breach of the MLA Code of Conduct—a decision which is the Committee's to make and one which I accept. This letter is not about the outcome but rather the process.

I understand that this is the first time in the Office's existence that an MLA subject to a complaint has asked to be heard by the Committee. In line with the legislation, the Committee provided both MLAs with a copy of my report and the Hansard of the presentation I made on the report to the Committee on 26 May 2021. Both MLAs were subsequently heard by the Committee (30 June, Dr Aiken; 28 Sept, Mr Wells) and their hearings were recorded via Hansard. Their Hansard reports were not made available to me until after the report was published on 25 November 2021.

During the process, I expressed my concerns regarding the fact that I had no view of or 'right of reply' to the statements of the witnesses appearing before the Committee prior to the Committee publishing their report. Having now read Dr Aiken's transcript of 30 June, which is a formal matter of record, I am concerned at a number of assertions made by him and the impact on the Office of the Commissioner for Standards if these matters are left unchallenged. I believe it is part of my duty as Commissioner to clarify these incorrect assertions. In the interests of maintaining public trust and confidence in the Office of Commissioner, I invite the Committee to record and publish my response to these specific assertions and, in future similar situations, to ensure that before the Committee publishes a final determination on any such complaint, the Commissioner is permitted to consider and respond to any factual assertions made by the subject of the complaint. Any response made by the Commissioner should be published at the same time as any transcripts of statements to the Committee by the Member concerned.

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In the present case a number of the assertions made by Dr Aiken in the course of his evidence to the Committee I consider to be demonstrably false. In particular, he claimed:

- (i) that I had no knowledge or little knowledge and had not considered the context of the matter before the Committee;
- (ii) that I had not introduced the second interviewer;
- (iii) that I had not watched other committee proceedings;
- (iv) that I had to be 'chased' for information;
- (v) and that I had no regard for Dr Aiken's ill-health.

I address each of these matters in detail in the attached Appendix.

I can assure the Committee that upholding and promoting standards in public life is of the upmost importance to me in my role as Commissioner for Standards. In carrying out my duties, I treat every MLA, Minister and complainant with respect; my aim is to find out the truth through a transparent, robust and fair process in accordance with the legislation that governs my role. I do not consider my approach to be in any way overzealous, but rather what is required to carry out my duties. I believe the public would expect nothing less.

The process for investigation is well established and I carried out my investigation in line with the legislation and processes that exist. At no time did I treat anyone unfairly, disrespectfully, or deny access to information relating to the case.

I was well aware of the context of this case. Indeed, my views had been sought by TEO in November 2020 in relation to the Department of Finance's proposals on the matter. I followed all of the debates surrounding the Functioning of Government Bill (now Act) 2021 as it had direct relevance to the Commissioner in terms of the extension of my role to include consideration of complaints against Ministers. Therefore, not only was I knowledgeable, I understood the context of the 17 June Committee proceedings well, including the tensions. I fully considered and understood the context. To assert that I had *no knowledge or little knowledge*, did *not understand* or did *not adequately consider evidence in relation to the context* was unfounded. When I recommended that Dr Aiken's behaviour in this case was inappropriate and in breach of the MLA Code of Conduct, it was with full knowledge and consideration of the context.

Over the past number of weeks, many debates surrounding standards and ethics have dominated the press. Only a few weeks ago the Speaker of the House of Commons cautioned MPs that they 'should not attack Officers of the House who cannot defend themselves' (in reference to the Parliamentary Commissioner for Standards). You may be aware from Dr Aiken's 30 June hearing, words such as 'highly unprofessional', 'deeply flawed process' and 'overzealous' were regrettably used by Dr Aiken to describe the work of my Office. I was surprised that he was not reminded of the convention regarding attacks on public officials.

It is a matter of particular concern that these inaccurate assertions are a matter of public record. I consider the record should show that I do not accept them. To leave the matters unchallenged would, in my view, undermine the Office of the Commissioner for Standards. I would expect that any attempt to undermine the Office of the Commissioner for Standards would be able to be challenged appropriately by me or by members of the Committee. Therefore, it is important to me that the Committee consider a way forward, in the first instance on how the Committee intend to ensure the Office of the Commissioner for Standards is defended against such baseless assertions that impact negatively on the Office of the Commissioner for Standards and the process in general for the future.

