



Northern Ireland  
Assembly

Report by the NI Assembly Commissioner for Standards on  
a complaint against Mr Jim Wells MLA  
by Mr Bill Pauley

Assembly – Confidential

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## Summary

This investigation focuses on a complaint made by Mr Bill Pauley, a senior civil servant at the Department of Finance. His complaint alleges that during his evidence session at the Committee for Finance on 17 June 2020, Mr Jim Wells MLA behaved inappropriately in his comments and questioning and as a result he felt harassed, intimidated and unable to give his evidence effectively. He alleges further offensive comments were made by Mr Wells at the 24 June 2020 Finance Committee relating to his 17 June 2020 evidence session.

Mr Pauley believes Mr Wells' behaviour is in breach of Rule 15 of the Code of Conduct for MLAs which states "You shall not subject anyone to unreasonable and excessive personal attack". He believes Mr Wells has violated the Code's Respect principle.

Mr Wells admits that a particular comment he made was unacceptable, but otherwise he believes that his behaviour was appropriate and that his questioning was robust as is part of his and the Committee's role.

Having considered all of the evidence, including the video recordings of the two Finance Committee meetings in question, it is my view that Mr Wells displayed unacceptable and offensive behaviour on the 17 June 2020 which continued on the 24 June 2020. Mr Wells' behaviour towards Mr Pauley was discourteous and disrespectful at the 17 June 2020 meeting including a comment he made, which he accepts was wrong. During the meeting on the 24 June, Mr Wells' comments were disrespectful, offensive and inappropriate, not only in relation to Mr Pauley but to another member of the Committee. It is my view that Mr Wells' behaviour was in breach of Rule 15 (para 4.15) and the Respect principle of the NI Assembly's Code of Conduct for MLAs.

## Chronology of events

17 June 2020	Mr Pauley appears before the Committee for Finance to give evidence on behalf of his Minister in relation to Private Members' Legislation: The Functioning of Government (Miscellaneous Provisions) Bill
24 June 2020	Members of the Finance Committee discuss the treatment of Mr Pauley and witnesses in general who appear before the Committee
1 July 2020	Mr Pauley lodges complaint alleging at 17 June 2020 Finance Committee meeting Mr Wells breached Rule 15 and the respect principle of the Code of Conduct
7 Sept 2020	Commissioner is appointed
30 Sept 2020	Acknowledgement letter is sent from the Commissioner to Mr Pauley in relation to his complaint with copy sent to Mr Wells and Clerk to the Committee on Standards and Privileges
5 Nov 2020	Letters are sent from the Commissioner to Mr Pauley, Mr Wells and the Clerk to the Committee on Standards and Privileges informing them the complaint was admissible and the investigation commenced
7 Dec 2020	Letters are sent from the Commissioner inviting Mr Pauley and Mr Wells to interview
11 Jan 2021	Mr Wells statement received by Commissioner via email
3 Feb 2021	Mr Pauley has interview with Commissioner via Zoom
10 Feb 2021	Mr Wells has interview with Commissioner via Zoom

## Background to the Complaint

1. This complaint was raised by a senior civil servant, Mr Bill Pauley, and relates to his attendance at the Committee for Finance ('the Committee') meeting on 17 June 2020 where he gave evidence on behalf of the Minister for Finance.<sup>1</sup>
2. The evidence session was in relation to the Private Members' Legislation: The Functioning of Government (Miscellaneous Provisions) Bill. Among other things, this proposed (now enacted) legislation provided for regulation of the appointment of SPADs and complaints against Ministers in breach of the Ministerial Code of Conduct.
3. In contrast, Mr Pauley representing the Finance Minister, was providing evidence that proposed a 'codes based' approach without any legislation which the Department of Finance believed responded to and reflected the *New Decade, New Approach*.<sup>2</sup>

## Investigation

4. In the course of my investigation, I carried out the following:
  - Interviewed Mr Bill Pauley<sup>3</sup> and Mr Jim Wells MLA<sup>4</sup>
  - Reviewed statement received from Mr Wells<sup>5</sup>
  - Read the Hansard report of 17 June 2020 Finance Committee meeting<sup>6</sup> and reviewed the video recording of 17 June meeting<sup>7</sup>
  - Reviewed the video of the 24 June 2020 Finance Committee meeting<sup>8</sup>
  - Reviewed two media articles brought to my attention by the complainant<sup>9,10</sup>

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<sup>1</sup> Document 1

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>3</sup> Document 2

<sup>4</sup> Document 3

<sup>5</sup> Document 4

<sup>6</sup> Document 5

<sup>7</sup> <https://youtu.be/E4JOppU1nc>

<sup>8</sup> <https://youtu.be/VssciA7aYFk>

<sup>9</sup> Document 6

<sup>10</sup> Document 7

- Requested and reviewed documents from the Finance Committee<sup>11</sup>
  - Researched legislation and cases relevant to the facts of this complaint<sup>12</sup>
5. The principles and rules from the Code of Conduct for MLAs (the 'Code'), along with the relevant legislation and case law are at Annex A.
  6. A copy of the complaint and all other documents I have relied on in reaching my decision are at Annex B.

### **Findings of Fact**

7. Mr Pauley, Director of Strategic Policy and Reform, Department of Finance, was appearing as a witness at the Committee for Finance on 17 June 2020 to give evidence on behalf of his Minister in relation to the Private Members' Legislation: The Functioning of Government (Miscellaneous Provisions) Bill.
8. Mr Pauley felt harassed and intimidated by Mr Wells' behaviour towards him.
9. Mr Wells was at all times acting in his capacity as an MLA. Mr Wells was additionally acting in his capacity as a member of the Finance Committee.
10. An imbalance of power existed in relation to Mr Pauley and the Finance Committee in favour of the Finance Committee—i.e. in favour of Mr Wells.
11. The video footage of all meetings reviewed were true and unedited audio and video recordings of events. Hansard reports of the meetings were accurate transcripts of what was said during and throughout the meetings reviewed.
12. Mr Wells interjected while Mr Pauley was being questioned by another Member and asked Mr Pauley "Do you want to phone a friend?"

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<sup>11</sup> Document 8

<sup>12</sup> Annex A

13. On 24 June 2020 at the Finance Committee meeting, a Member of the Committee raised concerns about the behaviour towards witnesses, including Mr Pauley at the Committee's 17 June meeting, and said that there should be an 'end to the bullying of officials' who appear before the Committee.
14. Mr Wells disagreed with the Member saying that senior civil servants get their large salaries and in return "take very tough and robust questioning from us as MLAs. They expect it, they get it, they take it on the chin, they go home and they laugh about it over tea".
15. Mr Wells admits that his "Do you want to phone a friend?" comment was unacceptable but rejects all other allegations made against him.
16. In accordance with paragraph 7.14 of the General Procedures Direction, Mr Wells was afforded an opportunity to challenge any of the above findings before I finalised my report. He did not avail of that opportunity.

## **Allegations**

17. In his complaint and interview, Mr Pauley described the behaviour towards him at the 17 June 2020 Finance Committee as an unreasonable and excessive personal attack and raises the following allegations.<sup>13,14</sup> Mr Pauley alleges that:

1. Mr Wells' repeated bullying behaviour was unreasonable and completely unacceptable at the 17<sup>th</sup> June Finance Committee meeting. It made him feel harassed and intimidated with the result that he was unable to deliver his evidence effectively.<sup>15</sup>
2. Mr Wells' continuation of his treatment towards Mr Pauley at the 24 June 2020 meeting of the Finance Committee<sup>16</sup> was unreasonable and unacceptable causing further insult.

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<sup>13</sup> <https://youtu.be/E4JOppU1nc>

<sup>14</sup> Documents 1 and 2

<sup>15</sup> Document 2, p3 at C

<sup>16</sup> <https://www.youtube.com/watch?v=VssciA7aYFk>



## Allegation 1

**Mr Wells’ repeated bullying behaviour was unreasonable and completely unacceptable and led to Mr Pauley feeling “threatened and intimidated” with the result that he was unable to deliver his evidence effectively.<sup>17</sup>**

## Evidence

18. Mr Pauley stated at interview and in his complaint that he felt intimidated, harassed and offended because of the way he was treated by Mr Wells.
19. Mr Wells interjected while Mr Pauley was being questioned by another Member and asked Mr Pauley “Do you want to phone a friend?”
20. Mr Wells withdrew the comment immediately when asked to do so by the Chair.<sup>18</sup>
21. At interview, Mr Wells agreed that his comment was inappropriate and offered to formally apologise.<sup>19,20</sup>
22. Mr Wells additionally said “They’ll be quaking in their boots after that”, a comment he made when Mr Pauley and his colleague had left the room and while waiting for other witnesses to enter the room.<sup>21</sup> This comment was not challenged.
23. Mr Wells later confirmed at interview that he believes witnesses should be ‘quaking in their boots’ when attending evidence sessions at committees.<sup>22</sup>

**Jim Wells:** I am not there to show Mr Pauley respect. I am there to ask Mr Pauley extremely difficult awkward and uncomfortable questions. I am not there to say Mr Pauley you are the most wonderful thing since sliced bread or there was no disaster in this country for three years because we didn’t do our job properly and hold your department to account. You know if Mr Pauley comes out of my meeting, meetings with me and Jim Allister etc and says that was a soft run we got. I was shown lots of respect and I didn’t get asked any difficult questions. Well then we have failed in our role.

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<sup>17</sup> Document 2, p3 at C

<sup>18</sup> Document 5 p4

<sup>19</sup> Document 3 p3 at F

<sup>20</sup> Document 3 p6 at E

<sup>21</sup> [https://youtu.be/\\_E4JOppU1nc?t=6148](https://youtu.be/_E4JOppU1nc?t=6148)

<sup>22</sup> Document 3 p8 at F-H; p9 at A-B; p12 at F

**John Devitt:** So can I just clarify what you have just said. You don't see it your role to give respect to the committee or the members that appear before it. Is that correct?

**Jim Wells:** No. my role is not to be a sycophant. My role is to ask questions which people will find very difficult and uncomfortable and indeed would prefer that I wouldn't ask them. Now if by doing that it might be insinuated that I don't show respect. I have nothing against Mr Pauley, he is just another senior civil servant I wasn't getting.. I didn't get up that morning and say how can I make life difficult for him. My role is to get to the bottom of a truly disgraceful situation which arose in this country where basically highly paid young SPADs were running this country and brought the country into absolute chaos.

24. Aside from the aforementioned 'Do you want to phone a friend?' comment, Mr Wells believes his comments and robust questioning during the 17 June 2020 meeting, in particular when he pressed Mr Pauley to provide the Committee with his own personal view, was in keeping with his and the Committee's scrutiny role.<sup>23</sup>

### Reasoned Decision

25. This case relates to behaviour; it is not a straight forward application of a black and white rule. Some, like Mr Wells, will believe this behaviour is entirely appropriate. Others, such as Mr Pauley, will believe it is entirely inappropriate and in breach of the Code. Mr Pauley said in his interview:

**Bill Pauley:** I had reservations about making a complaint against both of them. Making a complaint against elected members for a committee session and I am aware, I am accountable I can .. in there is a question, a difficult question to determine. I am certain there is a line but to determine and to make the judgement of whether it was crossed.<sup>24</sup>

**Bill Pauley:** I will have to go back to this committee on many occasions. My staff will have to go back to this committee and in fact some other members of my staff have gone there since in relation to it and we have a duty of care to those staff that it will be a safe place for them to go and that they will not be bullied and harassed. I felt on that basis that my treatment had crossed a line, that it was personal, that I was prevented from giving evidence in a robust and angry and aggressive matter. That is not robust questioning. It overstepped that line to me and I am asking where that

<sup>23</sup> Document 3 p12 at F-H; p13 at A-F; p15 at C-H; p20 at C-H

<sup>24</sup> Document 2, p9 at F

line is and whether that was crossed and that is the basis of my complaint. I believe it was in the way that I felt. I believe it had a significant impact on me. I believe that members of the committee recognised that impact. I believe that the chair did when he apologised three times.”<sup>25</sup>

26. The key question in relation to this allegation and the allegation that follows, is whether Mr Wells’ behaviour crossed the line from robust questioning to disrespectful behaviour in breach of Rule 15 of the Code of Conduct and the Respect principle. In deciding whether this behaviour crossed the line of acceptable behaviour, I have weighed up the evidence, context and facts of the case and ultimately made a decision on whether the behaviour, on the balance of probabilities, was an unreasonable and excessive personal attack in breach of the Code.

27. Examining the meaning of unreasonable and excessive personal attack is essential in terms of deciding whether the behaviour in question went over the line and breached Rule 15.

1. It is vital to the democratic process that Members and the Committees they serve are able to carry out their scrutiny role which often times requires robust and challenging questioning by MLAs to both witnesses and each other.<sup>26</sup>
2. Unreasonable is defined as ‘not fair or acceptable’.<sup>27</sup>
3. Excessive is defined as ‘more than is necessary, normal, or desirable; immoderate’.<sup>28</sup>
4. The Committee on Standards and Privileges discussed Rule 15 of the Code in their 2015 report.<sup>29</sup>

It is acknowledged that the exchange of ideas, and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. Members should keep in mind that rude and offensive behaviour may lower the public’s regard for, and confidence in, Members and the Assembly itself. Members should therefore show respect and consideration for others at all times.<sup>30</sup>

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<sup>25</sup> Document 2, p5 at F

<sup>26</sup> Document 10 para 101

<sup>27</sup> <https://dictionary.cambridge.org>

<sup>28</sup> <https://dictionary.cambridge.org>

<sup>29</sup> Document 10

<sup>30</sup> Document 10, Para 52

5. The Finance Committee's own policies relating to courteous and respectful behaviour are unequivocal where it states 'witnesses must be treated with respect at all times'.<sup>31</sup>
  6. While Members are required to hold others to account which often requires robust questioning, they are at the same time required to be respectful to witnesses and to each other. Members should be able to undertake a scrutiny role in a courteous, respectful and appropriate manner without resorting to personal attacks, causing offense, being abusive and/or overly disruptive. Therefore, Members need to consider both what they are expressing and the way they are expressing it.
28. In relation to this complaint, other information that was taken into consideration when considering the allegations include:
1. Definition of harassment

Mr Pauley alleges that the behaviour towards him was, among other things, harassment and led to him feeling threatened, intimidated and unable to provide his evidence. Many organisations develop definitions and policies relating to harassment; the closest to home would be that of the Assembly Commission, who define the behaviours of harassment, bullying, discrimination and victimisation as:

Any form of unwanted, unreasonable and offensive conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Conduct shall be regarded as having this effect only if, having regard to all the circumstances and in particular the complainant's perception, it should be reasonably considered as having that effect.<sup>32</sup>

While Members are not employees of the Assembly Commission and are not subject to this definition, it is instructive to the extent that it provides further understanding of the complaint.
  2. Complainant's perception of the behaviour

Mr Pauley made his view clear when he stated that the behaviour of Mr Wells made him feel intimidated, harassed and unable to give his evidence. Considering that Mr Pauley is a senior civil servant and has no doubt given evidence many times, his

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<sup>31</sup> Document 8

<sup>32</sup> Document 9

perception is likely a well-informed one. Having interviewed Mr Pauley, I am satisfied that he genuinely felt harassed and intimidated by Mr Wells' behaviour towards him. Additionally, it is clear from the 17 June Committee meeting video that Mr Pauley's hands were at times shaking and he appeared uncomfortable.

3. Views of other members of the Finance Committee

- 1) One member of the Finance Committee interjected during the 17 June Committee meeting to tell the Chair, Dr Aiken, that he thought he and another member had acted in a rude and unacceptable way to Mr Pauley:

**Maolíosa McHugh MLA:** I am interjecting for that very reason, Chair. I thought that it was downright rude that, when this gentleman started to speak, as soon as he got the first couple of words out of his mouth, you and Mr Allister went down his throat. I thought that that was downright rude. ....I felt embarrassed for a minute because of the way in which you were being treated, Mr Pauley.

**Steve Aiken:** Thank you very much, Maolíosa. Your comments have been noted. I apologise if I have embarrassed anybody, but, yet again, I state that this is about Northern Ireland and I am not taking any more lectures or being told that we are in a unique situation and then it being explained that we are not.

- 2) Others, such as Mr Paul Frew MLA and Mr Wells disagreed with this, and at the 24 June meeting stated that they felt the Committee and Chair did a great job.<sup>33,34</sup>

- 3) At the 24 June Committee meeting, two members of the Finance Committee expressed concern about the culture of the Committee:

**Maolíosa McHugh:** On a number of different occasions, I've had to look to the Chair when I would have spoken in the past that I was hearing the dawn chorus coming from behind me, shouting at me or passing comment, whenever I'm speaking and the likes of it. And I think too, that's a reflection of the bad manners that is displayed by this committee. Now, whenever it's got to this stage that we're actually being presented in the national newspaper and everyone else is talking about it, and in fact even here within this Parliament, that all of the committees are commenting about the poisonous atmosphere that exists on this committee, I think it is something

<sup>33</sup> <https://youtu.be/VssciA7aYFk?t=636>

<sup>34</sup> <https://www.youtube.com/watch?v=VssciA7aYFk>

that has to be taken on board. And I think it's a very, very serious issue for you as chair to take it on board."<sup>35</sup>

**Pat Catney:** And just one more little point, folks. I look at the committee and we are blessed with just one lady in it. I know when we bring in some of our witnesses, I know it is not meant to be, but we are the eight or nine eight men and we only have the one really, so I'm not accusing anyone, I'm just saying if we could temper that just a little bit.<sup>36</sup>

#### 4. Imbalance of power

It is important to note when considering all of the circumstances that an imbalance of power existed in relation to Mr Pauley and the Finance Committee in favour of the Finance Committee— i.e. in favour of Mr Wells.

#### 5. Article 10 of the European Convention: Freedom of Expression

##### 1) A consideration of Article 10 is important to the facts of this case.

Article 10 provides:

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the rights and interests of others....

##### 2) In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.<sup>37</sup>

##### 3) There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest.<sup>38</sup>

<sup>35</sup> <https://youtu.be/VssciA7aYFk?t=237>

<sup>36</sup> <https://youtu.be/VssciA7aYFk?t=3374>

<sup>37</sup> Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)

<sup>38</sup> R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172

- 4) However, the right to freedom of expression is not absolute. Restrictions may be imposed to ensure that the conduct of public life, including public debate, does not fall below a minimum level so as to endanger public confidence in democracy.<sup>39</sup>
- 5) Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits are not as wide as they are for elected politicians. It may be necessary, for example, to protect officers from offensive and abusive verbal attacks as it is in the public interest that officers are not subjected to unwarranted comments that prevent them from performing their duties<sup>40</sup>
- 6) Protecting public servants is a legitimate and proportionate aim of the State in respect of Article 10.<sup>41</sup>

**Hickinbottom J:**

As well as in their own private interests in terms of honour, dignity and reputation, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration.

What is more, civil servants must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.<sup>42</sup>

- 7) The Committee on Standards and Privileges considered this in their 2015 report:

“It should be pointed out, however, that the right to freedom of expression by politicians is not absolute. The Committee and the Assembly could restrict this freedom provided that the restriction was both prescribed by law and was, for example, necessary in a democratic society for the protection of the reputation or rights of others. The Committee has also noted that gratuitous personal comments made by a politician do not fall within the definition of ‘political expression’ which attracts greater protection under Article 10. The fact, therefore, that the new Code clarifies that it upholds Members’ right to

<sup>39</sup> Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)

<sup>40</sup> Janowski v Poland (1999) 29 EHRR 705

<sup>41</sup> Heesom v Public Services Ombudsman for Wales [2014]; Mamère v France (Application no. 12697/03)

<sup>42</sup> Mamère v France (2009) 49 EHRR 39

freedom of expression is in no way inconsistent with Rule 15 (referred to in further detail below) which provides that Members shall not subject anyone to unreasonable and excessive personal attack.<sup>43</sup>

Despite the scope of the Code extending to committees, the fact that it upholds Members' right to freedom of expression (and to privilege) means committee members should not feel inhibited from subjecting witnesses to challenging questioning. The Committee accepts that it would be entirely wrong if the Code of Conduct required members to modify their behaviour in committee in a way that undermined the democratic process."<sup>44</sup>

Of course, this position does not mean that members are free to subject witnesses, or others, to bullying behaviour. The provisions of Rule 15, which is considered in further detail below, continues to apply to Members when they are in committee."<sup>45</sup>

- 8) In approaching this case, in relation to Article 10, I considered whether
  - (1) The facts led me to conclude, on the balance of probabilities, that Mr Wells failed to comply with the applicable Code of Conduct—in this case Rule 15 and the Respect principle.
  - (2) If so, whether such a finding in itself is *prima facie* a breach of the right to freedom of expression under Article 10.
  - (3) If so, whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society.

## 6. Relevant Cases

As this complaint requires a judgement evaluation, careful consideration of each of the specific facts and circumstances of each matter is paramount. While previous decisions may be useful in terms of outlining approaches etc, they should not be relied on as precedent cases in respect of findings of fact. Having said that, one relevant case worth mentioning in relation to this current case is a 2015 case investigated by the then Commissioner for Standards, Mr Douglas Bain. It involved an alleged breach of Rule 15 and the respect principle. The complaint related to the conduct of MLA Sammy Wilson (now MP) during a Department for Social Development (DSD) Committee meeting. Mr

<sup>43</sup> Document 10 para 90

<sup>44</sup> Document 10 para 101

<sup>45</sup> Document 10 para 102



Bain found that Mr Wilson’s description of one of the witnesses as “dodgy” was at worst a mild form of abuse and did not amount to “an unreasonable and excessive personal attack”. Additionally, Mr Bain found that Mr Wilson was entitled by virtue of Article 10 to make the accusation of partiality in relation to Mr Maskey as Chair of the Committee, even if it was wholly untrue. However, when Mr Wilson described Mr Allister as a ‘thug’, despite the fact this comment was made in a political context by one politician about another, Mr Bain did not accept it was protected by the right to freedom of expression enshrined in Article 10 of the Convention as untruthfully describing someone as a “thug” is an abusive and gratuitous personal comment, that it amounted to an unreasonable and excessive personal attack on Mr Allister and that it contravened the Respect principle set out in the Code. Finally, after taking everything into consideration, Mr Bain found that Mr Wilson’s conduct ‘in the round’ amounted to an unreasonable and excessive personal attack on another Member when Mr Wilson called Mr Allister a ‘thug’ and failed to publicly apologise for or publicly explain his remark. Mr Bain also took into consideration Mr Wilson’s gesticulations, his evidence at interview and the circumstances in which the conduct took place. After a divided decision, the Committee for Standards and Privileges agreed that a finding of breach was necessary in a democratic society for the protection of the reputation or rights of others.<sup>46</sup>

While the Committee acknowledges the importance of Mr Wilson being able to exercise his right to freedom of expression, this right did not outweigh the public interest in this case in ensuring that Mr Allister’s reputation and rights were protected. .... Although this finding interferes with Mr Wilson’s Article 10 rights this interference is justified.

29. Another item of evidence was an opinion article that appeared in the media soon after the 17 June meeting that was included in Mr Pauley’s complaint. The article, written by Mr Tom Kelly and published in the Irish News, expressed the author’s view after watching the Committee meeting that Dr Aiken and others showed an “apparent lack of civility or respect towards them [Mr Pauley and his colleague]”.<sup>47</sup>

<sup>46</sup> <http://www.niassembly.gov.uk/assembly-business/committees/2011-2016/standards-and-privileges/reports-2011-2016/report-on-a-complaint-against-mr-sammy-wilson-mla/>

<sup>47</sup> Document 6

30. Mr Wells dismissed the article as lacking importance, relevance and credibility on the basis of its publisher and provenance and made various remarks about it at interview.<sup>48</sup>
31. Another article included in Mr Pauley's complaint as evidence was published in the News Letter on 28 October 2020, and is a report on Mr Pauley's complaint.<sup>49</sup> As this was a confidential document belonging to a confidential process, in accordance with Rule 17 of the Code it should not have been shared with a newspaper, or anyone for that matter. Mr Pauley refers to this as having been 'leaked' by someone, and wrote to me outlining his concern that he should be subjected to even further scrutiny for raising a complaint with the Commissioner. No new complaint has been raised by Mr Pauley in relation to this.
32. Mr Wells asserts that his 'robust' behaviour was mild compared with other Committees.
  1. **Jim Wells:** I do want to make an important point Dr McCullough I want you to look up the Transport Select committee at Westminster and see how Patricia Hodge and her team dealt with things like the overrun of the Cross Rail, the HS2, the third runway at Heathrow and see how extreme their questioning was of officials of the same calibre of Dr Pauley.<sup>50</sup>
  2. **Jim Wells:** But do sit down and watch Patricia Hodge and if you feel that I have overstepped the mark well then you would be calling Patricia Hodge to be taken to a place of execution and by hung by the neck until you are dead.<sup>51</sup>
  3. **Jim Wells:** Mr McHugh is only in the Assembly so he hasn't a lot of experience and he is not used to the rough and tumble of committees and I stand by every word I said there that what he saw he witnessed as a new MLA is nothing compared to for instance the questioning that occurred during the RHI Inquiry in our committee on RHI and even more important on the whole NAMA issue and if he goes back and looks at the line of questioning there where there is a billion pounds at stake he will realise that the officials were extremely uncomfortable and vexed by our line of questioning and that is exactly our role is to be extremely difficult and uncomfortable.<sup>52</sup>

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<sup>48</sup> Document 3 p7 at G

<sup>49</sup> Document 7

<sup>50</sup> Document 3 p7 at E

<sup>51</sup> Document 3 p32 C

<sup>52</sup> Document 3 p12 at F

33. It is clear that this complaint relates to the treatment of Mr Pauley at the Finance Committee and no other. The fact that Mr Wells refers to past events and times in other committees and jurisdictions to defend his behaviour does not persuade me that his behaviour was appropriate. It does, however, raise concerns in relation to possible inappropriate conduct in other committees.
34. Having interviewed Mr Pauley, I am satisfied that he genuinely felt harassed and intimidated by Mr Wells' behaviour towards him. Having regard to all the circumstances, it can be reasonably considered that Mr Wells' conduct had this effect on Mr Pauley.
35. The Code's principles require MLAs, as elected public officials, to conduct themselves in a manner that promotes the principles of objectivity, leadership, equality, promoting good relations, respect and good working relationships and further at para 3.1 in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly.
36. Treating witnesses, Members or colleagues in a hostile or aggressive manner does not create the inclusive, cooperative environment which the policies and the Code seek to promote. In my view, maintaining civility and respect at all times within our institutions, including our committees, ultimately leads to better outcomes for everyone.
37. Mr Wells' "Do you want to phone a friend?" comment was unacceptable and offensive and it undermined Mr Pauley. In my view, this comment implied that Mr Pauley didn't have an answer, was unprepared and was ineffective in doing his job of giving evidence on behalf of his Minister—among other possible implications.
38. I agree with Mr Wells' view in relation to pressing Mr Pauley for his personal view; Mr Pauley could have stated that he was there to represent his Minister's view as he had stated earlier in the session when similarly questioned. While I do not think this was unacceptable questioning insofar as Rule 15 is concerned, Members should know that civil servants appearing before the Committee are there to provide evidence on behalf of their Minister.
39. Having weighed up all of the evidence, I am satisfied that the behaviour by Mr Wells towards Mr Pauley crossed the line and was unreasonable and excessive.