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I hope the Committee will be able to provide proposals for rectifying this situation. The obvious solution is that, where a complainant criticises the investigation by the Commissioner, the Commissioner should be invited to comment before the Committee publishes its report and that the Commissioner's response should be published alongside the Member's statement to the Committee. This principled approach – known as Maxwellisation – is common practice in public inquiries and Ombudsman investigations.

I look forward to hearing from you how the Committee intends to proceed.

Yours sincerely,



Dr Melissa McCullough
Northern Ireland Assembly Commissioner for Standards

Appendix 1

Inaccurate Assertions by Dr Aiken at 30 June 2021 Oral Hearing to the Committee on Standards and Privileges

1. The Commissioner did not understand the context, had no knowledge or little knowledge

Dr Aiken mentioned multiple times during his 30th June attendance at the Committee that I 'did not understand', 'did not consider' or had 'little or no knowledge of' the context. This is wholly inaccurate. My views had been sought by the The Executive Office in November 2020 in relation to the Department of Finance's proposals and I watched all of the debates surrounding the Functioning of Government Bill, as it had direct relevance to my role as Commissioner. Therefore, not only was I knowledgeable, I understood the context of the 17 June Committee proceedings, including the tensions surrounding the matter. Dr Aiken's witness statement also outlined the issues clearly. I fully considered all of the evidence and understood the context. I explained my reasoned decision in my report. Just because I do not view the tensions surrounding Mr Pauley's appearance to be a reasonable excuse for aggressive behaviour (which I made clear in my report) does not mean I did not consider or did not understand the context. To assert that I had *no knowledge or little knowledge, not understanding or not adequately considering his evidence in relation to the context* is incorrect. These remarks are unfounded and misleading and I believe undermine the Office of the Commissioner for Standards and its work.

Dr Aiken's statements to the Committee:

It is regrettable that the commissioner did not, at any stage, fully consider the context of the official's remarks or my response to them. Pg3

At the outset, I would like to say that I was surprised that the commissioner did not at any stage probe the context of the Committee meeting, the evidence being or, more accurately, not being presented, the senior role of the official in the Department and the numerous occasions on which he had appeared before our and, indeed, other Committees. She instead focused on the conduct and environment of the meeting alone and on the relationship between the Chair, other Committee members and the complainant. The removal of the causality of the meeting is, I believe, a serious omission. Pg 4

The commissioner did not consider the context that we, as a Committee, were seeking the evidence of a senior civil servant — indeed, the senior civil servant with responsibility for that Bill — and that we sought that evidence without the fettering of ministerial and departmental direction, which, as I already explained, is non-evidence that we had received time and time again.p5

My remarks were clearly made in the context of the knowledge of the workings of the Committee, of the ongoing political situation and of the dispute within the Executive. Those are all areas of which the commissioner had no knowledge or little knowledge. p5

From her remarks recorded in the report of 26 May 2021, I do not believe that the commissioner was aware of that wider context. P6

I do not believe that the investigation by the Commissioner for Standards was sufficient. It failed to look at the context. P11

2. The Commissioner did not introduce the second interviewer

Dr Aiken claimed a number of times that I did not introduce the second interviewer, John Devitt, or introduce him in a timely or appropriate way. It is on record that I introduced Mr Devitt at the beginning of Dr Aiken's 24 February interview (2.1). I also introduced Mr Devitt again at the beginning of Dr Aiken's resumed interview on 1st April 2021 (2.2). Further, Dr Aiken should not have been surprised at Mr Devitt's presence at interview, as I advised him that Mr Devitt would be present in the notice to attend interview letter sent to him on 2 February 2021, prior to interview (2.3). Therefore, Dr Aiken's assertions that I did not formally introduce John Devitt, or introduce him in a timely fashion, are baseless.

Dr Aiken's statements to the Committee:

While I may be misrepresenting her tone, it appeared to me and my accompanier that she was annoyed. She did not introduce her investigator/questioner to me but introduced the person who was along with me as my other representative. [pg 10, 30 June 2021 Hansard]

Bearing in mind that we had been told that there was no right for my counsel to ask questions, the commissioner and the questioner, who had still not been introduced, stated that her evidence was being made from video recordings and newspaper articles as well as the Hansard record. [pg10, 30 June 2021 Hansard]

2.1 Commissioner Interview with Steve Aiken Date: 24 February 2021

Commissioner : So this interview is being tape recorded. I am Dr Melissa McCullough Assembly Standards Commissioner, the other person present is Mr John Devitt, he is the second interviewer who is assisting me in this investigation. We are interviewing via Zoom, the date is 24th February 2021 and the time by clock is 10:59am. I am interviewing Dr Steve Aiken and the other person present is Mr Alex Redpath. Dr Aiken can I remind you that your representative is not permitted to answer any questions on your behalf. He is here only as an observer.