40. I am of the view that Mr Wells' behaviour was unreasonable because it was not fair or acceptable to treat Mr Pauley, a witness providing evidence on behalf of his Minister, in such a way. It was excessive in that what Mr Wells said was more than was necessary, normal or desirable; it was discourteous and disrespectful and as such was an unreasonable and excessive attack on Mr Pauley in breach of the Code.
41. In terms of freedom of expression and the enhanced protection for political expression under Article 10, while my finding of a breach of the Code amounts to a prima facie interference with Mr Wells' Article 10 rights, this interference is proscribed by law and necessary in a democratic society for the protection of the reputation or rights of others, namely Mr Pauley, and therefore justifiable.
42. I uphold the allegation that Mr Wells' behaviour caused Mr Pauley to feel harassed and intimidated and unable to effectively give his evidence and was in breach of Rule 15 of the Code and the Respect principle.

## Allegation 2

**Mr Wells' continuation of his treatment by way of discussion at the next meeting of the Finance Committee on 24 June was further insulting and inappropriate.**

### Evidence

43. Mr Pauley states that he felt further insulted when at the following week's Committee meeting, Mr Wells made comments about him relating to his 17 June evidence session.<sup>53</sup>
44. At the 24 June meeting Mr McHugh commented in relation to Mr Pauley's treatment, that officials who come before the Committee are often left 'battered, bruised and broken'.<sup>54</sup> Later in the meeting Mr McHugh said he was concerned that the Committee often doesn't show basic good manners and that he would like to see an end to the bullying that goes on...<sup>55</sup>

**Maolíosa McHugh:** Chair, just this notion that I feel that I have to address, and it's in relation to this committee, and whenever we're actually hitting the national headlines, that's saying something about this committee, and I'm not that sure you're aware of or that you have seen the articles in the Irish News this week, in relation to the Finance Committee where a particular reporter had tuned into this meeting and had watched it all the way through. And he described the way that we had actually treated officials and that from the department who'd attended to give evidence.<sup>56</sup>

There's an expression in Irish, *bruite buailte agus briste*, which means battered, bruised and broken. I often think is that how one could describe the way we do treat officials who are only but doing their job coming in here to present evidence to us. That whatever we subject them to, the interrogation, and I've no problem with people ask questions one way or the other, none whatsoever, but I do think that there's a degree of civility that's required. And it isn't limited to those who've come in here to give evidence.<sup>57</sup>

45. Mr Wells responded to Mr McHugh's comment and made further remarks relating to Mr Pauley.<sup>58</sup>

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<sup>53</sup> <https://www.youtube.com/watch?v=VssciA7aYFk>

<sup>54</sup> <https://youtu.be/VssciA7aYFk?t=149>

<sup>55</sup> <https://youtu.be/VssciA7aYFk?t=3147>

<sup>56</sup> <https://youtu.be/VssciA7aYFk?t=154>

<sup>57</sup> <https://youtu.be/VssciA7aYFk?t=154>

<sup>58</sup> <https://youtu.be/VssciA7aYFk?t=709>

**Jim Wells:** As far as the officials are concerned, they are very senior level civil servants we are dealing with, extremely well paid. They've had a benefit over the last three years without any public scrutiny because of the suspension of the Assembly, therefore part of the deal to get their fabulous salary is to take a very tough and robust questioning from us as MLAs. They expect it, they get it, they take it on the chin, they go home and they laugh about it over tea. So therefore, had there been some junior rank, I could understand what the gentleman was saying, but that is just the nature of politics. And frankly, if he doesn't like it, there is always Londonderry and Strabane council to return to.<sup>59</sup>

46. The Chairman did not challenge this statement by Mr Wells nor did he ask him to withdraw any comments made at this meeting.

### **Reasoned Decision**

47. Mr Pauley felt intimidated and threatened throughout the 17 June meeting, and this was further compounded by Mr Wells' inappropriate comments at the 24 June meeting.
48. Mr Pauley told me at interview, "I accept I am well paid. But to suggest that we go home after an experience like that and laugh about it while we are having our tea was certainly not my experience on the evening of 17<sup>th</sup> of June."<sup>60</sup>
49. I am satisfied that Mr Wells was, by virtue of Article 10, entitled to make the comments that he made, even if they were not wholly true. However, I believe his comments were a continuation of the undermining of Mr Pauley, and in that context amount to an unreasonable and excessive personal attack.
50. Mr Wells' belief that witnesses coming to give evidence should be afraid, or in his words 'quaking in their boots', demonstrates his lack of awareness of the Respect principle, the MLAs Code of Conduct and policies relating to treatment of witnesses and colleagues. Mr Pauley said "...his comment when we left the room about quaking in our boots seem to

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<sup>59</sup> <https://youtu.be/VssciA7aYFk?t=364>

<sup>60</sup> Document 2 at 10D

me to suggest that he rather enjoyed doing that to me. It seems to be his approach in the session and his comments in the next session...<sup>61</sup>”

51. During his interview, Mr Wells made reference to protections afforded by Article 10 Freedom of Expression.<sup>62</sup> My consideration of Article 10 is at para 28 above.
52. It is my view that Mr Wells’ comments on 24 June were a discourteous, disrespectful continuation from the previous meeting and caused further hurt and offense to Mr Pauley. On their own, they arguably may not have breached the Code. Taken in the round however, they further offended and insulted Mr Pauley.
53. I am of the view that Mr Wells’ comment was unreasonable in that it was not fair or acceptable to portray Mr Pauley in such a way. It was excessive in that it was a continuation of the behaviour towards Mr Pauley and was unnecessary and disrespectful and in breach of Rule 15 of the Code and the Respect principle.
54. In terms of freedom of expression and the enhanced protection for political expression under Article 10, while my finding of a breach of the Code amounts to a prima facie interference with Mr Wells’ Article 10 rights, this interference is proscribed by law and necessary in a democratic society for the protection of the reputation or rights of others, namely Mr Pauley, and therefore justifiable.
55. I uphold this allegation.

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<sup>61</sup> Document 2 at 10D

<sup>62</sup> Document 3 at 23G

## Other issues arising in the course of my inquiry

### Mr Wells' age-related comments

56. Mr Wells made a number of age-related comments to me at his interview:

1. **Jim Wells:** Could I just say that I have been in the Assembly I suspect before you were born Madam Commissioner because I have been here since 1982 and I suspect that you weren't born in 82.<sup>63</sup>

2. **Jim Wells:** I was expecting someone much older actually, much much older.

**Commissioner:** You mentioned this before. I am 51 you know.

**Jim Wells:** No you are not you are adding a few decades to your age to try to impress me."<sup>64</sup>

3. **Jim Wells:** Ha ha. I don't believe you about your age by the way I think that's an absolute fib but bless you. If you are 51 I am 92."<sup>65</sup>

4. **Jim Wells:** Do you think by the way from a Commissioner's point of view that it is right to lie about your age Dr McCullough? That's the issue I have a concern about. I mean I might raise that. I would like to see your birth certificate. If you tell me Mr Devitt you are over 50 I will believe you.<sup>66</sup>

5. **Jim Wells:** And send that birth certificate to me.

57. Mr Wells' repeated comments in relation to my age were unwanted and inappropriate. Whether Mr Wells was insinuating by his questioning of my age that I was less than the ideal age to be in this role, or was attempting to flatter me, or was engaging in what some might wrongly describe as mere banter---it was inappropriate.

58. Ironically, Mr Wells was making these comments while at an interview where he was being questioned in relation to a complaint against him about alleged inappropriate comments.

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<sup>63</sup> Document 3 p2 at D

<sup>64</sup> Document 3 p23 at F

<sup>65</sup> Document 3 p25 at E

<sup>66</sup> Document 3 p31 at C



59. Mr Wells stated during his interview that his attempt at humour often times gets him in trouble.<sup>67</sup> Perhaps that is because some of his humour may no longer be considered acceptable in today's society.
60. There should be no time or place for inappropriate commentary relating to age, or indeed any other of the categories specified in the equality principle within the Code including gender, religion, sexual orientation, disability, political opinion, marital status or dependent status.<sup>68</sup> This behaviour does nothing, in my view, to promote the Assembly as a tolerant, inclusive, equality driven institution nor does it promote public trust in the Assembly.

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<sup>67</sup> Document 3 p30 at D

<sup>68</sup> Annex A

## **Conclusion**

61. I am satisfied on the basis of the evidence, my analysis and reasoning, that in behaving the way he did at the 17 June Finance Committee, namely the comment he made which he accepts was wrong, and the further comments he made at the 24 June Finance Committee, Mr Wells acted contrary to Rule 15 (para 4.15) and the Respect principle and in doing so breached the provisions of the Code of Conduct.

## **Further recommendations**

62. In light of my findings and observations in this case, I have included here recommendations that the Committee for Standards and Privileges may wish to consider.
  1. Training should be developed and delivered to Committee Chairs and Members in relation to the Respect principle and Rule 15 of the Code of Conduct, with a focus on treatment of witnesses and each other.
  2. A thorough, useful and practical overview of the Code of Conduct and Guide, including the principles, rules and 2016 Direction outlining the complaints process should be developed and included as mandatory within the induction programme for all Members.
  3. A meaningful and mandatory equality, diversity and inclusion programme should be developed and delivered, preferably one that has some proven positive outcomes on organisational culture elsewhere.

## **Annex A**



# **The Code of Conduct and The Guide to the Rules relating to the Conduct of Members**

## **CONTENTS**

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## 2 The Code of Conduct

### 1. **PURPOSE OF THE CODE**

- 1.1 The purpose of the Code of Conduct is to set out for both Members of the Northern Ireland Assembly (“Members”) and the public the minimum ethical standards required of Members when discharging their obligations to the Assembly, their constituents and the public at large by:
- (a) establishing the principles of conduct expected of all Members in undertaking their duties;
  - (b) setting the rules of conduct which flow from these standards and to which all Members must adhere; and in so doing
  - (c) providing openness and accountability to ensure public confidence in the standards regime at the Assembly.

### 2. **SCOPE OF THE CODE**

- 2.1 The Code applies to all conduct by Members when acting in their capacity as a Member of the Assembly. The requirements of the Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the Assembly including Standing Orders and the rulings of the Speaker.
- 2.2 The Code does not apply to the conduct of a Member either:
- (a) in the Assembly Chamber when Standing Order 65 applies;
  - (b) when acting exclusively in the capacity of a Minister;
  - (c) when acting exclusively in the capacity of any other political or public office; or
  - (d) when acting exclusively in their private, family or wider public life.
- 2.3 The Code upholds Members’ right to freedom of expression and their privilege provided for by section 50 of the Northern Ireland Act 1998. It imposes ethical standards upon Members rather than service or performance standards.

### 3. PRINCIPLES OF CONDUCT

- 3.1 Members should at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly and should never undertake any action which would bring the Assembly into disrepute. The Assembly encourages and expects Members to observe the following principles of conduct.
- 3.2 Whilst these principles will be taken into account when considering the investigation and determination of any potential breaches of the rules of conduct, the principles are not themselves enforceable.

#### **The Seven Principles of Public Life**

1. *Selflessness*: Members should act solely in terms of the public interest.
2. *Integrity*: Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. *Objectivity*: Members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. *Accountability*: Members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. *Openness*: Members should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. *Honesty*: Members should be truthful.
7. *Leadership*: Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

#### **The Additional Assembly Principles of Conduct**

8. *Equality*: Members should promote equality of opportunity and not discriminate against any person, treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.

#### 4 The Code of Conduct

9. *Promoting Good Relations*: Members should act in a way that is conducive to promoting good relations by tackling prejudice, promoting understanding and respect and encouraging participation between people on the grounds of different religion, political opinion, race, gender, age, sexual orientation and disability.

10. *Respect*: Members should show respect and consideration for others at all time.

11. *Good Working Relationships*: Members should work responsibly with other Members of the Assembly for the benefit of the whole community. Members' working relationship with Assembly staff should at all times be professional, courteous and based on mutual respect.



#### 4. THE RULES OF CONDUCT

##### 4.1 Members must abide by the following rules of conduct:

1. You shall base your conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.
2. You shall uphold the criminal law. You fail to uphold the law only if you are convicted of, or admit formally, an offence committed when acting in your capacity as a Member.
3. You shall uphold the law in relation to equality. You fail to uphold the law in relation to equality only if a court or tribunal makes a finding against you, or you accept formally that you have breached the law, when acting in your capacity as a Member.
4. You shall register in the Assembly's Register of Members' Interests details of all registrable interests. A registrable interest means an interest specified in Chapter 1 of the Guide to the Rules. [The categories of registrable interest are set out in Schedule 1]
5. You shall declare, whether in Assembly proceedings or in any approach to a Minister, public representative, public body or public official, any relevant interest which might reasonably be thought to influence your approach to the matter under consideration. A relevant interest means an interest to which Chapter 2 of the Guide to the Rules applies, and may include a registrable interest.
6. You shall not accept any gift, benefit or hospitality that might reasonably be thought to influence your actions as a Member.
7. You shall not, in return for payment or benefit, advocate or initiate any cause or matter on behalf of any outside body or individual. Nor shall you, in return for benefit or payment, urge any other Member to do so.
8. You shall not seek to confer benefit exclusively upon a body (or individual), from which you have received, are receiving, or expect to receive a financial or material benefit, or upon any client of such a body (or individual).
9. You shall not misuse any payment, allowance or resources available to you for public purposes. You shall strictly observe the requirements of any determination made by the Independent Financial Review Panel and any rules made by the Assembly Commission applying to these or any other payments, allowances and resources.

## 6 The Code of Conduct

10. You shall observe and comply with the Rules on All-Party Groups and any policy, guidance or instructions of any kind approved by the Assembly, or issued by the Assembly Commission or Assembly secretariat staff on its behalf or with its authority.
11. You shall use information which you receive in confidence only in your capacity as a Member. You shall never use, nor attempt to use, such information for the purpose of financial gain.
12. You shall disclose confidential or protectively marked information only when you are authorised to do so.
13. You shall not act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member, officer or staff of the Assembly of their duties.
14. You shall not use, or attempt to use, your position as a Member to improperly confer an advantage or preferential treatment for either yourself or any other person; or to avoid disadvantage or create disadvantage for someone else.
15. You shall not subject anyone to unreasonable and excessive personal attack.
16. 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.
17. You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority.
18. You shall not lobby a member of the Committee on Standards and Privileges, or the Commissioner in a manner calculated or intended to improperly influence their consideration of whether a breach of the Code of Conduct has occurred.
19. You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these rules of conduct.
20. You shall, if approached by anyone to act in a way that would breach the Code of Conduct, report without delay details of the approach to the Committee on Standards and Privileges, and to any other appropriate authority.
21. You shall not urge another Member to contravene any rule of conduct.



### Legislation and case Law relevant to this complaint

Article 10 of the European Convention provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the rights and interests of others....

### Relevant legal cases

1. Heesom v Public Services Ombudsman for Wales [2014] <sup>1</sup>
2. Janowski v Poland(1999) <sup>2</sup>
3. Mamère v France (2009)<sup>3</sup>
4. Lombardo v Malta (2009)<sup>4</sup>
5. Sanders v Kingston (No 1) [2005] EWHC 1145 (Admin)
6. APW/001/2020-021/CT-Councillor Kevin O'Neill<sup>5</sup>

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<sup>1</sup> EWHC 1504 (Admin)

<sup>2</sup> [\(1999\) 29 EHRR 705](#)

<sup>3</sup> [\(2009\) 49 EHRR 39](#)

<sup>4</sup> [\(2009\) 48 EHRR 23](#)

<sup>5</sup> <https://adjudicationpanel.gov.wales/apw0012020-021ct-councillor-kevin-oneill>

## Annex B

Document	Description
1	Bill Pauley Complaint 01 July 2020
2	Interview transcript Bill Pauley 3 February 2021
3	Interview transcript Jim Wells MLA 9 February 2021
4	Statement Jim Wells MLA
5	Hansard, Finance Committee Meeting 17 June 2020
6	Hansard, Assembly Plenary Sitting 2 February 2021
7	Irish News article, Tom Kelly, 22 June 2020
8	Newsletter article, Adam Kula, 28 October 2020
9	Finance Committee letter and Annexes A-D
10	NI Assembly Dignity at Work policy, Section 6.07
11	Excerpt from CSP 2015 Report

# COMPLAINT FORM

## Notes

1. You do not need to use this form to make your complaint but doing may help to ensure that you provide all the necessary information.
2. If you need help to complete the form please telephone the Standards Commissioner's office on 028 9052 1338. Please note that the Commissioner cannot advise you on whether you should make a complaint or on what you should say in it.
3. Information in bold must be provided if your complaint is to be admissible. You do not have to provide the other information but it may speed up the processing of your complaint if you do.
4. If you are complaining about more than one MLA, you must complete a separate form for each of them
5. Please read Complaints Process before completing this form.
6. Please send the completed form and your supporting evidence by post to The Standards Commissioner, Room 15 Parliament Buildings, Stormont, Belfast BT4 3XX or by email to [Standards.Commissioner@niassembly.gov.uk](mailto:Standards.Commissioner@niassembly.gov.uk)

## YOUR DETAILS

**Title:** Mr/Mrs/Miss/Ms/Doctor/Other (please specify): Mr

**First Name:** Bill

**Surname:** Pauley

**Postal Address:** Department of Finance, Strategic Policy and Reform, Clare House, 303

Airport Road West, Belfast,

**Postcode:** BT3 9ED

**Phone number (Day):** xxxxxxxx **(Evening):** xxxxxx

**E-mail:** [xxxxxxxxxx](#)

## DETAILS OF MLA YOU ARE COMPLAINING ABOUT

**First name: Mr Steve Aiken, Chair Finance**

**Committee Mr Jim Wells, Member**

**Finance Committee**

**WHAT CONDUCT OF THE MLA DO YOU SAY BREACHED THE RULES OF CONDUCT?** (Please describe in detail each act or omission of the MLA that you allege broke one or more of the Rules of Conduct)

I gave evidence to the Finance Committee on 17 June 2020 along with a member of my team. On numerous occasions during this session, contrary to the Assembly Principles of Conduct, I was treated with a lack of respect by the Chair Mr Steve Aiken MLA and Mr Jim Wells MLA.

I was subjected to unreasonable and excessive personal attack (Rule 15) throughout this evidence session. This began when the Chair, Mr Aiken, responded to part of my evidence in an angry and aggressive manner to state his own position on the evidence I had given on behalf of my Minister and indicated that he did not want to hear the evidence that I had presented again. He recognised that the manner in which he made this intervention was unacceptable and apologised to me. Despite this the unacceptable behaviour did not stop and continued to behave this way throughout the session. For example he later intervened again in an angry and aggressive manner to say he did not want evidence presented on what happened in other areas despite this being a specific request made of us in the written briefing. This led to multiple apologies being made. This repeated bullying behaviour made me feel extremely uncomfortable throughout the 90 minute hearing and I was precluded from presenting my evidence. The Chair also did not take sufficient action to protect me for the unacceptable personal nature of the questions from Mr Wells (rule 19)

Mr Wells treated me with a lack of respect through snide interventions such as “do you want to phone a friend” when other members placed their questions and made an unacceptable personal attack when he pressed me for my personal views on issues even after the basis of my giving evidence on behalf of my Minister had been clarified to the Committee. This was personal, repeated and excessive even after it was noted by him that I was uncomfortable where he wrongly attributed my discomfort in being asked to present my Ministers position, deliberately trying to undermine the relationship between a civil servant and the minister.

The multiple and repeated occurrences of unacceptable behaviour throughout this session had a cumulative effect.

The unacceptable nature of my treatment during this hearing was recognised by one other member of the Committee who intervened to state this. This did not stop the continuation of the unacceptable behaviour and the chair took no action, despite my obvious discomfort.

It was also recognised in a press Article by a journalist covering the session. An article appeared in a Newspaper that referred to the session adding to the public nature of my treatment by the Committee.

Giving evidence to a Committee is and should be a thorough and sometimes challenging examination of the issues. In my evidence session, I was subject to robust questioning on matters of fact by other members of the committee. This was a thorough cross examination of my evidence, but was conducted in a manner of mutual respect.. The unreasonable and excessive personally threatening behaviour from Mr Aiken and Mr Wells towards me made me feel uncomfortable and intimidated and meant I was unable to deliver my evidence effectively.

I believe their conduct is in direct contravention of principle 7 of the Standards of Public Life and as a result has brought Assembly in to disrepute.

## WHEN AND WHERE DID EACH ACT OR OMISSION TAKE PLACE?

Committee of Finance Evidence Session 17 June 2020

## WHICH RULE OF CONDUCT DO YOU SAY WAS BROKEN BY EACH ACT OR OMISSION OF THE

**MLA?** (It is sufficient to give the number of the Rule)

### **Additional Assembly Principles of Conduct**

Number 10 Respect: Members should show respect and consideration for others at all time

### Rules of Conduct

15. You shall not subject anyone to unreasonable and excessive personal attack.

19. You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these rules of conduct.



**SUPPORTING EVIDENCE:** You must attach sufficient documents or other evidence to satisfy the Commissioner that there is a prima facie case that a Rule of Conduct was broken. You should also attach the name and contact details of any witnesses whom you believe will be able to provide supporting evidence.

The Evidence is contained in the recording of the hearing. <https://youtu.be/E4JOppU1nc>

The hearing was also recorded by Hansard. In order to make judgement on my complaint I would ask that the evidence session is watched, as Hansard cannot pick up tone, raised voices or give a true representation of the actions of the members complained against.

**FURTHER INFORMATION:** Insert here any further information that you believe would assist the Commissioner in considering your complaint. Please continue on separate sheet if required.

This is an urgent matter. I cannot perform the full duties of my role effectively if I cannot appear before the Finance Committee to give evidence when required to do so on behalf of my Minister and to be able to do this without being treated with respect, not bullied or harassed, not subjected to unreasonable and excessive personal attacks. I expect the Chair of the Committee both to comply with the Code of Conduct for behaviour and to enforce these standards from other members of the committee.

Bill

Pauley 1

July 2020

**INTERVIEW TRANSCRIPT**

**Interview of:** Mr Bill Pauley

**Witness:** XXXXX

**Date:** 3 February 2021

**Place:** Room 106, Parliament Buildings

**Present:** Dr Melissa McCullough, Standards  
Commissioner  
John Devitt  
Bill Pauley  
Neil Jackson

**Time Started:** 9:33 am

**Time Ended:** 10:11 am

A.	<b>Commissioner</b>	I am Dr Melissa McCullough the Commissioner for Standards, the other person present is John Devitt. We are interviewing via Zoom on 3 <sup>rd</sup> February 2021 and the time is 9:33am. I am interviewing Mr Pauley and the other person present is Mr Neil Jackson and I wish to remind Mr Pauley that Mr Jackson is not permitted to answer our questions on your behalf, he is here only as an observer. OK. We also.. as all of our interviews have to be under oath so I have an oath here. Normally we would give you.. its an affirmation really here I will just share the screen so you can see it. Bear with me one second. Ok Can you see that Bill
B.	<b>BP</b>	I can
C.	<b>Commissioner</b>	okay. Can you just speak that out loud for the record
	<b>BP</b>	I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.
	<b>Commissioner</b>	Great Thanks so much. Ok so I am going to start off for the interview record. Could you please state your place of work and your job title.
D.	<b>BP</b>	I work in the Department of Finance, which is located at Clare House on Airport Road. I am the Director of Strategic Policy and Reform in the Department of Finance
	<b>Commissioner</b>	And how long have you been in this role.?
E.	<b>BP</b>	Four years. Just over four years. It was four years in October
	<b>Commissioner</b>	Have you been.. How long have you been a civil servant?
	<b>BP</b>	1 <sup>st</sup> May 1984. 37 years almost.
F.	<b>Commissioner</b>	OK long time. OK I am just taking you through some questions that arise from your complaint. So have you previously given oral evidence before either Mr Wells or Mr Aiken?
	<b>BP</b>	Yes. I have given. I gave evidence once previously to this committee in this session where both were present and I have given evidence once since that occasion.
G.	<b>Commissioner</b>	And tell me about those experiences
	<b>BP</b>	Do you want to previously. I worked previously for Mr Wells when he was Health Minister
	<b>Commissioner</b>	OK
H.		

A.	<b>BP</b>	Other than that some encounters around European Programme funding questions, answer. Very limited. Much less with Mr Aiken who hasn't been in politics the same length of time as Mr Wells
	<b>Commissioner</b>	And were those experiences that you just mentioned, were there any issues with those experiences liken to what we are looking at today in this complaint?
B.	<b>BP</b>	No
	<b>Commissioner</b>	Ok. So during that Finance Committee on 17 <sup>th</sup> June 2020 in your complaint you stated that the repeated bullying behaviour made you feel extremely uncomfortable throughout the 90 minute hearing and that precluded you from presenting your evidence. I am thinking as a senior civil servant in your role that you would be used to robust questioning. Am I right in that?
C.	<b>BP</b>	I have been questioned robustly before and was also questioned robustly during this session in a manner that was completely acceptable by others.
D.	<b>Commissioner</b>	Just to reiterate about you presenting your evidence that it precluded you. In what way do you think it prevented you from presenting your evidence exactly?
	<b>BP</b>	Mr Aiken, the session began quite normally in relation that I gave a statement of introduction, made clear the basis on which I was there. Referred also to the fact that my Minister had given evidence to the committee a few weeks before that and indeed that happened on 13 <sup>th</sup> May and that the evidence I would be given would be on behalf of the Minister as is custom and practice and this is the basis in which we attend the committees. I think that session on 13 <sup>th</sup> May may be interesting to you just to confirm what I did say at.. in relation to the particular issue of what was actually said and agreed during the talks process was indeed the line to take off my Minister in relation to that so he is very much on the record for that. Indeed he said it again yesterday as this Bill had completed its passage through the House whenever we were discussing. So Mr Aiken intervened to say in what he acknowledged was an angry manner, was that he did not want to hear that position being presented again so he directly told me that he did not want to hear what was the evidence that I was there to present on behalf of my Minister. He even referred to this yesterday in the House, made another statement about it. Called the appearance of the two senior civil servants on that day an unedifying experience and he said that he was involved in a negotiations which bore no relation to what the discussions became. So he was effectively saying that what we were saying in relation and what my Minister had said in relation to that process was not true. And he said that during the evidence session and the thing that he did not want to hear that presented again. So I
E.		
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A.		was effectively told that I couldn't present that evidence. I was hugely uncomfortable about this for a number of reasons. Firstly, that was what I was there to do. The manner in which he did it was completely unacceptable. And I suppose to be honest with you I don't think that what he said was necessarily the case of what happened. He indicated that he was present at the talks process. I too was present. I took the notes of the accountability and transparency working group. I was there. I also took notes with two bi-lateral meetings with the Ulster Unionist Party when we discussed the issues that were in these codes and the transparency with them. The leader of the Ulster Unionist Party at that time was Robin Swann in relation to that. So I took the notes of the discussion of that so he was preventing me from presenting evidence on the basis that it was not his position, he did so in an angry manner. He interrupted Mr Allister in order to make that intervention so in fact most of Mr Aiken's interventions other than the introduction and the conclusion in the bit and where I found his behavior threatening and intimidating where when he interrupted others to come to make points and to.. he certainly did that again in relation to evidence when actually my colleague who is a member of my team, where I am responsible for making sure that he is able to work in a safe and effective environment during questioning on whether or not the ..it was relevant to present information about the details of .. in what happened in other jurisdictions in relation to that. There was another intervention where it was said that the committee did not want to hear evidence about the experience in other jurisdictions. Which was completely astonishing to me as in their letter asking the department questions they ask a specific question as to whether the Department was aware about what happened in other jurisdictions. So throughout this there were ...he interrupted other questions while we were answering with other members to make positions and points that prevented us giving evidence and even in response to making a response to the question we were asked. I found that unacceptable.
B.		
C.		
D.		
E.		
F.	<b>Commissioner</b>	Why do think that was the demeanour on the day?
	<b>BP</b>	I really don't know. The session began fairly innocuously as I have said and we moved to Mr Allister which he spent nearly half an hour, 27 minutes or something whatever you might come to..Mr Allister is always known to be challenging and robust in his questions in relation to it. I have known Mr Allister a long time. He was an MEP when I spent 9 years as head of our department's European Division and have on many occasions if you like responded to Mr Allister's questions in his line and his probing with him in relation to him. And indeed we met outside of the Chamber in relation to his Bill in relation to that as well but Mr Allister in his manner and style and in presentation of it I suppose has a style or whatever and where the chair interrupted to if you like for some reason be more robust than Mr Allister was being but he did it in a way that presented me from giving evidence which I
G.		
H.		

A.		believe disconcerted me and I think it affected the rest of my own personal performance during that session that went on for some time afterwards
B.	<b>Commissioner</b>	So Because the discussion was you know made knowledge of that topic was sensitive given the history of SPADS and have those previously appointed so the fact that that was sort of what happened. Did the challenges. Did you think that there would be those sort of challenges because of this..
C.	<b>BP</b>	I knew that Mr Allister would question me on those matters. Mr Allister had previously submitted a written Assembly question to ask what the position was in relation to I think the particular issue was in relation to whether the point at which the Department took over the appointment of special advisers and he was saying that the new code of appointment for special advisers was far worse or whatever his language was but deficient compared to the previous code of appointment for special advisers where that previous code had specified quite detailed steps that you had to make and we had that appointment process establishing a pool of candidates, making sure it was open and fair and transparent in that way. Where the new code of appointment for special advisers stripped all that back. It was a much shorter document and well my response to Mr Allister was quite simply that those making the appointment had to be the Minister for the Minister to be responsible for SPAD which indeed was the case and that the SPAD code of appointment requires those making those appointments to fully comply with all employment law. So I was expecting.. that's a position that Mr Allister had taken in a written question previously and or his Twitter account or I can't remember but it ..the question in his position in relation to that SPAD code of appointment and that issue within it was not a surprise to me.
D.		
E.		
F.	<b>Commissioner</b>	Before I go on to the next question. There is reminding me of..I don't see unless you sent it in and somehow its been... but I am looking for the .. you referred to an article in the press that actually also stated there was .. you know it was very robust and challenging, sort of backing up what you are saying. I don't know if you could refer us to it or send me a copy of that whenever you can. It's not the one that was .. the leaked one. Not that one. But the one prior. The one you have mentioned in your complaint.
G.	<b>BP</b>	I believe I have a copy of that in the depths of our trims system which works very effectively no matter what others might say.
	<b>Commissioner</b>	OK. Thank you. If you could send that one over. Now just..
H.		

A.	<b>BP</b>	The article talked about my hand trembling and the witness being clearly under pressure in relation to and indeed there is a place where you can see that.
B.	<b>Commissioner</b>	During the whole meeting I am counting three at least times where Mr Aiken and I have watched about three times if not more. I don't have the minutes in front of me as to what times he did these but there was at least three apologies throughout that and during and it is clear because you complained that you find his apology was insufficient. I am wondering if you could just explain that.
C.	<b>BP</b>	During the time there is indeed at least three and I haven't counted them to hear that and indeed he finishes with it in relation to it which might have been..I suppose some events after the session or not so much after the session. After I left and I suppose we are talking about Mr Aiken or Mr Wells made a comment about colleagues of mine who were going in afterwards and who say they must quaking in their boots. This seem to be the desired intention and it seemed to me that Mr knew exactly what was happening in there whenever the robust questioning as they would talk it happen. I think I would also refer you to the discussion in the committee the week afterwards when this matter was raised. The committee had a discussion of it. One member described me as being battered bruised and broken at the committee's attempts to intimidate in relation to it. Mr Wells didn't accept that, he said he didn't accept one word of that comment. He said we are very senior civil servants getting large salary and that we go home and laugh about it during that discussion. And the committee more broadly talked about they needed to have robust questioning in order to get to the truth. Now, the comments at the start of that meeting finished with a question, came actually from Mr Allister who asked if any complaint had been made to determine whether or not and there hadn't been at that point and the answer was no and the committee moved on. I think they had another agenda for that day whatever it was in relation to it. But I did feel there that the committee did not recognise nor again was it that we had apologised or did not say that we had stepped over the mark where I felt that they did. I will have to go back to this committee on many occasions. My staff will have to go back to this committee and in fact some other members of my staff have gone there since in relation to it and we have a duty of care to those staff that it will be a safe place for them to go and that they will not be bullied and harassed.
D.		
E.		
F.		
G.		I felt on that basis that my treatment had crossed a line, that it was personal, that I was prevented from giving evidence in a robust and angry and aggressive matter. That is not robust questioning. It overstepped that line to me and I am asking where that line is and whether that was crossed and that is the basis of my complaint. I believe it was in the way that I felt. I believe it had a significant impact on me. I believe that members of the committee recognised that impact. I believe that the chair did when he apologised three times or
H.		

A.		whatever it was. Mr Wells made a point of dwelling on it for some minutes during the session itself. Moaliosa McHugh referred to it, stopped it during the meeting and brought it up again afterwards in the next session that the way that the committee was behaving was matter of concern. I was on the receiving end of it and it was not a pleasant experience in any way and I do not believe that type of questioning and
B.		that level of robustness is necessary for the committee to work effectively and to probe me to whatever extent might be appropriate in relation to the policy issues and questions that are before at this time. And as I say for it to be described by Mr Aiken yesterday as unedifying experience of the senior civil servants of the department being there during that session, well it didn't feel very nice I can tell you that.
C.	<b>Commissioner</b>	Thank you. I am going to hand over to John but one last question from me is that is there any other hidden or relevant factors that we should know about in relation to this. You mentioned earlier that you might have other evidence that you wanted to speak about.
	<b>BP</b>	No I don't have other evidence I mentioned it to you. I suppose the points that I would make my evidence is and we have touched on it a little bit that this is a very public matter for me to be treated in this way. The original press article the fact that the session. It has been twice in the press now, it is a matter and indeed the reporting of the.. during the article of like.. I mean the caption under the photograph is not mention those who were if you like questioning me at the time or whatever. It had my name at the bottom it in relation to the photographs in relation to it. So in a sense that was there. I had wanted to refer you to the 13 <sup>th</sup> May to confirm that that indeed did the position that I was presenting was that of my Minister. I wanted to refer you to the letter of 13 <sup>th</sup> June from our Departmental Assembly Liaison Officer that is where the Department responded prior to the hearing to the question they had asked and indeed chose that it is on the Assembly website because it shows that they had indeed asked questions about other jurisdictions so that the position taken during the session was completely doing that.
D.		I suppose you could also say that in New Decade, New Approach document itself in itself it is evidence because it lists those issues that are there. It is called a deal. I am unsure of Mr Aiken's position and whether that was a deal or not but I do know that our institutions are restored and it is of course true that not everything in that document has been delivered and indeed I have written letters for my Minister to Treasury to say where is the money in relation to it. But that document contained the basis of the principles that was there. There is substantial Executive papers that would show that all of those documents that we were discussing about in the codes were indeed agreed by the Executive as a whole before they published and put in place in relation to it. I have referred also to the evidence the next session and the discussion of the committee members at that which I
E.		think reflect their attitude in relation to it which indeed was a factor in
F.		
G.		
H.		



- A. my deciding whether or not I would make a complaint about the session involved in relation to that and I would refer you to Mr Aiken's comments yesterday during the debate on the bill in relation to that.
- Commissioner** And that would have been..That Finance Committee just to backtrack for a second that Finance Committee meeting after the June meeting would have been..
- B. **BP** Seven days later, 24<sup>th</sup> June
- Commissioner** 24<sup>th</sup> June Thank you
- BP** And it is brought up under matters arising at the beginning of the meeting.
- C. **Commissioner** OK Great. Thanks so much Bill, I am going to hand you over John.
- JD** Hi Bill thank you and your information that you have provided has been very helpful and informative so thank you for that. Bill I suppose I have just a few questions. Can you assist us in relation to what discussion if any you had with your Minister or Mr Hughes in relation to you making the complaint
- D. **BP** I didn't want you to hear me drinking the water there.
- JD** That's OK
- BP** In relation to it. I have had no discussion with my Minister in relation to this complaint.
- E. **JD** So are they aware that you have made this complaint I suppose is my question
- BP** I have not told or had a discussion with the Minister about this complaint. I have discussed the complaint with my Permanent Secretary, Sue Gray and indeed I have written to my employer to say I have made a complaint about the treatment in which I was there because actually the only person who is responsible for ensuring that I have a safe place to work is indeed my employer in relation to that. So I am unsure if she has told the Minister if there has been but I have never raised it with him and he has never raised with me in relation to that nor have we had a discussion about it. Immediately after the session and before we had complaint or was a discussion generally among the staff who were in the office about how that session was extremely robust when I came back to the office after it in relation to that and our private office staff are on the same floor of this building as I am. Fifteen yards from where I am sitting now if you like you would have the Minister's private office in relation that, in relation to that. But
- F.
- G.
- H.

A.		I have never discussed this matter before or after a complaint was made with Conor Murphy.
	<b>JD</b>	So do I understand your answer then correctly that your staff would have viewed this session while you were giving evidence.
B.	<b>BP</b>	Yes. The department with its Assembly Liaison Officer, every department has a dalo as we call them Disemble Acting Department Assembly Liaison Officer, they monitor all the session they would give us of the ones who aren't there we get a read out of every meeting, before the minutes and the things of what the committee is doing in relation to that and those who would be following a particular policy issue or whatever would do it. Mr Hughes was with me. I did discuss that I was going to make a complaint with him in relation to it. I told him I was going to do it lest he be considering or whatever his own thought was going to be but I told him that I was going to do it on the basis as well that I felt that I had a responsibility to him as he works for me and that if I ask him to accompany me to a committee session to give evidence that I have a duty to make sure that in attending a session like that that he shouldn't have to expect that he would be treated in a manner where he was treated with a lack of respect or where his dignity would be exposed in the type and manner which happened in this session
C.		
D.	<b>JD</b>	So following on from that then am I correct in my understanding that Mr Hughes is now aware that you have made a complaint or not.
E.	<b>BP</b>	He is.
	<b>JD</b>	So in respect of that is he supportive of your complaint? In other words will he provide independent evidence, not that it is required, but it is on the video but I am just, he is a witness to these events and I just want to know whether he would be a co-operating member of your staff?
F.	<b>BP</b>	I imagine he would. I haven't discussed with him whether or not or the question of whether he would give evidence or whether he would need to in this matter. Everything that happened or is recorded. The other sessions that I have referred to whether it is the Minister's one the one following this recording. People can see what happened but you know you can ask him or I can ask him. I have no issue with that.
G.	<b>JD</b>	And what level of member of staff is Mr Hughes, is he junior or is he senior?
	<b>BP</b>	No he is a senior civil servant, Grade 5 as we call them trying to you know so he is an experienced and senior member of my team.
H.	<b>JD</b>	Well I suppose my final sort of question to you is that in relation to the unedifying experience comment that Mr Aiken has alluded to, are you

A.		suggesting or you saying that, his behavior is a continuous sequence of events from the session from the 17 <sup>th</sup> June?
	<b>BP</b>	I believe that he is characterising that session where in the comments that he had made and I haven't seen the Hansard from yesterday yet, it is not available yet but as I understand it the quote that we have indeed he says "indeed we had a rather unedifying experience of being given evidence by senior officials in the Department of Finance who told us how guidelines were much more appropriate and that discussions had been held during the New Decade New Approach negotiations. I was involved in those no negotiations which bore no relation whatever to what those discussions eventually became. The New Decade, new Approach document was published and it refers absolutely to the position that we took and as I have indicated to you I took the notes of the working group.
B.		
C.	<b>JD</b>	In respect of your complaint then in relation to Mr Wells you have alluded to the fact that you used to work for Mr Wells when he was the Health Minister
	<b>BP</b>	A short time. Yes
D.	<b>JD</b>	So did you have any discussion with Mr Wells prior to making the complaint?
	<b>BP</b>	No. You mean of course between the session
	<b>JD</b>	Yes
E.	<b>BP</b>	Between what the 17 <sup>th</sup> June and my making a complaint I had no discussions at all with Mr Wells, No.
	<b>JD</b>	OK and Mr Wells who was your, I suppose your boss previously, did you have any reservations about making a complaint against him?
F.	<b>BP</b>	I had reservations about making a complaint against both of them. Making a complaint against elected members for a committee session and I am aware, I am accountable I can .. in there is a question, a difficult question to determine. I am certain there is a line but to determine and to make the judgement of whether it was crossed. In preparing all of the documents that we have prepared and note were the basis of our position at that committee. A new Ministerial code, a new code of conduct for a Minister code and the code of conduct for Ministers, part of that document a code of conduct for special advisers, a code of appointment for special advisers, a new code of ethics for the civil service and new response to the RHI Inquiry and indeed David Hughes and I are working, we are leading the Executive's response to the RHI Inquiry. So, in doing and going through those documents and where bad behaviour had occurred in the past we were writing
G.		
H.		

A.		documents that would take a point on. The whole purpose of this session and indeed Mr Allister clarified during it that the key difference between the Department and him in his Bill was whether legislation was necessary or whether the codes of practice and conduct were sufficient to ensure that behaviour would improve in the future and indeed we had discussions about behaviour during the session we are talking about. On that basis I felt that I had to ask the question as to whether Mr Wells' behaviour towards me during that session which in a sense was different in character to Mr Aiken's. the phone a friend comment was absolutely outrageous in my view in relation to it and I must say that I am rather confused at people of the experience of Paul Frew and Mr Wells that they are unaware of the basis on which a civil servant appears before a committee. I do not know why Mr Wells recognising that I was uncomfortable felt the need to press why I was uncomfortable and to suggest a reason for it as being that I was uncomfortable presenting the views of my Minister. There is no why after 37 years in the Civil Service I would be uncomfortable presenting the views of my Minister I do it every day. It is my job in relation to it. So I had no qualms or compulsions about that at all but he seemed to press the personal point in wanting to make it or otherwise and his comment when we left the room about quaking in our boots seem to me to suggest that he rather enjoyed doing that to me. It seems to be his approach in the session and his comments in the next session about well paid large salaries and I accept I am well paid. But to suggest that we go home after an experience like that and laugh about it while we are having our tea was certainly not my experience on the evening of 17 <sup>th</sup> June.
B.		
C.		
D.		
E.	<b>JD</b>	And in relation to both Mr Aiken and Mr Wells I take it that there is no personal conflict outside of your involvement giving evidence at these sessions.
	<b>BP</b>	No I have had no contact with them since other than the session that I attended subsequently. I forget even what that was on. I appeared before them subsequently with another member of my team. It was in the activities of our public sector reform division here in relation to it and other than In haven't met them personally. I have met other members of the committee in the course of our business in the Department separately and outside of that. I have met separately with Mr Allister on his Bill in between those times and we have met with Pat Catney on banking and access to finance issues which he is leading the Assembly's all party group on banking and finance.
F.		
G.	<b>JD</b>	Thanks Mr Pauley I am going to hand you back to the Commissioner for any follow up questions.
	<b>Commissioner</b>	Thank you John and thank you.
H.		

A.	<b>BP</b>	Sorry Can I? Do you want me to approach Mr Hughes? Do you want me to or will you do that or .
	<b>JD</b>	I was simply asking the question as to whether he was aware that you had made the complaint and whether he wanted to make any written or oral statement. As you quite rightly say the events are recorded audio and video so the events are not in dispute as we stand today.
B.	<b>BP</b>	I suppose for complete clarity as we move on I do see myself as having made the complaint as part of my duty of care to my staff who I have to ask to go and attend that committee and as I would go myself but I have to ask others to go either with me or on behalf of the Minister as we all go but I am responsible for those staff when they attend the committee
C.	<b>JD</b>	That is very helpful. Thank you.
	<b>BP</b>	Thank you
	<b>Commissioner</b>	So I think this has been really helpful. It has fleshed out a lot of detail Bill and also provided a lot of clarity to us. I think you have provided also with further useful evidence that I will be looking into and you have agreed to send me that article. Moving forward. Well before I do, do you have any other questions relating to this, this session.
D.	<b>BP</b>	No. I have no other questions to make. I have told you the nature and basis written and there to see other than the other bits of which are really the background corroborating issues rather than further experiences. It reflects attitude and continued attitude and approach. I have no further comments that I would want to make.
E.	<b>Commissioner</b>	<b>41:03</b> and I appreciate your honesty and the answering the questions very clearly but moving forward we will be interviewing both Mr Wells and Mr Aiken before the end of the month. I am hoping that you know within the next few months there will be a closure to this in whatever way that is but I do not want to prolong it much further. So if you don't have any other questions all that is left is to say that the time now is the end of this interview is 10:13 and I want to thank you for coming along today and thankyou for coming along Neil as well
F.		
	<b>BP</b>	And thanks for me Neil. Talk soon no doubt. Thank you Commissioner. Thank you John
G.		
H.		

**INTERVIEW TRANSCRIPT**

**Interview of:** Mr Jim Wells MLA by Zoom

**Witness:** XXXXX

**Date:** 3 February 2021

**Place:** Room 106, Parliament Buildings

**Present:** Dr Melissa McCullough, Standards  
Commissioner  
John Devitt  
Jim Wells

**Time Started:** 10:29  
am

**Time Ended:** 12:00

A.	<b>Commissioner</b>	So this interview is being tape recorded. I am Dr Melissa McCullough Assembly Standards Commissioner, the other person present is John Devitt. We are interviewing remotely via Zoom due Covid-19. The date is 10 February 2021 and the time by my clock is 10:29am. I am interviewing Jim Wells MLA. Jim I will now ask you to formally take an oath which is this case due to the virtual platform will be an affirmation that I am asking you to say out loud. If you give me a moment to share my screen.
B.	<b>JW</b>	Can I just ask who is Mr Devitt
	<b>Commissioner:</b>	Oh Mr Devitt is the second interviewer he is working with me on some of these complaints.
C.	<b>JW</b>	And does he work for your office
	<b>Commissioner:</b>	Yes
	<b>JW</b>	OK. I do solemnly and sincerely and truly declare and affirm that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth
D.	<b>Commissioner:</b>	OK thank you. OK. The other thing I want to mention that if our technology fails either yourselves or John or myself we will just be patient and wait for whoever goes down to come back and if there are any delays if you need us to repeat or I need you to repeat due to the tech just bear with us. We sometimes have a problem. Is that ok?
E.	<b>JW</b>	OK
	<b>Commissioner:</b>	OK. So Ji.. Mr Wells the matters that I am investigating relate to the complaint made by Mr Pauley when he appeared before the Finance Committee on 17 <sup>th</sup> June 2020. This meeting as you know was chaired by Mr Steve Aiken MLA and you were in attendance as a committee member.
F.	<b>JW</b>	Yes
	<b>Commissioner:</b>	The substance of Mr Pauley's complaint is as laid out in his correspondence dated 1 <sup>st</sup> July 2020 and I notified you about this in writing on 29 <sup>th</sup> September 2020. So this complaint just to reiterate relates to conduct and as such I am interested solely in exploring with you the conduct and behaviour through that complaint. So the principal complaint is that while he was giving oral evidence you treated him with a lack of respect, you made the remark "do you want to phone a friend" while he was responding to another members questions. Mr Pauley also complains that you made unreasonable and excessive personal attack, that is rule 15, when you pressed him for his personal views on issues on which he had already addressed on behalf of his
G.		
H.		

A.		Minister to the committee. Mr Pauley concludes his complaint by saying that he believes your conduct is in direct contravention of principle 7 of the Standards of Public Life that would be leadership and as a result you have brought the Assembly into disrepute by your poor behaviour. I want to acknowledge that in response to the above complaint when I had written to you that we were going into investigation you corresponded with my office on 11 <sup>th</sup> January 2021 via email and sent on a further hard copy which we have received. So I am going to just get into some questions now. I want to focus on that comment that he mentions, Mr Pauley mentions, "do you want to phone a friend". Which I know you do not deny saying because you have written as much and it is now a matter of public record in the recording but in your written response you state he clearly did not find his remark humorous as soon as I was asked to do so by the chairman. So you have acknowledged that you have watched the footage of the hearing so my question is do you wish to reflect on that answer that you provided when you said you withdrew the comment as soon as you were asked to
B.		
C.		
D.	<b>JW</b>	Well the chairman Mr Aiken who also by the way the second complaint against Mr Aiken, the chairman immediately drew my attention to the fact that I had made that comment. I accepted instantly he was right and I withdrew it instantly as was the proper procedure> could I just say that I have been the Assembly I suspect before you were born Madam Commissioner because I have been here since 1982 and I suspect that you weren't born in 82. Now I have been before the committee as a Minister and I have given evidence on behalf of outside organisations to the committee and sometimes it is nice to try and lighten a tough session by having a sense of humour. I do have a sense of humour. Mr Pauley didn't find what I said remotely humorous so when it was drawn to my attention. Most people would have laughed and said no I don't need to phone a friend or something like that. He didn't find that humorous. The Chairman, Mr Hawley or Mr Aiken immediately drew my attention that I had stepped over the line and as is normal I immediately withdrew the comment but that's the normal procedure.
E.		
F.		
G.	<b>Commissioner:</b>	Ok I am going to share a screen again because I am going to play the clip. I don't hear you say I withdrew. But let's just hear
	<b>JW</b>	Let me hear
	<b>Commissioner:</b>	There is going to be a few times where we refer to clips here. If you just bear with me
H.		