2.2 Commissioner Interview with Steve Aiken Date: 1 April 2021

Commissioner (00:01):

Okay, here we go. So, this interview is being tape recorded. I'm Melissa McCullough, Assembly Standards Commissioner. The other person present is John Devitt. We are interviewing by Zoom and the date is the 1st of April 2021, the time by my clock is 14:58. I'm interviewing Dr. Steve Aiken, and the other person present is Mr. Alex Redpath.

2.3 Excerpt from Letter to Dr Aiken 2.2.2021

NOTICE TO ATTEND FOR THE PURPOSE OF GIVING EVIDENCE

Dr Steve Aiken OBE MLA, Room 301, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX

In exercise of the powers conferred on me by section 28(1) of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, I require you to attend before me virtually via zoom at 10am on the 24th February for the purpose of giving evidence in relation to the complaint against you, Dr Steve Aiken MLA, by Mr Bill Pauley.

...

In attendance will be the Commissioner as primary investigator and Mr John Devitt as second investigator.

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3. The Commissioner hadn't watched other proceedings

Dr Aiken asserts that he is unclear whether I examined other proceedings. This is despite the fact that during Dr Aiken's 24th February interview I made it clear to him that I examined many of the Committee's proceedings (3.1) and even commented that I thought he and the Committee had treated many other witnesses with respect.

Dr Aiken's statement to the Committee:

As any Chair would, I presumed that she would have considered the work of the Committee in the round before forming her opinion, but it is unclear whether she examined other proceedings to indicate a pattern of behaviour, and, in the absence of that, which I strongly believe there is, whether she considered the circumstances of 17 June and subsequent media, Assembly and Committee meetings unique, and, if so, why she did not consider that that was the case in this case. [p8, 30 June 2021 Hansard]

3.1 Commissioner Interview with Steve Aiken Date: 24 February 2021

Commissioner	That's why I showed it. Dr Aiken. You are apologising so I am asking you what are you apologising for if you don't think it is wrong.
SA	No but I am apologising because it is a general degree of politeness. I do not wish to make any witness feel uncomfortable. I do not wish people to come in front of our committee and feel as if they are being, put it this way I don't want officials to feel as if they are in the Health Committee where there is continuous attacks made on officials and their integrity and their professional integrity. And indeed if you review the evidence of every official we have had in front of us they have always been met with the maximum degree of courtesy with the exception when they are being
Commissioner	I agree with you. I have watched a lot of them and I agree with you there is a lot of respect shown to many of them. I agree. I wondered though do you think Mr Pauley in this instance from the totality of the meeting so you think that he was entitled to conclude that your chairing, your style of chairing and your behaviour amounted to bullying as he described.
SA	Absolutely not. Under no circumstances should a senior civil servant have come in front of our committee and decided to mislead the committee with evidence, particularly at the beginning of the evidence

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4. Only 'after much chasing' did Dr Aiken receive the evidence

Dr Aiken stated to the Committee that only 'after much chasing' did I provide him with evidence. I gave all of the evidence Dr Aiken requested during the 24 February interview to him in a timely fashion and provided him with the clarification he and his solicitor were seeking regarding the rights of his solicitor in the interview. I provided a list of meeting videos and media we would be considering as he requested. Dr Aiken also received Bill Pauley's transcript and his own 24 February transcript. Disclosure is at the discretion of the Commissioner and Dr Aiken received full disclosure as he requested. He did not have to do 'much chasing' at all.

Dr Aiken's statement to the Committee:

The second interview, to finish the evidence gathering, was conducted several weeks later. That time, after much chasing, there was full disclosure of the evidence. It is a matter of concern that that was not made available before the first interview. [p10, 30 June 2021 Hansard]

5. Consideration of Dr Aiken's health

Dr Aiken told the Committee that notification of his illness 'passed me by' and that I had no regard for his health issues at the time. As the Office of the Commissioner for Standards is independent, I am not on any Assembly email circulation lists. If the means by which Dr Aiken's incapacity due to his broken ribs was communicated was by way of organisational email, it did not 'pass me by' — it never came into my orbit. I was unaware that he had a health issue. I do not accept what his language implies—that I somehow don't pay attention to emails or correspondence or that I had disregard for his health issues. Dr Aiken is right when he says he should have informed me himself.