- A. **JW** I see the clips yeah.
- Commissioner:** OK. This clip is that and if you can explain to me where, because I don't see it.
- JW** OK
- B. **Jim Allister** *We don't want anyone to touch the facility to appoint behind peoples backs by virtue of the royal prerogative. And you are saying that to elected assembly members who are supposed to make the legislation.*
- JW** *Do you want to phone a friend?*
- Jim Aiken** *6:00 No through the chair and please withdraw that remark that's beneath you Jim. Sorry about that. I apologise.*
- C. **JW** Yeah I see your point. I did but clear..it hasn't come over and Steve immed, the Chair immediately when he saw that I realised I had overstepped the mark, moved on, he could see that I had accepted his point but I do accept your point that that's not clear in the tape.
- D. **Commissioner;** No
- JW** I do accept that. But what I would say to you I do unreservedly withdraw the comment and it was an attempt...I have a quirky sense of humour. It was an attempt to lighten proceedings. It went badly wrong, the chair quite rightly in my opinion pulled me up and it was my intention, and I think Mr Pauley also by his approach realised that I had withdrawn it but you right it does not come over in the tape. Because remember the mic was..the mic wasn't directed to me at this stage because obviously I came in as an aside. So just for the record I totally repudiate that comment. I wish to withdraw it and it was never meant to cause offence and on reflection it shouldn't have been said.
- E.
- F. **Commissioner:** OK Thank you. On that note at 43 minutes as you just saw Mr Aiken says to Mr Pauley "I apologise". He apologises. We just heard it and so I have to ask then. He is apologising so do you consider your conduct acceptable in those circumstances?
- JW** As far as the phone a friend, no totally unacceptable.
- G. **Commissioner:** OK. I am going to play another clip and this clip is at one minute and ten. I have to share the screen again. OK
- JW** *You have watched this place collapse three years with absolutely appalling behaviour by SPADs and you are now sitting here advocating no real change just a slightly beefed-up code. A code to cover the 8:25 of SPADs. You have looked uncomfortable throughout the hearing and you are gentleman of vast experience, you have been around here*
- H.

- A. *longer than me and that's saying something around here, I'll not tell you how long I have been around here but you have vast experience. Are you uncomfortable with some of what you are being asked to say here this afternoon? You in yourself having witnessed the absolute chaos that SPADs have caused to the devolved government of Northern Ireland are personally standing over what you were ask to state this committee?*
- B. **BP** *Subject to the comments the chair made about your approach during the period of suspension the Civil Service...*
- Commissioner:** I don't think I need to see anymore of that. My point being. Let me stop the share. Jim, Mr Wells my point is that you know. I guess the question is are you aware that civil servants are representing the views of their Ministers'. I assuming with your experience you are.
- C. **JW** Yeah but in my written submission to you I said what was unusual about Mr Pauley's comment was he did actually say it was his personal viewpoint, Now the normal response to that would be "Mr Wells, I am here to articulate the views of my Minister, my personal thoughts on this are of no relevance" but what was unusual about Mr Pauley he actually said he personally agreed with that. Now I have used that question many times in my 26 years as a MLA if the senior civil servant and we are talking about a very senior civil servant here who has before my committee, my committee the finance committee and the Assembly for well over a decade and obviously you have a different approach when you are dealing with a very senior civil servant than some young individual who is thrown into the lion's den as it were so if you actually listen to the tape very unusually he said it is his personal opinion. Now that then I thought justified me saying well how can you stand over that opinion. And Mr Pauley would normally have said Well that's nothing, my personal viewpoints have nothing to do with this, I am here to articulate the views of the Department and on that occasion he didn't. Now had he not done that then I wouldn't have pursued that line of questioning.
- D.
- E.
- F. **Commissioner** You see I think earlier on much earlier on in this tape in fact I know much earlier on this tape that he was pressed by the chairman about it. I believe why are you saying this. There is a couple of times where Mr Pauley says you know I am representing the views of my Minister. I am sure of it. And I am surprised myself that he answered your question as you say because he was representing and I don't know if at that stage an hour and ten minutes into this session that he was worn down. I don't know but there was. I understand what you are saying there.
- G. **JW** Can I just say, Dr McCullough that at any stage had Mr Pauley who has even more experience perhaps than I have and that is saying something since I have been here since the Boer War. Now if he at
- H.

- A. any stage felt that my line of questioning was improper, he could have immediately referred it to the chair. Now the chair being a very fair individual and of course there is a complexity here that he also is a person who has been complained against. All he had to say was look Mr Chair I don't agree with Mr Wells' line of questioning and he has done that many times before. I mean Mr Pauley has a season ticket to the Finance Committee. He is one of the most senior spokesmen for the Department and we all know him. No one needs to say who's that coming in. If at any stage he was unhappy with my line of questioning all he had to do was say Mr Chair was I do not agree with Mr Wells' line of questioning. The chair would have stepped in and you will see many examples of where that has happened and would have immediately obeyed the rules of the chair. I was the chair of the Health Committee myself for four years so I know how important it is to keep proper order so there was nothing in Mr Pauley's demeanour. By the way are you limited to 40 minutes here by the way just out of interest. What's your zoom is it a 40 minute or are you unlimited?
- B.
- C. **Commissioner** Oh I am unlimited. Yes
- D. **JW** OK Because I am 40 minutes.
- Commissioner** You're logged into me so you will be fine
- JW** Yeah that's ok. At any stage all he had to say was Mr Chair I am unhappy with this. The chair whose role is to intervene would either have said, No there is nothing wrong with Mr Wells' line of questioning or Mr Wells would you desist from that and I would have done so immediately as I did on the phone a friend who I do accept it hasn't come over as clearly as I felt it should have so he made that point. And then I pressed him on that which is legitimate given the way that he answered. Now but you notice my demeanour and his was calm, there was no foul language there was no aggressive it was just a typical style of question that I have used in this building for 26 years. Neither he nor his assistants and he did have a very bright young chap with him who I would maybe taken a rather different approach to because I haven't seen him before. He could have reverted to him or he could have said to the chair but if you look at Mr Pauley's demeanour there is not even a raised eyebrow about my line of questioning. Note his body language and his reaction. Now had I seen or perceived that he was uncomfortable then I might have pulled back. He was perfectly relaxed about this and that does. I do question what is actually going on here. Why did he? You can't look behind his motivation but this was a very controversial issue which the Minister and the Permanent Secretary were extremely wedded to this cleavage between a code of conduct and legislation and the Minister was clearly telling his officials to take a very tough line on this as he is perfectly entitled to do. So I ask the
- E.
- F.
- G.
- H.

A.		question where in Mr Pauley's body language and reaction. Is there anything that he perceived to be unacceptable.
	<b>Commissioner</b>	I would say it is hard to know what is going through someone's head under that pressure. You know I don't know what is going on in someone's head in that moment whether it you know that stops or you
B.	<b>JW</b>	But you have to make the decision, Madam Commissioner that this is exceptional. It is a very clear test that when the procedures committee looked at this the test is that what I did was exceptional. I would say that it was bog standard ordinary my line of questioning. It wasn't exceptional
C.	<b>Commissioner</b>	Well to be clear my role as it goes is in the code. Is rule 15 so it is a judgement call on whether this was unreasonable and excessive attack.
	<b>JW</b>	No it's a bit further than that. Because when the procedures committee looked at it in the report they said that action would only be taken if there was exceptional behaviour. Now..
D.	<b>Commissioner</b>	That would be up to the committee for Standards and Privileges then once I make my report. Exceptional behaviour that hasn't come into my purview in terms of that. I'm literally looking at the conduct as in Mr Pauley's complaint and that is what I am going by. I mean in terms of that he also invokes a few other things which I will get to. So then am I right in saying that you don't accept that Mr Pauley had justification in finding your style of questioning and behaviour unacceptable?
E.	<b>JW</b>	Absolutely not. He is right in finding my attempt at humour as being unexceptional and I mean I am perfectly happy to say to Mr Pauley or write to Mr Pauley and say it was a very, rather failed attempt to be humorous which could have caused offence. I am not, one person could. Can I give you an example Dr McCullough. I sometimes if I meet
F.		a lady with a very good looking baby who I know well, I will say, Cynthia where does that child get it exceptional good looks from? Right. Now 99% of women will say well of course Jim it is obvious where the child..But I said that once to a lady and she said how dare you. How dare you. Are you insinuating this child is , the father is a postman or something it is obvious where the child gets it good looks from. Now that was my sense of humour backfiring badly and there are people
G.		out there who don't have a sense of humour. I told a joke about Mae West the other day and the person had never heard of Mae West and the joke was meaningless and they found it quite offensive. Now it is quite clearly that Mr Pauley found my joke offensive and I accept that. I accept that so on that issue yes you are right. On the issue about could he find my line of questioning intrusive or difficult, well A it is no
H.		different than the line of questioning I have had before him for about the last 10 years and secondly any reasonable person would say that

A.		if he said Yes Mr Wells this is my personal opinion I think it is entirely reasonable for me to come back and say well are you comfortable with that given that, given the fact that the behaviour of SPADs had brought this place into crisis for three years, you are saying that their future conduct can be controlled by means of a code while most of the Assembly is saying it has to be legislation and eventually the Assembly did decide it had to be by legislation. Are you comfortable about that. I
B.		think that is entirely in order and nobody raised an eyebrow at the meeting. You know this the point neither the chair nor anybody else thought there was anything exceptional here and if that, if this is wrong then I want the previous 26 years conduct to be brought in as evidence because that's my, that has been my line of questioning for 26 years and this is the first time it has ever been raised. Ever
C.	<b>Commissioner</b>	OK. Did you give any consideration. I in general not just this session you know, not just but yes this session because in consideration of the fact that members of the public might have viewed this footage would conclude that your behaviour was a form of bullying.
D.	<b>JW</b>	Can I say that the Finance committee hearing are not the hottest ticket in town. There is about a dozen anoraks, mostly associated to the, the association of accountants and things like that who watch this. Its not like, I was chair of the Health Committee and the Health Committee was regularly watched by several hundred people. I don't think there anybody on this planet remembers this event. And therefore I liked the line about bringing into disrepute with the public. I don't think the public saw any of this. Well if they do then they will have taken exception to my line of questioning for many many years. I do want to make an important point Dr McCullagh I want you to look up the Transport Select committee at Westminster and see how Patricia Hodge and her team dealt with things like the overrun of the Cross Rail, the HS2, the third runway at Heathrow and see how extreme their questioning was of officials of the same calibre of Dr Pauley. You will find that by comparison my line of questioning is frankly very mild indeed. Very
E.		mild indeed. If my line of questioning had been so abrasive I would have thought I would have heard about it by now. So no I can't see how the public would see me as anything but asking a very senior official extremely difficult and awkward questions and what is my role to do to ask senior officials very difficult and awkward questions.
F.		
G.	<b>Commissioner</b>	I see your point. I want to share this with you though because I was made aware of this during my investigation and this is in the Irish News a..
	<b>JW</b>	Yeah that well known DUP supporting newspaper? If you are going to quote something against me there I would be much more worried if you had quoted something praising me in the Irish News
H.		

A.	<b>Commissioner</b>	No. It's actually an article that was written in and published for people to read is why I am showing this.
	<b>JW</b>	By the Irish News which has a very clear republican editorial policy
B.	<b>Commissioner</b>	It's what it says in it that is very very interesting. What it says in it. Speaking about the culture within the committee. Tom Kelly wrote this. I don't know Tom Kelly.
	<b>JW</b>	Can actually read it Dr McCullough.
	<b>Commissioner</b>	Well you know something I will send you a copy of this.
	<b>KW</b>	OK
C.	<b>Commissioner</b>	I will send you a copy of this. One of the things it says is civil servants at hearing represent the views of their Minister, Politicians know that and if they don't know they should. A committee is not a star chamber nor is it the Nolan Show. So what he is saying is he watched in total desperation of boredom of lockdown. Like as you say that's pretty bored to be putting on and he happened to watch this. Regardless of what paper it's in, Mr Wells, I think it does show and make a point. Now I will send you a copy of this because I think it is extremely important that you see because people regardless are reading, have read this opinion piece and it's not a good look for our Assembly. So..
D.	<b>JW</b>	First of all this is the first that I have been aware of this article. It is totally new to me. Secondly Tom Kelly's editorial stance is extremely well known. Thirdly does he actually refer to me in the article just out of interest.
E.	<b>Commissioner</b>	I would have to re-read it. he refers to. I don't think he does but he does refer to something that you said and I will just put up next. You know, aspiring to have civil servants quaking in their boots is no measure of political performance which brings me to the next clip which I will just share now. Which is, he calls in the next people..
F.	<b>Steve Aiken</b>	<i>Janice?</i>
	<b>JW</b>	<i>They will be quaking in their boots after that</i>
G.	<b>Commissioner</b>	So I mean "quaking in their boots" comment. I just want to move on to that because that was also heard and referred to my Mr Pauley in subsequent correspondence and during the investigation so I just want to know why you would make that comment.
	<b>JW</b>	My weird sense of humour. What I would say to you about that is. First of all that wasn't said within the hearing. That was an aside between witnesses as far as I could see. It wasn't said to anybody. That's the first point. In fact I don't even believe that it should have been
H.		

A.		broadcast because the Assembly team are only there to do a Hansard report of actually physical committee meetings. Yes civil servants should be quaking in their boots if they make bad decisions and have to justify them before the Assembly's committee. I mean my role is to be awkward, difficult, searching and pertinent. I mean you know, can I just give you an aside. When Arline Foster many years ago agreed to sell the Giants Causeway to a developer called Seymour Sweeney there was a meeting of the DETI committee shortly after that and one back bench sycophant asked the Minister the following question –“Mrs Foster can I take this opportunity to congratulate you on an outstanding decision” and I said to the MLA that really her to the wall didn't it. You know we are not there to ask helpful questions or ask questions which are not difficult. We are there to scrutinise senior civil servants and Ministers about government policy and frankly if they have done something wrong they should be very worried about coming before the Committee, as I was as a Minister. I certainly suffered a lot more than that when I was a Minister when I became before the committee. So yes it was an aside it wasn't part of the 25:12 it was made to Mr Pauley and also can I just say that he had also had a series of searching questions from Jim Allister QC who is my colleague on the committee who also asked extremely difficult questions as did Paul Frew. So he had come through what was a difficult session which was on a controversial issue. But remember if you rule against me Dr McCullough there is a serious issue here as to how far members of the Assembly can go in these scrutiny committees to ask very pertinent awkward and maybe times very difficult questions of senior servants. And if you constrain that we are in very difficult territory.
B.		
C.		
D.		
E.	<b>Commissioner</b>	Well I think there is a line. I haven't made any judgement. My mind is open. I have no..
	<b>JW</b>	I don't believe I have crossed it.
	<b>Commissioner</b>	Well you will..
F.	<b>JW</b>	Apart from once, I don't believe I have crossed it.
	<b>Commissioner</b>	Apart from the phone a friend
	<b>JW</b>	Yeah I did cross the line there. Yes I did.
G.	<b>Commissioner</b>	So I think there is a sense that I think we all agree that robust questioning is extremely important. I think holding people to account is extremely important. I agree with you. I just think behaviour in the way we do it has to be and that is my point. I have no other sense of anything else other than what's right, what's wrong. If you are making people feel bullied that to me can't be right. But that's not robust. You
H.		

A.		notice that you say and I will mention this now. You say that Jim Allister and I have watched this 10 times this video
	<b>JW</b>	Oh dear love you
B.	<b>Commissioner</b>	To get a sense and it's not fun watching. You know, it does. He is under, those witnesses are under pressure and they should and they often are. And that's normal as you say. They are asked robust questions. Mr Allister did not treat him with disrespect by asking him or the other witnesses questions that were robust. I don't see that
	<b>JW</b>	Let me understand. Where did I treat him apart
	<b>Commissioner</b>	The phone a friend, the phone a friend
C.	<b>JW</b>	Yes I agree. I agree with you totally there is no argument about that
	<b>Commissioner</b>	OK, OK. That's all I am saying to you. I am not looking to squash anybody's robust questioning.
D.	<b>JW</b>	But Dr McCullough whatever cites, whatever you wish to do on the phone a friend I will do. I mean because I accept what you are saying it was an attempt at humour that backfired badly and I mean, some people, I know had I been in that chair that Dr Pauley was sitting I'd have said " I don't need to phone a friend, I can match you any day" but he clearly, let's be honest he clearly is not a man who has a sense of humour and that's he is perfectly entitled not to have one. I do though I am told its quite odd but I go back to the where did that baby get its
E.		fabulous good looks from, 99% of people thought it was funny and she thought it was the most insulting thing she had ever heard in her life. So but I am not going to argue with you on the phone a friend I need, the minute I said it and I could see the reaction of the chair, I knew I had overstepped the line. Now I do accept the valid point that you are making it does not come over clearly that I had said look I agree, you are right and I desisted from it immediately and I think the chair and of
F.		course you are interviewing the chair anyhow about the complaint against him. I think the chair will say to you, yes I accepted that Jim Wells had pulled back from that immediately so that, there is grounds for his complaint. I wouldn't have complained about it and I have faced an awful lot worse but he has grounds for complaint on that phrase. Yes absolutely. 100%.
G.	<b>Commissioner</b>	Thankyou I am going to hand you over to John and then I will close it out but he has a few questions himself as well. Thank you
	<b>JW</b>	Hello Mr Devitt
	<b>JD</b>	Mr Wells good morning
H.		



A.	<b>JD</b>	My questions relate to our further engagement with Mr Pauley and he has drawn our attention to the following weeks finance committee which was dated 24 <sup>th</sup> June during which he believes that there was further evidence of unprofessional treatment which was a continuation of his appearance before your committee on 17 <sup>th</sup> and I am going to ask the Commissioner to play that clip to show you the relevance of that.
B.	<b>SA</b>	<b>29:59</b> <i>Do you want to go ahead</i>
	<b>BP</b>	<i>Just as an issue that I feel I have to address. It is in relation to this committee and whenever we are actually hitting the national headlines it is saying something about this committee and I am not that sure if you are aware of or have seen the article it was in the Irish News this week in relation to the Finance Committee where a particular reporter had tuned into this meeting and had watched it all the way through. He described that we had actually treated officials and that from the Department who had attended to give evidence. Now had he had the opportunity to view this committee on other occasions he would have seen probably the very same attitude being displayed towards people who do present themselves to this committee. There is an expression in Irish - buailte, bruite agus briste which means battered bruised and broken and I often think is that how one could describe the way that we do treat officials who are only doing their job, coming in here to present evidence to us but whatever we subject them to. The interrogation and I have no difficulty with people asking questions one way or the other. None whatsoever but I do think that there is a degree of civility that is required and some of those who have come in here to give evidence on a number of different occasions I have had to look to the chair when I would have spoken in the past that I was hearing a dawn chorus coming from behind me shouting at me or passing comment whenever I am speaking on the likes of it and I think too that that is a reflection of the bad manners that is displayed by this committee. Now whenever it has got to the stage that we are actually been presented in a national newspaper and everyone else is talking about it and in fact even here within this parliament that all the committee are commenting about the poisonous atmosphere that exists in this committee I think it is something that has to be taken on board and I think it is a very very serious issue for you as chair to take it on board as each and everyone of us has to as well to ensure that anything we do say that we are not there shouting and roaring or going down someone else's throat attempting to intimidate them one way or the other. But I know anyway that from what I have been experiencing in here I don't like it and I really do think that it is about time that people called a halt to that. That they show much more respect to each other and in particular to those come in. Funnily enough I heard my mother say never insult anyone in your own house. It is seen as a very cowardly thing to do and I can only but describe it as times that</i>
C.		
D.		
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H.		

A.		<i>attitude despite in here towards those that have come in to give evidence they are the ones that are in our chamber, we have been insulting to them and I think it has to stop</i>
	<b>SA</b>	<i>Thank you very much indeed. Noted</i>
B.	<b>JW</b>	<i>I think the gentleman has a lot to learn. He is only in this institution, I have been here 26 years. Can I assure him that having sat through committees. I think every committee in this building for 26 years. What he has seen of your chairmanship sir has been absolutely nothing compared to what I have witnessed when things get really hot and heavy. That's the nature of politics. I don't agree with a word often he says, I have a right to say it and he feels offended well that is just unfortunate. As far as the officials concerned they are a very senior level civil servants we are dealing with. Extremely well paid. They have had the benefit of the last three years without any public scrutiny because of the suspension of the Assembly. Therefore part of the deal to get their fabulous salary is to take a very tough and robust questioning from us as MLAs, they expect it, they get it, they take it on the chin and they go home and they laugh about it over tea. So therefore had they been some junior rank I could understand what the gentleman is saying but that is just the nature of politics and frankly if he doesn't like it there is always Londonderry and Strabane Council to return to.</i>
C.		
	<b>??</b>	<i>Sorry Mr Chair there is no Londonderry Strabane Council</i>
D.		
	<b>SA</b>	<i>Excuse me one second</i>
	<b>??</b>	<i>OK</i>
	<b>JW</b>	<i>Entirely valid. I stand by every word of that and that's Maoliosa McHugh who is a Sinn Fein MLA for West Tyrone. He clearly had been instructed by his Minister to raise that issue as frequently do and there is no issue with that because his Minister was clearly stung by the strong line the committee took on his proposal for a code. Mr McHugh is only in the Assembly so he hasn't a lot of experience and he is not used to the rough and tumble of committees and I stand by every word I said there that what he saw he witnessed as a new MLA is nothing compared to for instance the questioning that occurred during the RHI Inquiry in our committee on RHI and even more important on the whole NAMA issue and if he goes back and looks at the line of questioning there where there is a billion pounds at stake he will realise that the officials were extremely uncomfortable and vexed by our line of questioning and that is exactly our role is to be extremely difficult and uncomfortable and therefore I see this query in two parts. First of all on the issue of phone a friend, for instance if I was required to write to Mr Pauley and say look it has been drawn to</i>
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H.		

- A. my attention that this overstepped the mark. It was not my attention to cause offence and I withdraw entirely that comment. I think that is reasonable but moving on to the substantive issue is have I crossed the line in holding the Department and the Minister to account by my activities on that committee and various meetings the answer is emphatically no and I think it is such an important principle that if you decide to rule against me I think that has to be tested on the floor of the Assembly because if we are going to bridle and there was a very valid comment made in the procedures committee report – if MLAs believe that being forceful and asking very searching question that they could end up before yourself Madam, then I think that will curtail what members do and this place was suspended for three years where there was no, no holding to account of anybody and if we have .. one thing we have failed as MLAs we have not held to account our Ministers and our departments properly to account because that has led to RHI, to NAMA to Red Sky and a series of scandals and we have failed to some extent to hold them to account. If you are saying to us that you wish to curtail our ability to do that because somebody might perceive it as being offensive or difficult or awkward then I am afraid that is such an important principle that it needs to be tested on the floor of the Assembly. If you are saying to me that I overstepped the mark on the phone a friend I say absolutely and I will take whatever remedy you recommend on that to dispense with this question because the question you have to ask yourself and I mean you are clearly much more experienced in this than I am did I overstep the line or more important the Wednesbury Ruling would a reasonable person watching what I have done believe I have overstepped the line. I note that Mr Kelly didn't feel that my conduct so unfair that to actually quote me and quote what I said and think that is interesting. He was probably one of the seven people in Northern Ireland watching that hearing. Have I brought the Assembly into disrepute. I think the Madam Minister can I tell you how wonderful a decision you have made. I think that brings the Assembly into disrepute far more than me asking Mr Pauley a very very senior servant and I mean really senior, you are talking 90 grand a year plus here. A very good salary, me holding him to account when he leaves himself open to that. Now
- B. **JD** Mr Wells can I? That's very helpful and it's on the record and you have placed that on the record. Can I just explain that the purpose of showing you that video was twofold? Firstly that it relates to the media article that you say you knew nothing about.
- C. **JW** I don't read the Irish News. I don't believe a word that it says. It is a GAA paper with news attached. I don't read it
- D. **JD** And secondly the public will be interested to know how you describe your behaviour during that session which is a continuation of events from the 17<sup>th</sup> June when Mr Pauley was giving evidence and he
- E.
- F.
- G.
- H.

- A. **JW** certainly has seen this footage and he sees this as a continuous disrespect of him having given evidence to the committee  
And?
- JD** So how would you describe your behaviour that you have just seen?
- B. **JW** I am not there to show Mr Pauley respect. I am there to ask Mr Pauley extremely difficult awkward and uncomfortable questions. I am not there to say Mr Pauley you are the most wonderful thing since sliced bread or there was no disaster in this country for three years because we didn't do our job properly and hold your department to account. You know if Mr McAuley comes out of my meeting, meetings with me and Jim Allister etc and says that was a soft run we got. I was shown lots of respect and I didn't get asked any difficult questions. Well then we have failed in our role.
- C. **JD** So can I just clarify what you have just said. You don't see it your role to give respect to the committee or the members that appear before it. Is that correct?
- JW** No. my role is not to be a sycophant. My role is to ask questions which people will find very difficult and uncomfortable and indeed would prefer that I wouldn't ask them. Now if by doing that it might be insinuated that I don't show respect. I have nothing against Mr Pauley, he is just another senior civil servant I wasn't getting..I didn't get up that morning and say how can I make life difficult for him. My role is to get to the bottom of a truly disgraceful situation which arose in this country where basically highly paid young SPADs were running this country and brought the country into absolute chaos.
- D. **JD** Mr Wells the topic of debate is not relevant to this conduct interview. The purpose of this interview is to give you the opportunity to explain your behaviour as complained about by Mr Pauley. You have just seen the video footage and your fellow committee member uses the phrase 'battered bruised and broken' as the experience of witnesses. Do you not consider that to be highly relevant in relation to Mr Pauley's complaint who felt that he was harassed and bullied and that you showed him disrespect?
- E. **JW** First of all remember where that wording came from. It came from the mouth piece of the Minister, a Mr McHugh, who clearly had been told to say it by Conor Murphy because, Conor Murphy was feeling very uncomfortable by the very strident line we were taking as a committee. Secondly you have to decide and I have made my own decision. I don't believe that Mr Pauley showed the slightest indication that he was battered bruised and broken because all he had to do from his vast experience was to say Mr Chairman, I do not like Mr Wells' questioning and the one thing I have always done when I have..I have huge respect for Mr Aiken as the chair, he has chaired the committee really well. If Mr Aiken as he sometimes does, pulls me in, I say, I accept your ruling Mr Chairman, and I desist immediately
- F. **JW**
- G. **JW**
- H. **JW**

A.		from the line of questioning. Mr Pauley didn't raise that and indeed neither did Mr McHugh or anybody else in the committee raise it because that is my way of questioning people and have been for 26 years so how come after the event, in fact several months after the event does he then suddenly feel that he hasn't been shown respect. I suspect because Sue Gray and the Minister were quite angry with the difficult questions that we asked at that committee. I believe that this has originated from the Department this complaint rather than Mr Pauley
B.	<b>JD</b>	Well let me take this in stages for you and in fairness to you, I am going to ask you a very simple question. Should the environment within the finance committee meeting not be a welcoming and respectful place for those giving evidence and for the public that may be watching.
C.	<b>JW</b>	It should be. But it is inevitable that the questions in a committee if they are doing their job correctly will ask very difficult and searchful questions where the individual may not feel respected because his views are not respected and I did not agree at all with views personally held views by Mr Pauley, because remember had Mr Pauley said Mr Wells my views are nothing to do with this I am here to represent the Minister. I would have desisted and gone on to the other questions and I notice he did not raise the next four or five questions in the sequence. There is more questions than what you have played. And they were difficult. But the reason, what was exceptional and as I say I have only been here 26 years, what was exceptional he actually said that he personally agreed to the Minister's line on this and therefore I asked him these difficult questions. Now he may well have felt with that line of questions I didn't show him respect. I accept that. But that was not my intention. My intention was to get to the bottom of why the Department were pursuing a line which I felt was so unreasonable.
D.	<b>JD</b>	Well you have said in your written response to the Commissioner, Mr Wells that you are an experience public representative, an MLA, and as such the public will expect high professional standards from you.
E.	<b>JW</b>	Correct
F.	<b>JD</b>	Do you expect. Do you accept that on the clips that have been shown to you on meeting of 17 <sup>th</sup> and 24 <sup>th</sup> that your behaviour has damaged public confidence and that your behaviour didn't reach those high standards that the public expects
G.	<b>JW</b>	Absolutely not. I mean where are the public. Apart from Tom Kelly who is certainly no friend of mine or Unionism. Where is the public outcry about this, this hearing which next nobody saw?
	<b>JD</b>	Well the public outcry is as reported in the media and your view on Mr Kelly isn't entirely independent and personal view. I don't know Mr Kelly but he was watching from his home and he states in his media article that even he felt uncomfortable watching it. Such that he reported your disrespectful comments when the session was ended
H.		

A.		and the two witnesses were waiting to be called about your comment 'quaking in their boots'
	<b>JW</b>	Yes and if Department officials have made wrong decisions they should be quaking in their boots. That's our role.
	<b>JD</b>	Well let me ask you this. Let me ask you this question Mr Wells. Is it or was it your intention to create a hostile environment for those having to give oral evidence
B.	<b>JW</b>	No not at all. My intention was to ask really uncomfortable difficult questions. Now they may have perceived it to be a hostile environment but that's my route for the last 26 years and when I was on the Health Committee we exposed all sorts of skulduggery by ask..I will give you one example Dr McCullough. When there was a whole series of health crisis in 2012 and the Minister kept coming in front of us and saying they were going to be dealing with these crises which he called the cryptosporidiosis outbreak I asked a question Mr Minister is there anything out there that you know about that is about to break and you haven't told us. He was extremely uncomfortable; he said no there wasn't. A week later there was a call a re-call of thousands of cancer x-rays at Altnagelvin Hospital. He later said he felt that was one of the most difficult uncomfortable questions he ever had experienced because he knew when I asked him what was coming and he couldn't tell me. Now did I show him respect, maybe I didn't, I asked him a question he found deeply embarrassing but that is my role to do. Now if in doing that people feel I am not showing respect I can understand that but what you have to decide is as my line of questioning which I have been using for 26 years crossing the line between holding to account and bullying. If you look at my demeanour in those clips there was no raised voice, there was no foul language, there was no attempt to try and intimidate. It was just cool clinical difficult awkward questions and therefore I don't believe Mr Pauley has any leg to stand on but I do feel the Department were angry with me and Jim Allister and the Chair because Mr Pauley has also reported the Chairman as well. And myself and Steve Aiken have spoken about this. So if you decide beyond the issue we are agreed upon to feel that my line of questioning is ... have overstepped the line then I Think the Assembly as a whole has to debate your report on this issue and come to a decision. But Most more importantly Dr McCullough go and look at the Dáil and Westminster and compare their line of questioning and how they treat witnesses to the Northern Ireland Assembly and you will see that we are pussycats compared to those in Westminster where you get in my opinion much stronger much more strident questions and can we should we be measured any different from our colleagues in Leinster House or in the mother parliaments. Should we be different?
C.		
D.		
E.		
F.		
G.	<b>JD</b>	Mr Wells do you consider yourself to be a bully
H.	<b>JW</b>	No I do not. I am not a bully

A.	JD	But you have made the derogatory, a disrespectful remark of “do you want to phone a friend” which you have acknowledged
	JW	Yes very unwise, very unwise
	JD	And you accepted the comment shouldn't have been made.
	JW	Correct yes.
B.	JD	Do you also accept that the committee meetings is not an adult boys playground and it is not a place for humour
	JW	Sometimes it can. I am reminded of the most famous phrase when in the Commons when Tony Blair couldn't decide which of two candidates, Mr Redmond or Mr Ken Livingston to be the mayor of London and William Hague said well Mr Redmond can be your day mayor and Mr.. a .. the other candidate can be your nightmare. Now a very cutting cruel comment but one where political satire was used to create political effect. You can on occasions. I mean just in a sequel to that I wonder how you would react to that. When Mrs Foster eventually decided not to sell the Giants Causeway to Seymour Sweeney the property developer, Danny Kennedy stood up and said Mr Speaker could he say that the Minister, Mrs Foster has left Mr Sweeney on his tod. Now that is a very clever line. Now it is very offensive to Mr Todd and very offensive to Mrs Foster. Mrs Foster didn't run to the Standards Commissioner. Mrs Foster took it on the chin and said that's clever political satire. I just wasn't that clever to be honest. I have used that line before in committees and the witnesses laughed and said that's very funny but Mr Pauley didn't see it that way and I could spot that instantly. There's is no. I am not going to defend for one second that comment but that's the sort of thing that happens in the rough and tumble of a committee, you make mistakes, you withdraw though I accept that Mr Pauley didn't really see it that way and you know IO am quite happy on that one to do whatever is required. On the other I think we are going into territory where we have to be so careful that you don't bridle the work of the committees.
C.		
D.		
E.		
F.	JD	Let me take you back to your written response to the commissioner, Mr Wells and that is your email of 11 <sup>th</sup> January which I hope you have before you. I am in the second paragraph, you have referred to the complaint raises serious issues regarding the right of elected representatives to hold senior officials from government departments to account and I think as you have alluded to in this interview you are absolutely right in that regard and that is why this, this process is so important and this conduct interview is important. But I want to draw you attention to the second page of your response and it is paragraph 2 where you have said that there could be a suspicion that the Minister or his permanent secretary instructed Mr Pauley to lodge complaints against myself and the committee Chair in order to rein in our support for the bill. The actual facts are, this complaint was not
G.		
H.		

- A. reported to the Minister. Mr Pauley did not report this to the Minister. Mr Pauley reported to his Permanent Secretary because he was concerned that any future representative from his department or other departments had a place of safety to come to at a committee meeting and he views those committees that they should be not hostile environment that they should be a place of safety where people can give evidence without being harassed and bullied.
- B. **JW** Yep
- JD** Would you like to comment on that.
- JW** Thank you for that information though you say he spoke to Sue Gray. Sue Gray could well have encouraged him to take a complaint because I know that Sue Gray had appeared before the Committee and my line of questioning was identical to Sue Gray and to the Minister. Sue Gray had app and she clearly was very uncomfortable about our line of questioning about this bill. Now secondly do remember I would have taken a very different view to the younger gentleman beside Mr Pauley, who I had never seen before. I think you have to make allowances for the seniority and the experience of the person so therefore I would never dream of being hostile to some or as hostile as perceived to be to people who are younger and more lacking in experience but Mr Pauley is like myself he is an old experienced hand and he has had many difficult encounters with our committee over the years so therefore if he has had a discussion with Sue Gray, Sue Gray could then have said "go for Wells, we have to rein this guy in, he is being awkward so complain".
- C. **JD** You are misrepresenting what I have told you. I am simply telling you that Mr Pauley didn't see it appropriate to contact his Minister, he did however see it appropriate and necessary to contact Sue Gray who is his employer and he was reporting that as regards to a place of safety for any other member of staff who should have to come to the committee to give evidence. That he did not want them to experience the harassment and bullying and disrespectful treatment that he has alleging,
- D. **JW** Hold on, now hang on. Are you saying that I am guilty of harassment and bullying?
- JD** No I am telling you that that is the complaint that Mr.
- JW** That is the perception that he had.
- E. **JD** That is his complaint
- JW** I'm saying I didn't harass or bully him. I said I made him feel very uncomfortable and rightly so because I felt he was defending an indefensible policy. Are you saying that by that stage Mr Pauley had actually lodged the complaint and he was simply telling Sue Gray or did he consult Sue Gray before he lodged it?
- F. **JD** That is his complaint
- JW** I'm saying I didn't harass or bully him. I said I made him feel very uncomfortable and rightly so because I felt he was defending an indefensible policy. Are you saying that by that stage Mr Pauley had actually lodged the complaint and he was simply telling Sue Gray or did he consult Sue Gray before he lodged it?
- G. **JD** That is his complaint
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A.	<b>JD</b>	My understanding is that he contacted Sue Gray that he was making the complaint. He wasn't persuaded either way. He had made his mind up. He felt so that this matter was so important that he had no other option. And bear in mind he was your previous, you were, he worked with you when you previous Health Minister.
B.	<b>JW</b>	Oh yes, I know Mr Pauley extremely well. Yes but what you are saying there is there was a discussion with Sue Gray. We know that Sue Gray was very unhappy with our line we had taken as a committee on the Bill so how do we know that Sue didn't then encourage him to submit the complaint/
	<b>JD</b>	The line that the committee took on the Bill is actually irrelevant. The relevance is the conduct of the treatment of witnesses and in this case Mr Pauley.
C.	<b>JW</b>	Which I believe..
	<b>JD</b>	And Mr Pauley says your treatment of him was disrespectful. He believes that it was harassment and verging on bullying
D.	<b>JW</b>	And he never showed the slightest indication of that during the committee meeting, he didn't raise it with the chair and didn't write to the chair afterwards. He went straight to the Commissioner. And he is perfectly, I mean he would meet the chair and the deputy chair for briefings on a regular basis. All he had to say was look I thought Wells went too far, rein him in. He never did any of that. Look at the video very carefully Mr Pauley didn't raise a single eyebrow about any of my line of questioning throughout the entire hearing. There was not even a quiver of a lip. He was his usual very capable self. So therefore if he was unhappy he could have stopped it dead in its tracks. Steve Aiken would have made an assessment and he would have reined me in as Steve reins in people regularly and quite rightly so and as I did as when I was chair of the Health Committee. So ..
E.	<b>JD</b>	Mr Aiken did rein you in, in relation to comment on phone a friend
	<b>JW</b>	And accepted it immediately.
F.	<b>JD</b>	So much so that he said it was beneath you.
	<b>JW</b>	Yes and I accepted that immediately.
	<b>JD</b>	Mr Wells thanks for answering my questions. I am going to hand you back now to the Commissioner for her to continue her line of questioning
G.	<b>JW</b>	OK Dr McCullough
	<b>Commissioner</b>	OK Mr Wells, in fairness I have watched quite a number of these finance meetings
	<b>JW</b>	Oh dear love you.
H.	<b>Commissioner</b>	Well I'm not, I don't do it in my spare time.

A.	<b>JW</b>	Not like the anoraks, sad people
	<b>Commissioner</b>	I was watching it in preparation for this and I have to say I watched one where Sue Gray was there speaking to you and talking about going out for pints and it was very amicable. I believe that was Sue Gray if I am not mistaken.
B.	<b>JW</b>	It was. I don't drink by the way so wouldn't have been going for a pint anywhere
	<b>Commissioner</b>	You know what I am saying is there was not this feeling of hostility in some of the meetings that I watched. Now some that I watched there was a bit of ...in this one in particular and some of the statements made in the one after that Mr Pauley has, both of those , has mentioned. You can understand I hope that when someone feels that they have been bullied or harassed or maybe when you said.. take aside his view on questioning about the Minister's view and is he personally agreeing with it. Put that aside for a moment. I know that you are agreeing to the fact that it was wrong that phone a friend. When you go into the next meeting the week after and you suggest that he was at home laughing about it, they make so much money then they go home and laugh about it. For somebody who felt that it was really very bad behaviour towards them and undermined them. That statement. Then you say that they were laughing about it later you can imagine that that would really grind somebody, that they would think, that there was some sort of thing that where he would be laughing about something that he so took seriously so I just want to see what your view is on that because I found if I am being 100% honest when I read that and Mr Devitt is aware of this, I found it very offensive, 'phone a friend' and I found it offensive because of that and you have already admitted it, so I found it offensive because it would make me feel like I wasn't doing my job well, that I was stupid, that I was under prepared, that.. there is a lot of things that would go through my head and it would be like a stab in my heart. So I know, I know why you are agreeing to this because you understand that that's what ..
C.		
D.		
E.		
F.	<b>JW</b>	I do
	<b>Commissioner</b>	Exactly
	<b>JW</b>	If I had been Minister, Dr McCullough I would just have laughed it off because I have a sense of humour but not everybody has. And
G.	<b>Commissioner</b>	I do and it still bothers me Jim.
	<b>JW</b>	I agree with you and by the way I didn't know. I mean Mr Pauley had appeared before our committee that often as I said he has a season ticket. I hadn't the slightest understanding or knowledge that he found any of what happened at the previous meeting offensive because he had been his usual very cool and collected self. So I know that if officials will often come back to committee meetings certainly did
H.		

A.		when I was in the Department of Health and said we managed to nail that back bencher. He thought he was a clever guy but ha ha we got him. You know these are very experienced committee hands so I so I felt if I had received your complaint before the second meeting I think I would have thought well yes there has clearly been an issue here.
B.		But I was totally oblivious to this. I was made aware that there was a complaint coming and I could think of a thousand other things and more likely to have been complained about than this. You know I was thinking what on earth is it and it turned out to be something that I had totally forgotten about and I had to go back and remind myself as to what I said. So clearly had he raised it with the Chair at the time or raised it within the week I think I would have take, I would probably have taken a different view but I didn't think for one second that an
C.		old experienced hand like Mr Pauley was remotely concerned about us
	<b>Commissioner</b>	It is an interesting thing Mr All.
	<b>JW</b>	Mr Allister, yeah I am confused with Mr Allister but I have got more hair.
	<b>Commissioner</b>	But no honestly I think that it is an interesting thing our words and the things that we become.. you just don't know what can happen and how people take things and I think you understand that. Because I can tell from that and I .. but what I want to say is that I really do believe that I have to take Mr Pauley's complaint seriously because it is a serious thing. It is not something that especially in to today's world that we, that I want to facilitate people to be able to complain if there is a valid complaint. And if they can actually show that there is a valid complaint and we can make this place a little bit better if we can figure out what is the thing that went wrong here. So I am not looking to make anything any less robust or challenging or lacking or in any way say that these people should not be accountable. At any stage I am looking for basic civility and respect. Because I think the public deserve that, I think your colleagues deserve that, I think you deserve that. I think that's the way work should go. I don't think that that runs contrary to being able to be robust.
D.		
E.		
F.	<b>JW</b>	Dr McCullough if I ran to you every time somebody didn't show me respect in this building you would have a very large lever arch file full of complaints. I think, it is somebody complaining about lack of respect in politics is like a sea captain complaining about rough oceans. I mean it just comes with the job. Now what I can say to you is. But you have to decide is my conduct and the committee's conduct at variance with other democratic institutions throughout these island s where much more strident and difficult and searching questions are asked. Secondly could I say that when I was Health Committee chairman we exposed quite a few really serious issues about health care in Northern Ireland by being very awkward, difficult and asking officials things which were life and death issues like Cryptosporidium which I find difficult to say, issues that emerged in
G.		
H.		

A.		the committee which had serious life threatening consequences. Now we definitely made life miserable for the officials during those enquiries and I am certain they felt we didn't show them respect but it had to be done. Now had this been an inquiry we were doing on something like the roads budget well you would never have got as intense about the roads budget or potholes or something. But
B.		remember what we were dealing with is a situation where we believe brought devolution crashing down in this country for three years and that's why Dr Devitt I do feel that the subject matter is important although you would be otherwise on this. This was the most serious issue that we were dealing with this place collapsed because of the appalling behaviour of SPADS including three from my own party. And the Minister ..
C.	<b>Commissioner</b>	We are all aware of all of that yeah
	<b>JW</b>	The Minister was saying that its as you were, it's a gentle nod and a wink and the Assembly as a corporate body has decided no we needed legislation so therefore it was a very deeply controversial issue. Did I set out to make like difficult for Mr Pauley. Yes I did. Did I set out to cause him disrespect, that was not my intention, or to cause him offense. I am just a bit surprised knowing Mr Pauley he didn't raise it at the time. That's why I am wee bit suspicious about this meeting with Sue Gray because did he then have a chat with her and said we don't like the way the Committee is going here we need to bridle them and the one way to do it is to make a complaint.
D.	<b>Commissioner</b>	I have to look back at this cause when we asked him that I do believe he had already put the complaint in. I honestly do believe that.
E.	<b>JW</b>	Well that would change the situation
	<b>Commissioner</b>	Yeah I was trying to think when John was speaking there and I am pretty sure now I will have to double check but I am pretty sure we pressed him on you know did he confer with anybody and whether that was, we were searching for that answer as well and I didn't get that intention
F.	<b>JW</b>	Conflict. 1:04:04 your view on that if that is your recollection. What I said
	<b>JD</b>	Mr Wells he has written, he wrote to Sue Gray to inform that he was making the complaint about his treatment so there was no
	<b>JW</b>	But had he submitted it before he did that is the question we need to clarify
G.	<b>Commissioner</b>	My assumption was he was just informing her that he was submitting
	<b>JW</b>	OK Right well that's helpful but you know we are straying in here into with the one exception to a very deeply issue as to what the role of committee members are and if by being very strident and difficult they could be perceived by a witnesses not showing respect then I think you are on very very soft ground. Because all a witness has to say is well those are awkward questions about that recall of 3000 cancer x-
H.		

- A. rays, I didn't feel I was shown respect and then you tend to bridle committee. Because my demeanour in terms of the words I use, I never swear obviously, I don't tend to get angry. There was nothing in my demeanour that could have caused disrespect it was in the questions that I asked.
- Commissioner** I think it is more. More. What I am concerned about is those words that we spoke of. That was one of my main concerns.
- B. **JW** Phone a friend?
- Commissioner** 1:05:25 complaint against you, the phone a friend, was one of my main concerns. Doesn't mean that I am not concerned with the bullying but I definitely am not seeking to stop you from being challenging
- C. **JW** Difficult and awkward. Yep. Oh no I mean you know do you ever have a sense in life where you wish you could grab words you have said and bring them back/
- Commissioner** I do
- JW** The moment I said that the other day. I said something in the Assembly, yes I said that the local deer abattoir in Downpatrick was called Bambi Belson. That's what the nickname for it. Right. All the locals called it Bambi Belson and I said this in the Assembly and somebody said to me you must never mention anything about the Nazis and I thought yeah that is just a local humour I think and I just wished I could have grabbed the words and brought it back in. I do. When you do that you need to be man enough to say look I shouldn't have said that, and if that reassures Mr Pauley then by all means I am happy to write to him in that respect. Now I notice for instance you did a complaint with Mrs Anderson, you wrote to me. I was happy enough with the outcome of it and it was sorted out by means of her stating what she had done wrong and I was happy with that.
- E. **Commissioner** Now that was preliminary. Let me just explain that. That was preliminary and it wasn't, you mentioned just to be very clear on that. I know you had emailed me a few times I felt like we had met already from the emails
- F. **JW** I was expecting someone much older actually, much much older.
- Commissioner** You mentioned this before. I am 51 you know.
- JW** No you are not you are adding a few decades to your age to try to impress me.
- G. **Commissioner** Well thank you. I think you know that is about freedom of speech. This is a little bit different in terms of the protection afforded for tweeting and social media. That is still actually. It is like writing something in the paper. And politicians are afforded a great a greater enhanced protection as I explained in that letter. This unfortunately is about behaviour of a witness who is coming before a committee and it wasn't about you expressing political opinion that he is offended by.
- H.

A.		He is offended by being treated disrespectfully or you know in bullying behaviour. That is different from freedom of speech and I am sure you can understand that.
	<b>JW</b>	Yes I understand that. And do you think beyond the phone a friend issue that I was, my line of questioning was bullying?
	<b>Commissioner</b>	I am not so sure. I haven't really made a decision on anything yet. I want to hear everybody you know.
B.	<b>JW</b>	I don't think it is you know I mean if you actually look at Jim Allister's line of questioning, he is raising. He is a very bright cookie. His questions were very very awkward and I think Doctor, Mr Pauley could have said he wasn't being treated with respect either. Is it not that his views were not being treated with respect. Is that maybe the issue rather than the individual concerned. I have no, as I say I worked with doc with Mr Pauley I know him well. Nothing against the man at all and I certainly did not get up that morning to make life difficult for him. But I have found from my vast experience in here. I am the person here the longest, I am the father of the house, I'm probably the grandfather of the house. That if you really get on a roll and start to ask the really pertinent questions you can expose all such of skulduggery and that is the purpose of back bench
C.		committees. And what I would be very worried about is that any ruling that you make against me would be seen as a threat to committee members to say hold on, look what happened to Wells. Wells asked difficult questions and the witness felt he wasn't showing him respect by doing that therefore we don't want to end up before the judgement seat of Dr McCullough, we don't want to be having this thrown at us.
D.		This easier for me because I have been before your predecessors many times on issues nothing to do with committee performance on whatsoever.
E.	<b>Commissioner</b>	Mr Wells I can assure you that I look at things about, I look at this as making sure that nobody feels intimidated over duly intimidated or bullied. I mean there is a line. And I don't think, I don't think there is anything in me that believes that you shouldn't be allowed to challenge and question but not go over the line. Mr Allister for example was not complained about and he was very robust in his questions as he always seems to be. So I don't think this is about that. I think this is about the phone a friend in particular. I think it is about that yeah I do. I think it is about and it's a bigger complaint than just you. It is Dr Aiken as well. So there is a whole thing. There is a whole lot to consider in this. It is not, it is not only about you. So we need to look at the whole environment and after we have done the interviews there will be a decision made. You know it is a judgement call. It is not. It's not clear cut you know.
F.		
G.	<b>JW</b>	I understand but if a witness feels that he is questioned with such vigour that he feels that he hasn't been shown respect I think that is a very dangerous line because that inevitably will happen. I mean it wasn't Mr Pauley's personality or what football club he supported it
H.		

A.		was that he, I felt that he was defending the indefensible personally and therefore I felt that I should ask him very difficult questions. In the course of that he might have felt that he wasn't shown respect but that was coincidental, that was collateral damage to the main purpose and if you go back to the Health Committee when I was chair we absolutely nailed Department officials to the extent that they definitely would have felt that they weren't shown respect. Not
B.	<b>Commissioner</b>	because of our demeanour but because we asked the most pertinent and difficult questions and I mean that was a very satisfying .. I think questions are very different from what we are speaking about right now aside from of ...
	<b>JW</b>	Well let's park the phone a friend
C.	<b>Commissioner</b>	The question or the statement made, the phone a friend can you see how that is very different than the line of questioning you took
	<b>JW</b>	OK
	<b>Commissioner</b>	When you took that line of questioning can I just expand. You took the line of questioning when he answered your question you are quite right. He answered the question yes. I personally do. He answered it and you asked it. You are allowed to ask those questions he answered it. You went on to ask other questions which were equally as direct. I have no problem with those questions
D.	<b>JW</b>	Well Dr McCullough if the phone a friend hadn't been raised is there anything fundamentally wrong with my line of questioning or my demeanour apart from that. I would say there isn't
	<b>Commissioner</b>	Well I would like to say. I would like to reserve my opinion on that but
E.	<b>JW</b>	That was trick question, that was to try to get you into a corner
		1:11:58
	<b>Commissioner</b>	Nice one
	<b>JW</b>	Ha ha. I don't believe you about your age by the way I think that's an absolute fib but bless you. If you are 51 I am 92. Go ahead
F.	<b>Commissioner</b>	But one final, two things final. Firstly, there is a Rule 17 which I want to drive home because I am not suggesting you or anyone else. I don't know who would have leaked it. but there was a leak about this complaint and it was in the paper. So I just want to confirm with you that Rule 17 says that you shall not disclose details in relation to an investigation except when authorised by law. So please remember this is all confidential.
G.	<b>JW</b>	Could I just say Dr McCullough immediately that complaint was, I consulted all the friendly committee members of that, all of them. I showed it to them. Because I wanted them to see could they remember anything that they perceived as being untoward. I said can you remember me being offensive and not showing Mr Pauley and they all came back and said no we didn't see anything. So I mean I had nothing to hide
H.		