Dr Aiken's statements to the Committee:

The Speaker, all the party leaders, the British Prime Minister, the Irish Prime Minister, the Secretary of State, many MLAs and the media were aware that, having badly fractured two ribs, I was on sick leave. My office was aware and could have been contacted at any stage but was not. The commissioner was clearly unaware. The communication that I was unavailable for meetings until my return had obviously passed her by. I accept that, along with many other duties including dealing with the turmoil surrounding the outcome of the Bobby Storey funeral investigations and disturbances on the streets, I could have sought out the commissioner specifically to explain why I was unavailable. I apologise for that and for being on multiple painkillers at the time of my second interview. [p11, 30 June 2021 Hansard]

When I appeared, to use the commissioner's word, "confrontational" — in light of the first interview; the legal advice that the process was deeply flawed; that there was no disclosure of evidence and that much of the case seemed to be based on opinion pieces in the media; the comments from MLAs who were directly opposing the Bill; the fact that I had, as pointed out by my counsel, who was prevented from speaking or asking questions at what was essentially a disciplinary hearing, already publicly and on record apologised to the complainant; and that the commissioner was clearly showing no due regard for my health — you may understand, with some indulgence, why I may have appeared to have been annoyed. Again, for that, without prejudice to our deliberations, I apologise for the perceived behaviour that the commissioner may believe, despite the circumstances, that I exhibited. [p11, 30 June 2021 Hansard]

6. Email of December 9 containing Dr Aiken's witness statement

Dr Aiken stated that he sent his witness statement to me on 9 December 2020, prior to his 24 February interview. Neither myself or my secretary received an email from Dr Aiken on 9 December. When he mentioned this at the very start of his 24 February interview, my tone was one of surprise and concern that we would have somehow missed this correspondence. Dr Aiken sent the statement to me immediately at the interview. Soon after the interview, we carried out a search and did not find an email from Dr Aiken on 9 December (or any other date prior to 24 February) that contained his witness statement. I asked my secretary to request from Dr Aiken a copy of the sent email dated 9 December. She requested this twice from Dr Aiken's secretary, yet we were not provided with the original email to show that it had indeed been sent on the 9 December and to what email address it was sent. As this is disputable, I regret that Dr Aiken portrayed this as fact to the Committee.

Dr Aiken's statement to the Committee:

She denied receiving my written submission even though it had been sent in December. Whilst some miscommunication can be accepted as the impact of COVID, it was disappointing that, after a considerable amount of work and research, she had not received my submission, "2021/1208 UUP

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Party Leader Response to Allegations of Mr Bill Pauley, Department of Finance", dated 9 December 2020. It was then resent, and the meeting was adjourned so that my submission could be considered. [p10, 30 June 2021 Hansard]

If I may digress, at the initial interview with the commissioner, which, I believe, you have seen a recording of, the commissioner started the interview with me by stating that she had not received a written response. I must admit that I found the manner in which she put that to me as one of feigning disinterest, although that is a subjective assessment. I informed her that it had been sent to her in December, several months beforehand. [p5, 30 June 2021 Hansard]

6.1 Emails Requesting December 9th confirmation email

From: [REDACTED]
Sent: 24 February 2021 16:34
To: [REDACTED]
Subject: RE: 20201208 Response to Commissioner for Standards

[REDACTED]

Just got a reply back from Steve to say he has sent it.

Regards

[REDACTED]



[REDACTED]
PA to The Chief Whip
Ulster Unionist Party

From: [REDACTED]
Sent: 24 February 2021 15:55
To: [REDACTED]
Subject: RE: 20201208 Response to Commissioner for Standards

[REDACTED]

Thank you for this, I can confirm receipt. The Commissioner is looking a copy of the original e-mail sent in December please.

Kind Regards

[REDACTED]

From: [REDACTED]
Sent: 24 February 2021 15:51
To: [REDACTED]
Subject: FW: 20201208 Response to Commissioner for Standards

Hi [REDACTED]

With regard to your telephone call just a short time ago please find attached document from Dr Steve Aiken OBE MLA.
Grateful if you could confirm you have received.

Best regards

[REDACTED]

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

Sent: 24 February 2021 15:04

To: [REDACTED]

Subject: Fw: 20201208 Response to Commissioner for Standards

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