A.	<b>Commissioner</b>	Yes I know you don't have anything to hide but the rules of the game are that you keep these things confidential.
	<b>JW</b>	I understand that but I mean obviously I will not say anything about what has happened today but I was very anxious to see from the other committee members, I didn't obviously consult Sinn Fein because they want me hung, drawn and quartered at dawn. But I consulted the other members and said look there is a complaint here from Mr Pauley and I also spoke at length to the Chair. I said can you remember, now this is going back to June and this was September. Can you remember anything in that committee meeting that you had the alarm bells ringing for you and they couldn't even remember the meeting never name anything offensive that had been said. And apart from Mr Tom Kelly and yourself nobody has raised it. you know it has been an absolutely non-event. Now I have been guilty of other things usually as a result of my quirky sense of humour where I could immediately identify and people remember me saying it. I remember in one of the committee meetings I had ask a question and had said that was disaster under my breath and people thought that was me calling the person giving evidence an illegitimate being. People picked it up as a totally different word and we all snuck back to the
B.		tape and I definitely said that's a disaster I didn't say she a you know what. So therefore I was keen to find out from people like Paul Frew and Jim Allister and Pat Catney, did I do anything wrong here and they said we don't remember anything so Sinn Fein did because it was their Minister and their department and they of course were beating their chest about it. I am just saying that if disposing this complaint means dealing with the humour that backfired very badly that's fine. Now I am perfectly happy to accepted to be whipped at dawn in front of a crowd of ladies with knitting needles for that. But if its that I can be constrained in anyway about me pursuing the
C.		Department or any other MLA or more importantly that any, people don't know you Dr McCullough, they see you as a figure that they fear and tremble. I have only met you for the first time on zoom but the very thought that they would be referred to you if they went too far in asking difficult questions I think that constrains greatly two we
D.		operate in this building. And thirdly we must be assessed with our peers and that's why if you look at Patricia Hodge you will think that Jim Wells is pussy cat compared to Patricia Hodge and yet that is perfectly acceptable in Westminster. And I have been down in the Dáil and seen how their public accounts committee perform and I
E.		have to say I wouldn't go as far they do. Wouldn't dream of it. So that is the crucial issue and that may have to be debated in the form of a report on the floor of the Assembly as to do you think MLAs should be constrained in how they ask officials in the committees and that is a watershed moment if that happens because..
F.		
G.	<b>Commissioner</b>	Well we don't know what is going to happen.
H.		



A.	<b>JW</b>	We don't because you still have to make your opinion known
	<b>Commissioner</b>	What I would say is. Let me ask you this. It is just dawning on me while I have your attention. Do you think? What do you think the culture in the Assembly is like?
B.	<b>JW</b>	Well you see its difficult for me because I haven't been since 1982 before you were born. I am well used to. It is water off a duck's back. People should, every day in life I am deleting comments from people on social media about me. Literally every day. I mean people say that my parents weren't born when I was married. They were. They were married like one.. I interrupt the conversation someone accusing me of wearing a wig. They were saying that it is not mine. Now I get called a bigot, homophobic, a loyalist paramilitary supporter every day in life so therefore it just floats off me like water off a duck's back. In fact some of the people on it would actually, I would be annoyed if they were saying I was a great chap. So therefore to me it just comes with the territory. Compared to other institutions it's no different. So therefore if you put yourself up forward for election you expect to get it and boy do I get it, because I am a hate figure particularly in the LGBT community and I accept that. Now because I dare to say that I believe in traditional marriage as a product of it and being in and having two daughters who went through it as well. Now so therefore to people who come in and where this Assembly falls down is that the turnover is that high and there is that many young people drafted in through co-option, they are not used to it. There is only a few old haggard veterans like myself who have been through it for such a long time. And they find it very difficult to cope with but I don't believe what happened at the committee has led to any any intensification of that cold house experience.
C.		
D.		
E.	<b>Commissioner</b>	I was asking generally. I was asking generally just while I had you
	<b>JW</b>	It doesn't bug me at all the way people behave here because I am used to it. now if I was a young female back bench MLA just co-opted and I had to experience some of the difficult questioning that goes on. Yes I would be upset about it but that comes with the territory. That's what you sign up to. That is the Ferry Captain on the rough sea. But you can't go running to teacher every time you feel offended by something that happens in the committee or the floor of the house. And you know all I can say to you is this could be known for many generations as the McCullough Ruling that members of this Assembly will feel constrained about asking awkward questions because their witness could perceive them as not showing respect. And you go down that route and that opens up a whole hornets nest.
F.		
G.	<b>JD</b>	Mr Wells, on that very point you have explained to us and you have alluded to the fact that you have been a committee member for 26 years. In that 26 years what formal training if any have you had in relation to seeking answers from individuals who appear before the committee and how their evidence may or may not be challenged.
H.		

A.	JW	None at all. But what I can tell you and this may sound quite conceited when I was chair of the Health Committee it was widely recognised in the media that I and my colleagues pursued the Department on a huge number of issues and raised life threatening issues into the public domain. I will give you one example. Swine flu. I asked the Minister a very pertinent question. Has anybody7 died from Swine Flu in Northern Ireland. He says I'm not telling you. I am not revealing that. That caused such a furore he announced that there were 13 people who had died, all of them in special care homes, special care schools. That prompted him to immediately launch a vaccination programme to every special care student in Northern Ireland. Had we..
B.		
C.	JD	The point of my question was that you know the Commissioner has alluded to the fact that Mr Allister has questioned Mr Pauley in a very robust manner but Mr Pauley didn't consider any of that robustness to be disrespectful.
	JW	He wouldn't dare
	JD	Well I
D.	JW	Who would dare to complain against Jim Allister, he is so able. He is frightening.
	JD	But that shouldn't be the environment that a witness appears before the committee is it?
	JW	No but Jim Allister asks. I think my questions and Jim Allister's questions are very much a par. He wouldn't dare, Jim Allister is one of the brightest political and intellectual brains in this country. He is more than a match for anybody including Mr Pauley and people don't complain against Jim because frankly they are scared of him. He has an IQ at a different stratosphere to my own, so but he complains against the Chairman who was perhaps an easier target. Now what I am saying to you if you take out the phone a friend issue which everyone is accepting here was my line of questioning radically different from Jim Allister's.
E.		
F.	JD	Well take it back to the line of questioning and the comment which you made which you have already accepted you are happy to withdraw and apologise for. The continuation of that went into the 24 <sup>th</sup> June's committee meeting where the topic of the media article was raised. Your fellow committee member made comments that the committee was almost being brought into disrepute and your comments in response to that and I am just trying to establish what training if any that you have had with regards to conduct at committee meetings that the public would expect
G.		
	JW	None at all. None at all. And maybe you have raised a very important issue here because we come in here, we are window cleaners, we are farmers, in my case I worked for the National Trust we come in with no CVs no interviews, nothing and you are thrust into this place and in fact some cases not even elected, you are co-opted as a result
H.		

A.		of a death or a resignation and you are sat on committees and away you go. All I can say is that my only defence in this is that I have been in the job for 26 years, I have been Chair, Deputy Chair, Minister, Deputy Speaker, commission member. You name it I have been charge of the tea room and that does give you vast on the job training but I would say to you yes maybe you do raise an issue that all MLAs should be given some advice on this issue
B.	<b>Commissioner</b>	Yes
	<b>JD</b>	I am grateful to you .
	<b>Commissioner</b>	Very grateful for that answer because we.. I think you.. we have touched on something important on that of note. And other things too that maybe we can address throughout time on other issues. The training is always so important but if people do not have the time for training all the time
C.	<b>JW</b>	There was initial training way back in 1998 when the Assembly was set up but there is only 5 people left from 1998. My great ability here is I have managed to have pulse and the secret of my success is that we have run South Down for 26 years without an MLA with ability and we don't want to change, we are perfectly content being a political back water but I have survived. The turnover rate here is very high. As I don't smoke, drink or take meat that helps as well. So I have been around a lot longer. The most. And therefore any training that was given and don't even know if there was training. There was training on legislation, there was training on procedures. I don't think there was any training on committees. The other thing is the committees have been up and down like yoyos
D.		
E.	<b>Commissioner</b>	Yes
	<b>JW</b>	So many various suspensions. I think maybe the only positive thing that comes out of this is that there should be some form of training on committee procedures that comes out of that something positive as well as having Wells played at dawn in the public square. So and I would be perfectly happy with that. I suppose I would feel a bit you know teaching Granny to suck eggs after 26 years but I do see
F.	<b>Commissioner</b>	Much change over 26 years you know things. I will give an example. In the medical school we would have retirees come back in and sometimes there were things done in teaching practices that would never be done today and you would have to say to them, even though these people in their time were doing things the way, so
G.		things do change so we have a situation where maybe upgrading our knowledge around these issues and like you say figuring out how not to get words out and not being able to get them back in. Just being more aware. I mean there is a lot of new things out there that can help people in their practice which I don't think anybody is availing of
	<b>JW</b>	Humour is a difficult thing. Many occasions it lightens a meeting, it makes a political point. On other occasions it can cause great offence
H.		

A.		and it is very difficult to gauge. Myself, Danny Kennedy and another MLA actually have a stage act where we go around charity events, I tell jokes, Danny sings, he is a very good singer and Dominic he plays the fiddle and we raise money for charity and we are so awful we are wonderful. We are just so bad. And because people laugh at us rather laugh with us
B.	<b>Commissioner</b>	I haven't seen that. I would love to see that
	<b>JW</b>	And do the, I do all the funny humorous stuff. The political humour. We had a chap in the 1986 Assembly read a speech where he said the schools in Coleraine were as good as closed and indeed he could say it was a fata complis and somebody had written fait accompli in his speech and he didn't know how to say it so he said fata complis. And I mean I have told that many many times. Now the chap might find that very offensive some people might find it very offensive against MLAs in Coleraine, so I find that at times you can make a very strident political point, like if you look at the chamber the other day they were complaining about Paul Frew's contribution on this very bill and John O'Dowd said he found it very boring. I stood up and said well you are not exactly Martin Luther King either are you. And he laughed at that but some people could say that I was not showing him respect. So there is balance here and maybe my humour does get me into trouble. It certainly has on this occasion. But maybe I would welcome this going further because I think we do need to tease out what the limits are set by your good self as to what MLAs can and can't ask and in what way they can ask it. But secondly, I asked, two final points. First of all do read the procedures committee's report on this very issue. This was an issue of concern to the Assembly and they set very clear parameters as to what they felt was appropriate. No I know it's not directly, you are not directly under the control of that report but it does show you that when it was considered what they felt was reasonable and the test there was "was the line of questioning exceptionally out of line" and I would contend it wasn't. I believe it may have been heading towards the edge but certainly didn't cross any mythical line and secondly what are the implications if I am flayed at dawn on this for the future scrutiny. Because you may do it on the basis of respect but other MLAs would be quaking I their boots and say that young woman McCullough is going to call me up and, they fear you and I mean I know all the complaints that are sitting out there and they are really fearful. I'm not because I have a season ticket to the Commissioner for Complaints. Doesn't bother me in the least. In fact there was a time when I wasn't here because of my strong views on straight marriage that I was never out of the ....There was on case where I went to a public meeting they asked me my views on homosexual marriage and I said I do not wish to answer that question and they complained against me on that. That went before the Commissioner for Standards. So that shows you that I am hardy annual here and I
C.		
D.		
E.		
F.		
G.		
H.		

A.		frankly expected a lot worse coming from you but what I would say is that if you go down this route which you are perfectly entitled to do it raises some very interesting questions. It really does. And it raises the whole issue about should we be treated differently to other democratic institutions in the rest of the United Kingdom who go down, who a lot worse than I have done. A lot worse. And finally, if I
B.		hadn't used the phrase 'Phone a friend' I don't think there is a leg to stand on. That's my personal view and maybe if you wanted to dispense by this by me writing to Mr Pauley and saying look I overstepped the mark here, it was ill judged, it was an attempt to lighten proceedings which clearly caused you offence. I accept that and under the Wednesbury Principle would a reasonable person have been offended by that comment I would say yes you have grounds for saying that. The rest I think there will be a book written about it because it is such a crucial issue not only for us but other institutions in the rest of the United Kingdom. But do sit down and watch Patricia Hodge and if you feel that I have overstepped the mark well then you would be calling Patricia Hodge to be taken to a place of execution and by hung by the neck until you are dead. Don
C.		you think by the way from a Commissioner's point of view that it is right to lie about your age Dr McCullough? That's the issue I have a concern about. I mean I might raise that. I would like to see your birth certificate. If you tell me Mr Devitt you are over 50 I will believe you. Mr Wells there is a place for humour and there is a place for robust questioning and I think the culture has to differentiate from that. But you have been very open and candour is very much appreciated for this interview so thank you.
D.	<b>JD</b>	
E.	<b>JW</b>	I was done by the Commissioner many years ago and deduct a day's pay from me but then they forgot to do it. I checked my payslip, and it didn't and you did Ian junior who was also a season ticket holder at the Commissioners and he said something in the chamber, he was to be escorted to the boundary of Stormont and forbidden to go in for 24 hours. But he went downstairs into the press lobby and started doing a series of interviews as to why he was thrown out and they couldn't find him to throw him out. So the day they threw me out I was frogmarched to the edge of the estate and banished for 24 hours and I have been rebuilding my life ever since. It's absolutely tragic
F.	<b>Commissioner</b>	Thank you very much
	<b>JW</b>	It was very pleasant. It's not as onerous as I expected you to be and you know
G.	<b>Commissioner</b>	We try to make it a warm and welcoming environment Jim
	<b>JW</b>	And you have shown me respect and even your difficult questions I am not going to run to teacher and say I don't feel. I felt deeply uncomfortable as you can see and I mean I am a broken man but I have hidden it very well like Mr Pauley and therefore I don't you have
H.		

A.		done anything today that I would find remotely worrying about and I will wait with interest you ruling.
	<b>Commissioner</b>	Thank you. Thank you very much
	<b>JD</b>	Excellent thank you
	<b>JW</b>	Thank you very much Mr Devitt and Dr McCullough
B.	<b>JD</b>	You're welcome
	<b>JW</b>	And send that birth certificate to me
	<b>Commissioner</b>	OK
C.		
D.		
E.		
F.		
G.		
H.		

### Document 6: Jim Wells MLA Statement

**McCullough, Melissa Dr**

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**From:** +StandardsCommissioner  
**Sent:** 11 January 2021 08:23  
**To:** McCullough, Melissa Dr  
**Subject:** FW: Your e mail dated 7th December 2020.

-----Original Message-----

From: [REDACTED]  
[REDACTED] Sent: 11  
January 2021 00:04  
To: +StandardsCommissioner  
<standardscommissioner@niassembly.gov.uk>  
Subject: Re: Your e mail dated 7th December 2020.

Thank you for your correspondence dated 17th December 2020.

I have been an MLA for 26 years and during that time I have been a member of almost every committee at Stormont. I have always used a similar style of questioning as that seen at the June Finance Committee meeting and no witness has ever complained before.

The complaint raises serious issues regarding the right of elected representatives to hold senior officials from Government Departments to account.

The context of the June hearing of the Finance Committee was that many MLAs (including myself) were extremely concerned about the actions of several SPADs during the development and implementation of the Renewable Heating Incentive Scheme.

The RHI report had uncovered a very worrying series of actions by SPADs which led to a political crisis and the suspension of the Northern Ireland Executive for three years. It was quite clear that this serious situation would not have occurred had there been stronger legal restrictions on the powers exercised by Special Advisors. Jim Allister's bill sought to address those issues.

The Minister of Finance, the Permanent Secretary and senior officials had made it clear to the Committee at previous hearings that they were opposed to the Private Members' Bill even though it had obtained widespread support during its second reading in the Assembly.

The complainant was clearly acting under Ministerial direction at the June hearing and

reiterated Connor Murphy's assertion that legislation was not required as guidelines and a code of conduct would prevent further transgressions by SPADs.

I have watched the footage of the hearing and I believe that my questioning was fair, balanced and well within what would be considered appropriate. At no time during our exchange did Mr Pauley raise any concerns about our exchanges.

It has to be stated that Mr Pauley is a very senior Civil Servant who has given evidence to Assembly committees for many years. Given his huge experience he would have expected to receive a thorough examination of his strong defence of a position which he knew was very much at odds with the views of the Committee and the Assembly as a whole.

One of my initial questions was whether Mr Pauley supported his Department's position on the Private Members' Bill. Normally a senior civil servant would have replied that his personal opinion was not relevant as he was there to support the views of the Minister and not his own. Unusually Mr Pauley stated that he did personally support the Minister's position and I therefore felt that it was appropriate to press him on that matter.

I accept that my subsequent questions were pointed but came nowhere close to what would be considered unreasonable and it is difficult to understand why Mr Pauley could have taken exception to my approach. Both he and I remained calm throughout the exchange and he had another civil servant with him who he could have referred to at any time.

It is clear that the Minister of Finance and his Permanent Secretary were both unhappy with the committee's opposition to their position on the Bill. It was clear that they had failed to convince members that a new code of conduct would prevent further transgressions by SPADs in the future. There could be a suspicion that the Minister or his Permanent Secretary instructed Mr Pauley to lodge complaints against myself and the Committee Chair in order to 'rein in' our support for the Bill.

The main role of committee members is to scrutinise the actions, budgets, policies and procedures of Executive departments. In order to carry out this important duty effectively it is inevitable that senior officials will feel uncomfortable when faced with searching questions during evidence hearings. Indeed I would contend that if officials don't find these hearings challenging MLAs had not performed their role effectively.

If at any time an official feels that an MLA's line of questioning is unreasonable he or she can ask the Chairman to intervene, but as mentioned earlier Mr Pauley did not raise any concerns about my approach. A careful scrutiny of the video and Hansard record of Mr Pauley's evidence confirms that he remained calm and assured throughout the hearing and dealt with my questions effectively.

There was one incident when I asked Mr Pauley if he wanted to 'phone a friend'. He clearly did not find this remark humorous and I withdrew it as soon as I was asked to do so by the Chairman.

There is a much wider question that is raised by Mr Pauley's complaint - can a Department use the complaints procedure to bridle or constrain a committee's scrutiny? Clearly any form of bullying, inappropriate language or insulting behaviour should not be permitted but nothing that occurred at the June Finance Committee



meeting came anywhere close to that.

I would ask you to study the line of questioning pursued by Patricia Hodge MP when she was Chair of Transport Select Committee at Westminster and compare it to the June Finance meeting. This will confirm that what occurred at the Finance Committee in June was mild by Westminster standards.

I am e mailing this to you and will also forward a hard copy in the form of a letter. I am off course more than happy to meet you to discuss Mr Pauley's complaint.

Jim Wells MLA

Sent from my BlackBerry® smartphone on O2

-----Original Message-----



Committee for Finance

# OFFICIAL REPORT (Hansard)

Functioning of Government (Miscellaneous  
Provisions) Bill: Department of Finance

17 June 2020

# NORTHERN IRELAND ASSEMBLY

## Committee for Finance

Functioning of Government (Miscellaneous Provisions) Bill: Department of Finance

17 June 2020

**Members present for all or part of the proceedings:**

Dr Steve Aiken (Chairperson)  
Mr Paul Frew (Deputy Chairperson)  
Mr Jim Allister  
Mr Pat Catney  
Ms Jemma Dolan  
Mr Seán Lynch  
Mr Maolíosa McHugh  
Mr Matthew O'Toole  
Mr Jim Wells

**Witnesses:**

Mr David Hughes	Department of Finance
Mr Bill Pauley	Department of Finance

**The Chairperson (Dr Aiken):** We welcome Bill Pauley, who is the director of the strategic policy and reform division, and David Hughes, who is head of the renewable heat incentive (RHI) inquiry sponsorship team in the Department of Finance. I remind everybody that the item is being recorded by Hansard. Bill, can you make an opening statement, please?

**Mr Bill Pauley (Department of Finance):** Thank you, Chair. I will say briefly that the Minister and our permanent secretary gave evidence to the Committee a couple of weeks ago. David and I, in our respective roles, report to them in the normal ways. What they said will overarch what we might say here in looking at things in more detail.

We will also briefly refer the Committee to some of the generic issues that were raised in the Minister's cover note to it on 27 April. Much of what is proposed relates to the issues that were covered in the revised codes for Ministers, spads and civil servants. Those codes were completed after the talks process last summer and were reflected in the 'New Decade, New Approach' document, which recognised the need for a new approach as well as transparency about and accountability for what happened in the past, and that is entirely accepted. Having rules and standards for Ministers, spads and civil servants is an important issue, as is its enforcement.

We have a couple of points about the Minister's cover note from 13 June. The view is that the codes sufficiently address the issues and that legislation is not necessary. That overarches what we might say in our responses to questions. Also, the codes will be re-examined in light of the RHI recommendations.

**Mr Allister:** Mr Pauley, I want to return to the codes, because the Department's basic message is not so much to dispute the content of the Bill but the "how" of the Bill and whether legislation is needed or it is sufficient to put it into codes. The Department's basic stance is, "Even though they failed us in the past, codes are enough", but, when it comes to appointment, the codes that failed us in the past were better than the codes that we have today, because, as I have put to you before, the very significant fact on the code for the appointment of spads is that it stripped out all the process of selection by the Minister. Two weeks ago, the former Commissioner for Public Appointments, Mrs Felicity Huston, whom you probably know, said this to the Committee:

*"we have to ask ourselves whether the code" —*

the code of appointment —

*"as it stands looks like a credible document in the eyes of the public. Does a code that sets aside all recognised appointment procedures, because of the personal nature of the spad appointment, persuade the public that all is well?"*

She went on to say:

*"it would provide tremendous confidence for the public if they thought that, in appointments like this, some sort of process could be seen and there was some sort of evidence of why x or y had been appointed."*

You are coming to the Committee and telling us that you want to stand over a code that makes sure that no sort of process can be seen in the selection and no sort of evidence can be available for why X or Y was appointed. Is that seriously the Department's position?

**Mr Pauley:** I accept your point about whether the difference is codes or legislation. Certainly, as we said, and, as I said in my introduction, we accept the need for change, as did the talks process that the codes responded to in the 'New Decade, New Approach' document, just, I suppose —.

**The Chairperson (Dr Aiken):** I do not wish to cut across, but just to put this on the record — I have already put this on the record with the Minister and the permanent secretary — unlike anybody else in this Chamber, I sat at the party leaders' group at those talks. The discussion about what we would do to restore accountability and responsibility to the Assembly and to control Ministers and processes is not what ended up in 'New Decade, New Approach' and was not what is in this code. For the record, I make that abundantly clear. Every time I hear an official say, "This was agreed between the party leaders and by the parties as part of New Decade, New Approach", I say that it was not. That is not what was agreed, and, clearly, the Ulster Unionist Party never signed up to what ended up in 'New Decade, New Approach'. As a party leader, I never signed up to it. Let us make that abundantly clear right now. I do not want to hear that put in front of the Committee again. I am sorry for being angry, but I am getting really fed up with this.

**Mr Pauley:** Following the 'New Decade, New Approach' document, which indicated that the codes should be put in place as a matter of urgency, the Civil Service put that to Ministers and asked them to respond. All the new codes and their supporting documents have been agreed by the Executive and published with the exception of the code of ethics document, which is going through the agreement processes and has been provided to the Committee because it relates to some of the documentation. That is what we have been doing, and the codes have been agreed by the Executive.

**Mr Allister:** I know that they have been agreed, but I am asking you the question because Sir Patrick Coghlin, in his report, says that the letter and the spirit of the codes need to be seen to be implemented. Why, before that report was ever published, had the Executive agreed to strip basic things that Mrs Huston referred to as "recognised appointment procedures" out of the code of appointment? A pool of candidates, criteria, personal abilities etc are all stripped out. Now, you cannot say that that strengthens the code. The protestation of the Minister is that he strengthened the codes, but he has shredded the code of appointment.

**Mr Pauley:** The codes have been agreed by the wider Executive, but, yes, it was the Minister of Finance who brought them to the Executive as proposals —.

**Mr Allister:** Do you agree that it is a weaker code in terms of its process?

**Mr Pauley:** I have not come to the code of appointment yet. The first question that you put to me and was whether we agreed that, broadly, it was about whether this is a code or legislation. The other point — I am not sure if I made it, but I will say it again — is that three clauses in the Bill are not covered by the codes, as we understand it, and relate to reducing the number of spads, the power to make the special appointment and the requirement to publish a biennial report. It is our understanding coming here that those matters are not covered by the codes, wherever they might be done.

We believe that the code of appointment is a much simpler code, reflects the reality of what happens when appointing spads and is consistent with the Civil Service (Special Advisers) Act (Northern Ireland) 2013. The code for the appointment of spads requires the appointing authority, which is the Minister, to apply all appropriate employment law in their work to appoint their spad. Subsequent to that, when we are informed by the appointing authority, which is the relevant Minister, who the spad is, the Department takes over the work and takes the process from there. That is a much simpler version that reflects the reality of the situation.

**Mr Allister:** Mr Pauley, the code kicks in only when the Minister has hand-picked whomever he wants. He does not have to consider a pool of candidates or what the criteria for the job are, assess anyone against any criteria or even keep a note of why he made the choice. Please, do not suggest to us that the code is compatible with the good practice of the past, which had all those elements. It is weakening the code, not strengthening it, and anyone, except the Department, it seems, can see that.

**Mr Pauley:** The code requires that the appointment is made in line with all aspects of employment law. That is a statement in the code.

**Mr Allister:** Let me move on. You mentioned one of the clauses that are not compatible with and not covered by the codes. That is the clause on subjecting the exercise of prerogative powers to Assembly resolution. We are a legislative Assembly, yet, we have a situation where, in the past and into the future, the First Minister and deputy First Minister had and will have the opportunity to, in secret and with no appointment process open to scrutiny, as they did with Mr David Gordon, make an appointment at £75,000 a year and never inform the Assembly about it. Clause 3 makes any such proposal subject to the approval of the Assembly. Why would a Department want to disbar the approval of a legislative Assembly in situations such as that? Why would you want to hide that from the Assembly?

**Mr Pauley:** We have responded to the point about that clause in the comments that we made to the Committee. As we said, we believe that it would remove the power of the First Minister and deputy First Minister to engage any specialised, expert support that they might need in some form of emergency or other situation through such an appointment. We have not got an example for you of a situation that might arise. There have been no such appointments made under this Administration. There has only ever been the one to which you referred. Since then, the normal processes of recruitment and appointment have been applied where the individual is not advising one Department as a civil servant in that way. The processes that exist can be applied to recruit experts when we have sufficient time and when it is appropriate to do that to recruit the expertise that we need. We are looking at how we —.

**The Chairperson (Dr Aiken):** Excuse me, Bill. Speaking as somebody who has been a chief executive and all the rest of it, I know that, when you have to bring people in at short notice, you bring them in on a consultancy basis; you do not bring them in as full-time employees. You do that in the Civil Service as well. If you need somebody in a specific area, you bring them in as a consultancy service. You spent a fortune on PwC to bring it in as a consultancy service. I do not get that.

**Mr Pauley:** That is another route by which temporary specialist appointments can be made for different periods of time.

**The Chairperson (Dr Aiken):** What you are talking about is short-circuiting the system so that you can have a full-time appointment. How is that following normal human resources (HR) process?

**Mr Pauley:** That is an option that is open under the legislation but that has not been used by this Administration. It has been used once in the past for the individual Mr Allister referred to.

As part of our wider thinking about Civil Service reform, we are, indeed, looking at how our Civil Service Commissioners work and the role that they play, and we are looking at, for example, the

number of exemptions to the merit principle. Fewer exemptions are available to Civil Service Commissioners here than to Civil Service Commissioners in Britain, so there is a difference in what can be applied in expertise or whatever. It takes you to look at some wider issues of getting the expertise that we need when we need it, which is an RHI issue, and that will potentially lead to that and to Civil Service reform. In this instance, the Department's comment on the clause is to note that it would remove from the First Minister and deputy First Minister the ability to appoint in this way —

**Mr Allister:** And make it subject to the Assembly.

**Mr Pauley:** — to make it subject to the Assembly — and to note that it is not a power that has been used.

**Mr Allister:** Yes, so why are you so precious about it?

**Mr Pauley:** We are precious about the need for legislation in this area and whether —.

**Mr Allister:** You see, Mr Pauley, if you were concerned —.

**Mr Pauley:** The overarching point is about whether legislation is needed in this area to serve what we need.

**Mr Allister:** You see, Mr Pauley, I could understand your position — the Chair pointed out that you could simply go to consultancy, and there is no real answer for why you could not do so — if you were coming to the Committee and saying, "OK. We get it that it does not look good to have prerogative powers exercised behind the back of the Assembly, and, therefore, although we are concerned about the need for speed, we suggest that, instead of having a positive resolution procedure in the Bill, you have a negative resolution procedure". I could understand you taking that stance, because that would maintain a role for the Assembly, but you are coming to the Committee and saying, "We do not want anyone to touch the facility to appoint behind people's backs by virtue of the royal prerogative". You are saying that to elected Assembly Members, who are supposed to legislate.

**Mr Wells:** Do you want to phone a friend?

**The Chairperson (Dr Aiken):** No. Through the Chair, please. Please withdraw that remark.

**Mr Wells:** OK. Sorry about that.

**The Chairperson (Dr Aiken):** That is beneath you, Jim. Sorry about that, Bill. I apologise.

**Mr Pauley:** In relation to the clause, we said that, as an overarching position, we do not believe that legislation is required in this area or around it. If we were to make legislation solely for this clause, we point to the fact that it has been used once and is not used now, and we point to the responses that we made —.

**The Chairperson (Dr Aiken):** Just for clarification, you said that it has not been used recently and that you think that there is only one example of where it has been used. Are there any other examples of where it has been used?

**Mr Pauley:** Not locally, no. This is 2016 legislation that has been used once — that is my understanding — for the individual whom Mr Allister named and has not been used since.

**The Chairperson (Dr Aiken):** If it has been used only once, why are you so determined to keep it in? I do not understand the logic.

**Mr Pauley:** We pointed out in our response that it would remove this facility from the First Minister and deputy First Minister now, and we have —.

**The Chairperson (Dr Aiken):** But we have already explained —.

**Mr Pauley:** No —.

**The Chairperson (Dr Aiken):** Excuse me: I am the Chair here. I already explained that there is a very normal process that happens across all government of bringing in consultants. There is a process of bringing in consultants at short notice to specific roles. You explained to us that there is an issue here with HR issues. The only thing under HR issues that would protect somebody who did not get that role is that the royal prerogative had been used. Therefore, that would be the defence if somebody who did not get the job and decided to take legal proceedings. If it has only ever been used once, I am really struck by why you want to retain it.

**Mr Pauley:** We say in the later responses to the question that there is a broader issue about how the Civil Service can recruit at short notice and, at times, get the expertise that it might need. This is a facility that exists at the moment. It has been used once and not in the most current Administration. In terms of how we believe that these things should be done, in a reformed Civil Service or a new approach, in this new decade, there might be linkages to that.

I also pointed to the fact that the Civil Service Commissioners oversee how we appoint people to the Civil Service and the process of doing that. I indicated to the Committee that the list of exemptions to that, where the full merit principle and the full application of recruitment processes have to be applied, is less for us than it is in Whitehall and other areas. Until such time as we look at wider Civil Service reform, we do not see a need to legislate solely to remove the clause or solely on this area. As I said, it is not something that we covered in the codes. It is not something that we covered in how we looked at or responded to the issues on it or how it became part of that process. It is something that was put in place, was used once and has not been used since. There are, to my understanding, no plans in any Department, but certainly not in ours —.

**Mr Allister:** The power still exists. Let us understand —

**Mr Pauley:** The power still exists, as we have acknowledged.

**Mr Allister:** — it was not just that David Gordon was appointed — it could have been anyone — it was that the First Minister and deputy First Minister made legislation.

**Mr Allister:** They exercised an executive power to change the Civil Service Commissioners Order 1999. They made, by prerogative order, new legislation called the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016. They made the law. They did not tell the Assembly that they had made it. The clause is about making sure that they cannot change the law again without the consent of the Assembly. It is as basic as that, but you want to keep a power that was created in that way, saying, "It won't be used, but it could be used". Chair, there is one other area, but I am conscious that I have hogged the proceedings. I will come back if there is time.

**The Chairperson (Dr Aiken):** I will give you the opportunity to speak now, Jim. Just go ahead.

**Mr Allister:** OK. Clause 5 is about suggesting that we need a more objective process of investigating breaches of the ministerial code. The Department's stance is, "We do not need clause 5 because, under New Decade, New Approach, we will appoint three new commissioners who will survey all these matters and deal with any complaints against Ministers". Is it correct, Mr Pauley, that, whereas the standards commissioner, to whom I say that function should be given, is appointed by open competition in a transparent way, there is no such parallel with the hand-picking of three commissioners by the First Minister and the deputy First Minister? Secondly, whereas the standards commissioner has the power to compel witnesses, to compel documents and to take evidence on oath, the three commissioners suggested in 'New Decade, New Approach' would have no such powers and could only ask the head of the Civil Service about factual matters?

With the Commissioner for Standards, there are, for good reason, disqualifications around who cannot hold the post, such as a former senior civil servant; in fact, 20 disqualifications are listed in the legislation. There would be no disqualifications when the First Minister and deputy First Minister appoint suitable commissioners. Even from the point of view of a presentation of objectivity, is it not clear that giving the function to an independent standards commissioner would be far more presentable and acceptable from a public perception point of view than giving it to three hand-picked commissioners who cannot even compel documents or evidence or take evidence on oath?

**Mr Pauley:** The proposed enforcement process that has been agreed by the Executive includes provision for a panel of three, one of whom is, in an ex officio role, the Assembly Commissioner for

Standards. We believe that that commissioner would be part of the potential panel of commissioners who would look at this. It was discussed during the talks process that taking the role of the Assembly Commissioner for Standards, who is responsible mainly, as I understand it — I have not looked at the legislation in detail — for maintaining standards among MLAs and solely reading that role across to make it apply to maintaining standards among Ministers could lead to some areas where that was inappropriate. However, we felt that it was appropriate that he or she — whoever is appointed to the role — should be a part of the panel, because it is likely that there could be breaches of standards that would also be breaches in respect of the fact that the Minister is also an MLA. The proposed panel is a multiple-person panel, and that is to allow different areas of expertise or knowledge among the individuals who will be appointed. They can then use that to carry out investigations into breaches or complaints and determine the person who is best capable of investigating the matter.

**Mr Allister:** Without the powers.

**Mr Pauley:** Certainly, it is envisaged that those people will be expected to comply fully with the panel for ministerial standards — I think that that is what we call it — when that panel is carrying out investigations. Certainly, when they needed to come to the Executive secretary for any information, that would be fully complied with *[Inaudible.]*

**Mr Allister:** Mr Pauley, may I demonstrate to you the absurdity of the situation? The independent Commissioner for Standards investigating an MLA has the right to call for documents and call witnesses to take their evidence on oath. That same person, ex officio as one of the trio of ministerial commissioners, if he is performing that role in respect of a Minister, cannot call for evidence, cannot administer an oath and cannot take evidence in the manner in which he can against an MLA. Is it not absurd that Ministers are treated with the kid glove approach of three commissioners who are toothless and without powers and depend for their facts and what the head of the Civil Service tells them, as opposed to a commissioner who, when interrogating an issue in respect of a mere MLA's alleged breaches, has that whole panoply of powers? Is that not plainly absurd?

**Mr David Hughes (Department of Finance):** If I may just make an observation on how this operates in other jurisdictions —.

**Mr Allister:** Look, we are worried about here. It is here that had the catastrophe of RHI.

**The Chairperson (Dr Aiken):** Just be aware that the Committee has heard time and time again from the permanent secretary and head of the Northern Ireland Civil Service that Northern Ireland is a unique situation. Now, you are trying to tell the Committee that it is not unique. Please, give us the benefit.

This is a Northern Ireland situation that was brought about because of RHI, and the aim is to make sure that it does not come happen again. That is why, specifically, we are doing that.

**Mr Hughes:** Sorry, if —

**The Chairperson (Dr Aiken):** Sorry, Jim is still giving evidence. I will bring you back in in a second.

**Mr Allister:** I think that the gentleman wants to reply.

**Mr Hughes:** I just want to mention the experience of Scotland and Wales, where independent advisers have been appointed. In Scotland, the First Minister made the appointment for the investigation of the First Minister. In that context, it has been publicly acceptable that, of course, the First Minister will appoint an independent adviser; otherwise, that investigation has no credibility. The two current independent advisers have not only that standing but, because of their background as prosecutors, carry standing from their previous employment and background. It is important to recognise that there is precedent for the approach being taken, but an enforcement mechanism here means that the panel has a greater capacity to bring things into the open than is set up in the Scottish context.

It is also worth noting that the method of appointment of the panel has not been settled. It is not explicitly set out in the enforcement mechanism.

**Mr Allister:** Will it be set in legislation?



**Mr Hughes:** I am not aware that there are any plans.

**Mr Allister:** No. It will be hand-picked. You know that perfectly well. It will be three individuals hand-picked by Ministers who could themselves be subject to an investigation. If not them, the majority of Executive Ministers come from the same parties. Those are the people who will hand-pick the panel, instead of having an open competition such as we have for MLAs.

Well dare an MLA step out of line. MLAs are subject to the full panoply of investigation, sworn evidence and everything else, but a Minister might step out of line, and some hand-picked individual with no such powers reaches some conclusion that they suggest to the person who appointed them, and the person who appointed them decides whether to take any action. Really?

**The Chairperson (Dr Aiken):** We need to be careful with our tone. As Chair, I accept that my tone has been slightly exasperated during the session as well, but there is good reason for it.

**Mr Allister:** OK. Thank you.

**The Chairperson (Dr Aiken):** Maolíosa, go ahead.

**Mr McHugh:** I am interjecting for that very reason, Chair. I thought that it was downright rude that, when this gentleman started to speak, as soon as he got the first couple of words out of his mouth, you and Mr Allister went down his throat. I thought that that was downright rude.

I appreciate, in every respect, the information that you have provided during the meeting. Although Sinn Féin stands for "Ourselves Alone", we do not believe in reinventing the wheel. In other words, we look at what is happening in other jurisdictions and look to the best possible practice in every respect.

I felt embarrassed for a minute because of the way in which you were being treated, Mr Pauley.

**The Chairperson (Dr Aiken):** Thank you very much, Maolíosa. Your comments have been noted. I apologise if I have embarrassed anybody, but, yet again, I state that this is about Northern Ireland and I am not taking any more lectures or being told that we are in a unique situation and then it being explained that we are not.

**Mr Frew:** Thank you very much. You are very welcome here. It has been very informative.

Are you here, Mr Pauley, as an individual, with all your years of experience and as the director — the role that you hold now — or are you here to represent the view of your Minister?

**Mr Pauley:** I am here to represent the view of our Minister. That is the basis on which all civil servants attend all Committees, and that is the basis on which I am here.

**Mr Frew:** Would there never be a time, at an evidence session like this, when you would say, "The Department is going in the wrong direction" or, "The Minister may well be incorrect"?

**Mr Pauley:** No. I act under the direction of my Minister. In our opening statement, I referred to the fact that he was here a few weeks ago with my permanent secretary. I report to both those people in different ways that, I believe, are widely understood, and that is the basis on which I give evidence to the Committee.

**Mr Frew:** Thank you for clearing that up. That is helpful.

I want to ask about the appointment of a person of expertise. I was part of the talks process, and you have already mentioned that talks process. A lot of the time, the language used was about co-design. How does this law, this rule, this royal prerogative sit with the concept of co-design?

**Mr Pauley:** Is this the prerogative?

**Mr Frew:** Yes.

**Mr Pauley:** It is not the wider bit about the codes and the practices.

**Mr Frew:** No. The power to appoint a specialist.

**Mr Pauley:** It is not a policy that has been subject to co-design, as I understand it to mean when it is used to refer to consulting the third sector or when it was used, for example, in the draft Programme for Government and for other things, that our policymaking processes and that should be subject to co-production and co-design or the different terms that relate to consultation with wider stakeholders.

**Mr Frew:** In your answers, you have basically justified having the power by saying that it has not been used this term and has only been used once ever. Am I correct in saying that you said, "We have this power, but it has not been used, except once, and that was a one-off"?

**Mr Pauley:** I do not think that I ever said that the power was justified. I said, as reported in the response to the Committee, that this is a power that, if it were removed, would remove the capacity of the First Minister and the deputy First Minister to appoint a specialist or expert or whatever an emergency situation might require. I also said that, looking forward, as is in the written submission, there are aspects of Civil Service reform that are being kept under review. We were asked what it means for the provision to be kept under review, and I have alluded to the fact that we believe that the Civil Service Commissioners, the requirements on our Civil Service for recruitment, our ability to recruit and the exemptions from the recruitment process, where the full rigour of the merit principle must be applied, are different here from elsewhere. There may be a time when we need expertise to take things forward as expeditiously as possible, but I have no example of that or thought of what the situation may be, and I know of no part of our current Administration that is considering using the power at this time.

**Mr Frew:** You started your answer by saying that you never said that the power was justified: are you saying that it is not justified?

**Mr Pauley:** No. I am explaining the impact, as the Department sees it, of the clause, should it remove the power from the First Minister and the deputy First Minister.

**Mr Frew:** Again, I do not understand this. Does the power allow the First Minister and the deputy First Minister to appoint one person of expertise or more than one?

**Mr Hughes:** Only ever one at any time.

**Mr Frew:** You have painted a scenario in which we are in a bit of a sticky situation, for which we really need to get in expertise from somewhere, and we cannot find it anywhere — anywhere — in our Civil Service. Is there not a real danger that, by plumping for and appointing only one expert, one scientist or one medical expert, you are limiting the scope of your expertise? We know that science and expertise vary on any subject matter.

**Mr Pauley:** Yes. That would be a risk in the scenario that you have painted. I indicated that I cannot see a scenario in which we would want to use that power again, but that would be a risk in your scenario.

**Mr Frew:** Are there any other ways in which the Civil Service can temporarily appoint experts to get it through a period of review or emergency?

**Mr Pauley:** Yes.

**Mr Frew:** Will you explain what those are, please?

**Mr Pauley:** The Chair outlined how, through our procurement approaches, some framework contracts are in place for some types of expertise or for individuals, depending on whether they are available or whether they offer their services on a consultancy basis. I was going to say that that happens every day of the week, but I will say that it is common for that to happen. It happened on many occasions as we prepared for Brexit, and it happens where other particular aspects of expertise have been sought by the Civil Service.

**Mr Frew:** You say that it is common. Is the Civil Service comfortable instigating that function? Is it an everyday, mundane area of work, with nothing controversial or contentious about it? Do you simply employ a temporary consultant to advise on a certain subject?

**Mr Pauley:** Beyond the fact that the use of consultancy, and the extent and nature of it, has been much criticised in the past, it is not a controversial process. It is a common process. It happens often. The overall level of consultancy, however, is monitored because of those other wider uses to make sure that we are not using consultants for something that could be done internally.

**Mr Frew:** You are here —.

**The Chairperson (Dr Aiken):** Paul.

**Mr Frew:** Last question. You are here at the behest of your Minister. An awful lot of your answers in red in the paper start off, "The Minister has", "The Minister is bound" or, "The Minister has the power". You, as civil servants, are bound by your Minister. Is there a concern, when you are talking about other Ministers having the power to —?

**Mr Hughes:** Sorry, but can you point us to some examples? Some sentences start that way for different reasons.

**Mr Frew:** I read it earlier. It is in the tabled papers. I certainly was paraphrasing, but let me check. Under the response on clause 1(2), you state:

*"In terms of their role within government, individual SpAds are accountable to the Minister who appointed them."*

Under the response on clause 1(3), you state:

*"Ministers are responsible for the conduct and discipline of their special advisers".*

At the top of the next page, it is stated:

*"Whilst the investigation of misconduct may, for instance, be undertaken by a civil servant, the Minister is ultimately responsible for the discipline of a special adviser, though the civil service may be expected to contribute".*

In answer to question 2.d., you state:

*"All Ministers have agreed the current codes and guidance."*

We are putting a lot of weight on Ministers here. All Ministers.

**Mr Hughes:** The answer is there under clause 1(3), which refers to all Ministers or the Minister who has appointed the special adviser. It is a point on which everyone is agreed: that there has to be absolute clarity that the appointing Minister is responsible for the discipline of a special adviser.

The answer at 2.d. outlines how the Executive have agreed the codes and guidance that exist. In some places, the answer will refer to the Minister of Finance, who has responsibility — I cannot think of an example for this instance — for the publication of the Civil Service code of ethics. That is a Department of Finance responsibility, under the Minister's direction and control. It depends on context, obviously, but there are areas in which the Minister of Finance has a responsibility. Some answers in the paper come from the Executive Office and therefore have been seen and agreed by the First Minister and the deputy First Minister, because it is an Executive Office remit.

**Mr Frew:** OK. That will do me, Chair.

**Mr Wells:** You have watched this place collapse for years on the back of absolutely appalling behaviour by spads. You are now sitting here advocating no real change other than a slightly beefed-up code to cover the affairs of spads. You have looked uncomfortable throughout the hearing, Mr Pauley. You are a gentleman of vast experience. You have been around here longer than me, and

that is saying something. I dare not tell you how long I have been around here. Are you uncomfortable with some of the things that you are being asked to say here this afternoon?

**Mr Pauley:** No.

**Mr Wells:** Having witnessed the absolute chaos that spads have caused to devolved government in Northern Ireland, you are personally standing over what you have been asked to say to the Committee.

**Mr Pauley:** Subject to the Chair's comments about the New Decade, New Approach agreement. During suspension, the Civil Service, on a number of occasions, through the head of the Civil Service and others, made it clear that it wanted our institutions back and called for that to happen, just as much as — in fact, more than — anyone, and we needed that. I fully concur with all the things that were said and done. We value and appreciate our institutions, because we live here too. These things are important to us.

As I intimated in reference to what you said, the New Decade, New Approach agreement acknowledged that change from what had happened in the past was necessary. I do not want to split hairs, but a couple of questions posed by the Committee were framed "in light of" previous events. My understanding is that the reference is to the RHI situation and others. Our Department, my Minister and the Executive have accepted all 377 findings in the RHI inquiry report. We have decided to accept them. I believe that New Decade, New Approach, whatever its standing — doubt has been raised here about whether it was an agreement — indicated that people wanted the institutions to come back to deliver public services again in Northern Ireland, if the approach that emerged during RHI, and more broadly, could be changed. If that can be delivered, do we want our institutions? Yes. Do I want them? Yes, I do. I believe in them.

**Mr Wells:** That is not the question that I asked. Are you comfortable with what you have been asked to say here today?

**Mr Pauley:** I am comfortable with the basis of New Decade, New Approach. People said that in light of the things that had happened, there had to be change, and they expected that there would be change. In all of this, I personally believe that people have to change and respond to that change, whether that is through legislation or codes. There are those who are committed to behaving badly. Every day, people break laws — that is commonplace — just as they can breach codes, but they have to be committed to all of the institution. That applies to Ministers, spads, civil servants and Members of the Assembly. It is about how we treat each other every day, and there have been questions about that today. There has to be a new approach across the full gamut.

**Mr Wells:** One of the things that emerged during the Red Sky issue was the conduct of Stephen Brimstone. I am interested not in the facts of that case but in the allegation that the conduct of the special advisers fell far below acceptable standards. The Minister was the only person who could take disciplinary action against Mr Brimstone, and he opted not to do so. How does that change under your code?

**Mr Hughes:** The critical change is to the ministerial code of conduct, which makes clear that the Minister is required, under that code of conduct, to ensure that the rules on the management and conduct of special advisers, including discipline, are adhered to.

**Mr Wells:** Who forces the Minister to do that?

**Mr Hughes:** I understand that a failure to fulfil the terms of the ministerial code of conduct is a breach of the Pledge of Office. One deals with such a breach through the Assembly rather than any other mechanism. An enforcement mechanism has been designed to be introduced, and it can, if necessary, help that. The disciplinary authority for Ministers rests in section 30 — I am sure that someone will correct me if I am wrong on that — of the Northern Ireland Act, where it falls to the Assembly. That insertion into the ministerial code of conduct is new. It had never been expressed so clearly at that level and with that degree of impact where a breach might have taken place.

**Mr Wells:** What happens if a Minister decides not to let the Assembly know what has been going on?

**Mr Pauley:** Our response to the Committee states that there would be a key role for the Civil Service in this process, depending on the nature of the behaviour. Certain behaviours, such as bullying and harassment, cannot be tolerated or accepted in our workplace, no matter who the perpetrator is. The Civil Service, if and when necessary, would intervene and go to the Minister and, if necessary, the head of the party. It would then be reported to the ministerial standards panel, and its investigation, carried out according to the outlined enforcement process, would be made public.

Parts of our enforcement mechanism are much stronger than those elsewhere, in that anyone can make a complaint. It is not confined to the Prime Minister or head of the Government, as it is elsewhere. There are tight timescales within which any investigation should be carried out. Whatever failing existed, if the Minister was not taking action, it would be the Civil Service's role to call that out and to intervene to say that such behaviour must not continue in our workplace. In the nature of different breaches, the code of conduct covers everything from how we conduct ourselves in our daily interaction with people to behaviour that could be illegal.

**Mr Wells:** Is that the same radical action that was taken when it was discovered that two super-spads were operating on the Falls Road and that information was being taken from Stormont Castle?

**Mr Pauley:** What happened in the past —.

**The Chairperson (Dr Aiken):** Jim, I think that you have made your point.

**Mr Wells:** OK. I will move on to my last question. The whole argument that you are dying in a ditch over — I think that you are very uncomfortable about dying in a ditch about this — is whether there should be a statutory code or legislation. We are all dancing on the head of that pin. The best legislation is legislation that never has to be used because it is a deterrent.

You have not convinced me that we could not have the best of both worlds: a statutory code and, overarching that, legislation. Then, when somebody steps out of line, you have that ultimate deterrent of a court case, with all the evidence having to be collected, the cross-examination and the disclosure of all documents. That is a real deterrent, far more so than any Civil Service investigation. Why can you not accept your idea of a code and Mr Allister's overarching legislation? What is wrong with that?

**Mr Pauley:** I have addressed a question previously as to whether I was uncomfortable with deviating from the basis and principles for which I am here, which is that I am under the direction of my Minister. The position of my Minister is that we do not believe that legislation is necessary in this area. The Executive have agreed new codes. They have agreed that, in other areas, there needs to be a changed approach. They have agreed that increased transparency and accountability need to be applied across a whole range of areas. I am entirely comfortable and agree with the fact that those changes need to happen and need to be taken forward.

**Mr Wells:** If your code will be so successful and so effective, why are you worried about there being legislation that may never have to be used?

**Mr Hughes:** I just want to add a point about the deterrent effect of legislation. We have to bear in mind the chilling effect, as it were, or the deterrent effect on someone doing the right thing in the circumstances if it means that they fall foul of the legislation. A code allows for the interpretation of what the rules and the breaches might be.

**Mr Wells:** As could legislation.

**Mr Hughes:** Once the legislation has determined that something is wrong, there may be a defence, absolutely, but having to consider the defence may well be a deterrent to or chilling element in someone doing the right thing.

**Mr O'Toole:** I will be brief. Earlier, we discussed clause 3, which is about the prerogative power to appoint civil servants. I want to absolutely clear, because I was not in Northern Ireland at the time, never mind Northern Ireland politics, that the only time when that was ever used was for David Gordon.

**Mr Pauley:** That is my understanding.

**Mr O'Toole:** Are you aware of any other discussions in which it was considered?

**Mr Pauley:** No.

**Mr O'Toole:** Fine. The purpose of it being there is to appoint someone to a Civil Service role. There are provisions whereby, as the Chair mentioned, you could appoint someone as a consultant — if you needed someone from PwC, if you needed an actuary for something or if you needed a lawyer or whatever — but this is about having the legislative power to appoint a civil servant in extremis. Is that what you are saying?

**Mr Pauley:** Yes.

**Mr O'Toole:** You talked about this earlier. David Gordon is a former journalist. Basically, he is a comms person/press officer, and I would not demean either role because I performed both. Of course, I regard them as highly expert and specialised roles, but others might not. What other roles do you imagine that power being used for, given that the Department has responded by saying that, effectively, it believes that the power should be retained, whatever about the transparency issues and the irregularity of it?

**Mr Pauley:** I indicated that I did not have an example or a role, but I know the type of role. It is common for a PwC-type person, for example, with expertise in trade to be recruited to the Department for the Economy to work on Brexit-type issues.

I cannot think of all the exemptions as I sit here, but the list of exemptions to the merit principle that is available to the Northern Ireland Civil Service through our Civil Service Commissioners is shorter than the one in GB. It does not include all those that can be applied by the Civil Service Commissioners in Britain.

The use of exemptions as a means of expediting a recruitment process is permissible by the Civil Service Commissioners. How and why ours is different is a question that we are thinking about, among others, in relation to future Civil Service reform.

If you compare the two lists of exemptions, you see that GB has a couple of categories that we do not, and those might be in the area into which you want to move. We would be happy to send you the two lists so that you can see that they are different.

**The Chairperson (Dr Aiken):** Yes, please. Thank you.

**Mr O'Toole:** I am thinking of examples in Whitehall when a body is set up and an appointment made. A few years ago, the UK Government set up a body on infrastructure and appointed Lord Adonis, a former Minister, to chair it. I presume that that will not have gone through an open competition based on Civil Service rules. If a similar public body were set up here, would that provision be more limited in terms of making that appointment? I really cannot see why that power is required, given that we are all finding it quite hard to give an example of where it would be used.

**Mr Pauley:** The example that you describe was much more akin to a public appointment. If he was to be paid, and I imagine that he was, it was certainly a public appointment as opposed to an appointment to the Civil Service.

Many people sit on advisory panels for the greater good. They provide those services for some hours per week for free, or it might be related to another role that they have. There are numerous scenarios where you can have advice and expertise. Experts write to us every day with their views about things that should be different.

**Mr O'Toole:** There is no rule that says that a special adviser has to be a party member or even a party sympathiser.

**Mr Pauley:** No.

**Mr O'Toole:** It just happens to be the case here that DUP, Sinn Féin, SDLP, UUP special advisers tend to have worked for, sympathise with or have been councillors for those parties, but that is not always the case in special adviser appointments. It could be that an urgent appointment is wanted. If

the First Minister and deputy First Minister decide that they need particular expertise, whether from David Gordon or anyone else, they could appoint a special adviser, and that person would have to comply with the special adviser code or the updated legislation that Mr Allister is putting forward, if it passes. That appointment could be made, could it not? Someone could be appointed in that way.

**Mr Pauley:** I believe so. When developing and considering the salary scales of special advisers, we looked at other jurisdictions. Pay bands with a difference of up to three points took into account that special advisers might bring expertise as well as a political perspective. Indeed, some of our special advisers, as well as being party members, have experience and a background in the area to which they have been appointed.

**Mr O'Toole:** I will be quick, because I know that Seán wants to come in. Is there a degree of circularity in saying that you —? Actually, I will leave it. I have asked enough questions.

**Mr Lynch:** Most answers today have provided clarification. Bill made a very good point, which was that, whether you have legislation or codes, if there is a culture of bad behaviour, that is different and will not change. Mr Wells asked, "What do you do with a Minister?". We know the case that he is talking about. Elections are the final arbiter in such cases, and the people of North Belfast made a decision on the Minister.

**Mr Wells:** Wrong Minister.

**The Chairperson (Dr Aiken):** Hold on. Go ahead, Seán.

**Mr Lynch:** I just wanted to say that it does not matter whether we have codes or legislation.

**Mr McHugh:** Tá faillte romhaibh anseo inniu fosta. You are very welcome here this afternoon. I want to reinforce Seán's point. A lot of our discussion has been about the appointment of special advisers. Matthew expanded on that. In many respects, a special adviser does not have to have a particular qualification. People can be experts and play significant roles in certain fields without having GCSEs, A levels, degrees or the like.

If we move away from looking at the appointment of advisers and qualifications, what is required out of New Decade, New Approach is a change of culture. You more or less confirmed that. A member referred to Mr Brimstone. Whether it is Mr Brimstone or Mr Johnston, that reflects a culture, and it is the very thing that has to change in every respect. The same member talked about Sinn Féin having two special advisers on the Falls Road. We do not have any special advisers in any office on the Falls Road operating independently of this institution in any way. I refute that entirely.

**Mr Catney:** This is not an attack, but, in the private sector, I am telling you, for £85,000, I would want people to have all the qualifications, skills and necessary experience that they could have.

Is there anything in the code of appointment to stop a Minister from appointing a chum and bringing him in with no qualifications, special skills or experience? There is nothing, is there?

**Mr Pauley:** There is nothing in there about what a Minister does before he informs the Civil Service of the appointment or about what he considers the job and role to be. The Civil Service role begins when we are told of the appointment, and issues such as that are taken into account when we determine the salary.

**Mr Catney:** I am speaking not only about the Minister of Finance but about all Ministers. I am just looking for good government.

Mr Allister raised this point, as did the former Commissioner for Public Appointments, who stated:

*"as we have seen with the publication of the Code of Appointment for special advisers ... if a code is basically silent on procedures then it can be very easy to comply with".*

What is your response to that?

**Mr Pauley:** The code of conduct for special advisers begins, very deliberately, by setting out the valuable role that special advisers can play and are expected to play in good government. The code

sets out what special advisers can bring to the role and how they interact with the Civil Service and Ministers. Advisers can go to certain places that are difficult for the Civil Service to go to in place of Ministers. They play a very valuable role in decision-making and the process of good government here.

Our expectation is that the job description for special advisers is the code of conduct for special advisers. Paragraphs 1 to 4 of that document set out the role that they are supposed to play. The code also details some roles that they cannot play. Our expectation is therefore that the people who are recruited to the role can perform those functions. The merit principle is set aside for spads, because it is accepted, I think by all, that special advisers should have a similar political affiliation or outlook to their Minister so that they can advise him or her. Special dispensation from the merit principle is allowed, but, as you said earlier, that could mean that they have no qualifications at all. I cannot, however, foresee a scenario in which Ministers would want to do that, as they would be left with a fistful of Executive papers twice a week, with little advice given on them.

**Mr Catney:** Can we get a criminal offence out of your code? Is there a tariff or are fines applied?

**Mr Pauley:** There are sanctions that can be applied to special advisers if they behave badly, in different ways. Most of the sanctions relate to the fact that complying with the special adviser code and the Civil Service code of ethics is part of a special adviser's contract. We received questions on the ways in which people can be disciplined for misconduct.

**The Chairperson (Dr Aiken):** It is up to the Minister to terminate the contract.

**Mr Pauley:** Normally, we would expect an investigation to be carried out if it is about something that happened in the Civil Service.

**The Chairperson (Dr Aiken):** The Minister is ultimately responsible for the spad.

**Mr Pauley:** Yes.

**The Chairperson (Dr Aiken):** If the spad has therefore done something that breaches the Civil Service code of conduct, he is, by your legal definition, in breach of contract.

**Mr Pauley:** Yes.

**The Chairperson (Dr Aiken):** He is in breach of contract. Who therefore terminates his contract? Is it the Civil Service or is it the Minister?

**Mr Pauley:** Ultimately, it has to be the Minister who does it, because he is the appointing authority. The last question in, I think, a series of five about one of the subsections was, "Would it be acceptable for no action to be taken?". Our response is a clear no. The Civil Service would have to take the issue further. There are certain behaviours and things that we cannot allow in our buildings. If special advisers are working among, with and alongside our employees, there are standards of behaviour and conduct that must be observed that are slightly different from political standards.

**The Chairperson (Dr Aiken):** Let us say that somebody breached cybersecurity or computer security or did something along those lines that is a very definite breach of the Civil Service code. Would you be allowed to exclude that special adviser from the building or the system, or would that be a ministerial decision?

**Mr Pauley:** The ultimate application of the sanction would have to be by the Minister.

**The Chairperson (Dr Aiken):** I appreciate that this has been quite a long day —

**Mr Pauley:** You are all right.

**The Chairperson (Dr Aiken):** — but there is an issue on which we have to ascertain the answer. Obviously, if the Minister does not impose the ultimate sanction, the Minister then comes before the Assembly, but what sanctions can the Assembly impose on the spad who is in breach of the code of conduct? The way in which I read the ultimate sanction is that, if the Minister does not do anything



about the spad, he or she somehow ends up in front of the Assembly, and the Assembly then decides. What is the sanction that the Assembly can use?

**Mr Hughes:** I would have to go back to the Northern Ireland Act, to, I think, section 30.

**The Chairperson (Dr Aiken):** Yes. I think that it is.

**Mr Hughes:** My recollection is that it is suspension of up to 12 months and that that can be renewed, but apologies if I cannot say that with absolute confidence. It has been a long time since I have looked at the Act. The sanction is therefore removal from office for a period.

**The Chairperson (Dr Aiken):** It would have to be done by cross-community vote in the Assembly.

**Mr Pauley:** Yes.

**Mr Hughes:** There is certainly a threshold.

**The Chairperson (Dr Aiken):** There would be a considerable threshold. We just needed to ask that.

Pat, are you finished?

**Mr Catney:** I was not. Thanks anyway. I want confidence built into the foundations of what we are trying to do as legislators.

I cannot see where the policing is here if the issue goes back to a Minister. As you have stated, Ministers appoint their special advisers, and spads then follow their Minister's direct line. There is no guarantee that we, as a legislative Assembly, can overturn or overrule a decision or speak of any wrongdoing that has happened.

I am looking for sanctions, tariffs or some accountability, and there does not seem to anything available. I am sorry, Chair, and this is an observation, but I find myself supporting Mr Allister's Bill more, the more that I hear.

**Mr Pauley:** The sanctions that can be applied to any civil servant are set out in our handbook. They range from a verbal warning to a written warning, right through to a formal written warning. Warnings can be about attendance or for behaving inappropriately by bullying staff. There are overarching degrees of misconduct. There are also elements about email security and being in breach of the code around gifts and hospitality.

**The Chairperson (Dr Aiken):** This speaks back to the role of a consultant. If you bring a consultant into an organisation, that consultant abides by the terms, rules and conditions of the organisation. The difference here is that, if a spad does something wrong and breaches the Civil Service code, unless the Minister agrees to sanction the spad and agrees with the sanction, the process goes all the way to the Minister being hauled in front of the Assembly, and the Assembly has to go through the entire process in order to get to a cross-community vote. That is the problem with the code.

**Mr Pauley:** If we all behave differently —.

**The Chairperson (Dr Aiken):** Yes, but we do not, so —.

**Mr Pauley:** If our parties here say that they are not going to behave differently, yes.

**The Chairperson (Dr Aiken):** We have had an example. I am really sorry for keeping you for this length of time, but this is important legislation. I started off quite agnostic about the Bill. The more evidence that I have heard, the more that I am becoming convinced that it is important that we go down the legislative route, as Pat said.

We are trying to extract emails from the Department. We are trying to do all sorts of things, but we are not seeing that cultural change. Anybody who comes to the Committee says every time, "It's a cultural change, and everything's changing". I will put my hands up. I am not being party political about this. I

am somebody who really wants to see Northern Ireland work and work well, and I am not seeing that change of culture. That is what bothers me.

Bill and David, thank you very much indeed. I know that we have probably been slightly more robust with you than we would like to be. Please take an apology from me for that. Thank you very much for coming to the Committee, and we look forward to seeing you again soon.

**Mr Pauley:** Thank you.

## Document 6: Irish News Article by Tom Kelly, 22 June 2020

18 MONDAY JUNE 22 2020  
www.irishnews.com

editor@irishnews.com

THE IRISH NEWS  
Pro fide et patria

## OPINION

Leaders  
must speak  
out against  
bigotry

**C**OVID-19 has dominated every aspect of our lives for the last three months and beyond but it does not mean that other serious issues on a range of fronts have simply gone away.

Sectarianism is seldom far from the surface in parts of Belfast and elsewhere, often at this time of year, and its dark shadow has sadly appeared again in recent days.

The Grove playing fields in north Belfast is a publicly owned shared space which is open to all, and has been a hugely important facility for both adults and children during the pandemic, but acts of intimidation against anyone vaguely connected to the GAA have been escalating there over the last week.

It needs to be stressed that no section of our divided society has a monopoly on bigotry, and people from all backgrounds have been the victims of sporadic and entirely unacceptable incidents in the north of the city, but it is the level of organisation involved at the Grove which is disturbing.

Firstly threatening banners targeting GAA members appeared at the park, then a group of up to 50 men assembled there and ordered anyone wearing particular jerseys to leave immediately, and a series of provocative social media messages have followed.

The playing fields should be open to all sports, but what makes the episodes at the Grove even more sinister is that it does not have GAA pitches and there is no evidence that any form of organised Gaelic games activity has ever taken place there.

Loyalist elements have instead aggressively objected to individuals attending soccer training sessions while wearing GAA or Glasgow Celtic tops or even casually pucking a hurling ball across the grass.

This represents blatant sectarianism, and it is essential that it is firmly rejected by community leaders and elected representatives, but sadly some have remained silent and others have offered bland statements suggesting that both sides somehow share equal blame.

It would be appropriate if senior politicians from all the main parties made it clear that everyone is welcome at the Grove playing fields, regardless of their personal sporting affiliations.

There will also be a firm expectation that the police will comprehensively investigate all the developments there over the last fortnight and ensure that those who have broken the law are brought before the courts.



REACTION: UUP leader Steve Aiken now appears as the angry man of politics who gets 'outraged' a lot

Public interest is not  
served by grandstanding

**L**IKE most people I am bored with semi-lockdown. I even find myself watching the Arlene and Michelle Show for evidence of a sneaky makeover or a trim but no, our doughty leaders brave the bi-weekly media maelstrom unvarnished in solidarity with the rest of us.

So welcome news that barbers, hairdressers and beauty salons are to reopen, even if a visit may require a radioactive spacesuit. There is a 'Price is Right' feel about aspects of the reopening process as the public demands, so the politicians follow as long as we remember to wash our hands!

Over the past few months, I have taken exercise, read books, worked, written columns, cooked, created travelogues, cleaned, shielded, painted, planted, created date nights, studied mindfulness and even tried yoga. It was therefore inevitable that I would eventually get around to watching NI Assembly TV. Riveting viewing it is not.

Perhaps my choice was unfortunate.

I chose the Finance Committee chaired by Steve Aiken, Ulster Unionist and former submarine commander. Unlike a submarine, the inmates are not in close proximity as all are appropriately social distancing. In a report about UK Select Committees, the Institute for Government said "some failed to understand the difference between making a headline and making an impact".

After nearly three hours of watching the proceedings on June 17, I could not help but feel if this committee achieved either or understood the difference.

Two senior civil servants from the Department of Finance were present, taking questions and providing answers to those listening. To this casual observer, there was an apparent lack of

Tom  
KELLY

civility or respect towards them. Public scrutiny must never descend into public put-downs.

Occasionally, the chair intervened to rein in some comments by members but then also undermined those rebukes with his own side quips.

Steve Aiken came into the leadership of his party with onlookers being quite optimistic. Here was an individual with a professional background, choosing public life and drawn in by the secular and inclusive unionism of former UUP leader, Mike Nesbitt.

Aiken supported remaining in the EU because it was right for Northern Ireland and he bravely said he would break the mould by running candidates in all Northern Ireland constituencies, only to embarrassingly back down on that pledge.

Subsequently, his party was eclipsed in so many unionist constituencies by the

Alliance Party.

Aiken now appears as the angry man of politics who gets 'outraged' a lot.

During the proceedings, he bellowed the civil servants then later apologised.

The conduct of any meeting is often set by the style of the chairman. Aiken's approach seems more confrontational than inquisitorial.

Another committee member remarked that a witness looked uncomfortable as he answered their questions. It was not surprising, I felt uncomfortable watching. Cringing with embarrassment as the hand of the witness trembled on camera.

To his credit, Jim Allister is Jim Allister, forensic in style; others less so.

Civil servants are well able to cope with the content of any questions relating to policy. Politics is not their bailiwick.

Ironically, the politics behind the new policy on executive and spaid reform has been agreed by the entire executive, whose ministers cover seven of the nine members of the finance committee.

Constant barracking of civil servants to say whether they agree or not with their minister is inappropriate.

Civil servants at hearings represent the views of their minister. Politicians know that and if they don't they should. A committee is not a star chamber nor is it the Nolan Show. Public interest is not served by grandstanding.

The Institute for Government which encourages good practice also said of Select Committees that they don't always appreciate or seek feedback. Mr Aiken and his committee colleagues would do well to watch re-runs of their own proceedings.

Aspiring to have civil servants 'quaking in their boots' is no measurement of political performance.

*Civil servants at hearings  
represent the views of their  
minister. Politicians know that  
and if they don't they should. A  
committee is not a star chamber.  
Nor is it the Nolan Show*

## Document 7: Newsletter article by Adam Kula, 28 October 2020

News Letter Pg 10

NEWS

WITNESS AT STORMONT COMMITTEE SAID HE FELT 'INTIMIDATED'

# Senior civil servant levels 'bullying' claims against UUP and DUP MLAs

BY ADAM KULA  
adam.kula@newsletter.co.uk  
@News\_Letter

One of NI's leading civil servants has lodged formal complaints about the behaviour of two MLAs, stating that they left him feeling intimidated.

Bill Pauley is head of the Strategic Policy and Reform Directorate, a group within Conor Murphy's Department of Finance (DoF) which is tasked with improving performance across the whole civil service.

He came before Stormont's finance committee on June 17, and has now complained about the conduct of committee members Jim Wells and Steve Aiken.

The focus of the hearing was Jim Allister's 'Functioning of Government (Miscellaneous Provisions) Bill', a piece of law which the TUV man says is aimed at eliminating the kind of government culture which led to the RHI catastrophe.

It would – among other things – make it an offence for ministers, civil servants or special advisors (Spads) to use private email accounts to keep government business of the official record, and place curbs on the appointment of



Bill Pauley during the June committee hearing

Spads (whose conduct was put under the spotlight during the inquiry into RHI).

Mr Pauley indicated that Sinn Féin MLA Mr Murphy believes a mere code of conduct – rather than an actual law – would "sufficiently address the issues".

Mr Pauley at one point referenced the 'New Decade New Approach' deal (which

had emerged out of long-running political talks, and led to Stormont being revived), saying the deal had "recognised the need for a new approach".

UUP leader Dr Aiken – the committee chairman – interjected to say that the Ulster Unionists believed the deal had been too weak on reforming Stormont so he had "never signed up" to its provisions.

"Let us make that abundantly clear right now," said Dr Aiken. "I do not want to hear that put in front of the committee again. I am sorry for being angry, but I am getting really fed up with this."

The quizzing of Mr Pauley continued, with the civil servant repeating that "we do not believe that legislation is required in this area" – and also

stressing he was there to repeat Mr Murphy's view, not his own opinions.

At one point in the questioning, DUP MLA Jim Wells asked Mr Pauley: "Do you want to phone a friend?" (He then withdrew the remark with an apology.)

Mr Wells suggested that Mr Pauley looked so uncomfortable because he did not relish

the idea of "dying in a ditch" in order to defend the idea that no new legislation is needed for reforming Stormont – adding that the best "deterrent" for bad behaviour would be to have both a written code and a new binding law, in case the code ended up being ignored.

Sinn Féin MLA Maolisa McHugh said the behaviour towards Mr Pauley had been "downright rude" during the evidence session.

In his complaint to Stormont's standards commissioner, Mr Pauley wrote he had been "treated with a lack of respect" and was "subjected to unreasonable and excessive personal attack" and "personally threatening behaviour".

The "bullying behaviour" made him "extremely uncomfortable" and "intimidated".

The News Letter contacted both Mr Wells and Dr Aiken, but neither would comment.

Standards Commissioner Dr Melissa McCullough said: "The law prohibits me from confirming or denying that a complaint against a particular MLA has been received or from disclosing any information on any complaint under investigation."

● See a full account of exactly who said what at [www.newsletter.co.uk](http://www.newsletter.co.uk)

### Document 8: Documents received from Finance Committee

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#### Committee for Finance

Dr Melissa McCullough  
Northern Ireland Assembly Commissioner for Standards  
Room 283 Parliament Buildings  
Ballymiscaw  
Belfast BT4 3XX  
[Elizabeth.mckenna@niassembly.gov.uk](mailto:Elizabeth.mckenna@niassembly.gov.uk)

25 February 2021

**Our Ref:** 2021: 114

Dear Dr McCullough

At its meeting of 24 February 2021, the Committee for Finance considered your recent correspondence requesting a copy of the documents referenced in the minutes of proceedings of the Committee for Finance on Wednesday 22 January 2020.

The Committee agreed to reply to you providing the information that you had requested. The following is appended:

- **Appendix A** - Committee approach to preparation and questioning (Item 7)
- **Appendix B** - Agreed protocol on conduct and courtesy at Committee Meetings. (Item 8)
- **Appendix C** - A copy of the Guide to Declaration of Interests (Item 12)
- **Appendix D** - A copy of the Guide to the Role of Committee Chairpersons (Item 13).

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

*Peter McCallion*

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**Peter McCallion**  
Clerk to the Committee for Finance  
Enc.

### **Committee approach to preparation and questioning**

The purpose of each individual Committee session will determine the type of preparation and approach to questioning that are required. The purpose of the session could be:

- To gather initial evidence from a stakeholder or the Department on a particular topic;
- To scrutinise and debate with a stakeholder or the Department evidence already in the Committee's possession on a particular topic; or
- To deliberate on and evaluate evidence received from stakeholders or the Department to allow the Committee to form a view or take a decision.

In terms of the practicalities relating to questioning, options include:

- Members will be taken in the order they indicate or alternatively the deputy Chair will be called after the Chair's opening question(s).
- Members will agree to limit the number of supplementaries they ask, and if necessary, the Chair will allow a second round of questions, once everyone has had the chance to ask an initial set of questions.
- Members will agree to limit the length of any opening statement they make, and will move quickly to a question.
- Members will agree not to repeat a question that has already been asked and answered.

Depending on the purpose of the session, Members may wish to consider how they wish to prepare for the session, both individually and collectively. In addition, the Committee will wish to agree a general protocol for questioning witnesses.

#### Preparation for meeting

There are various options available to Members in terms of preparing in advance of evidence-gathering or scrutiny sessions, to ensure that they are aware of the key issues.

- Preparing individually based on the analysis provided by the Clerk and associated papers.
- Preparing with party colleagues based on the analysis provided by the Clerk and associated papers.
- Arranging a short meeting with the Clerk, either as individuals or with party colleagues in the few days before the meeting.
- The Committee holding preparatory sessions during committee meetings the week before a formal evidence session in order to review key research findings, and gaps/weaknesses/inconsistencies in the evidence. The Chair and/or Clerk can brief the Members on the objective of the forthcoming session, the key information that needs to be obtained from the witnesses, any discrepancies or gaps in the evidence already obtained from other witnesses on the same topic, and the witnesses' likely approach to dealing with questions from Members.

- The Committee holding a pre-meeting directly in advance of the formal meeting (5 - 30 minutes, depending on the issues). The Chair and/or Clerk can brief the Members on the objective of the session, the key information that needs to be obtained from the witnesses, any discrepancies or gaps in the evidence already obtained from other witnesses on the same topic, and the witnesses' likely approach to dealing with questions from Members.

Training for Members in the previous mandate demonstrated that collective preparatory sessions can provide particular value for evidence sessions with key witnesses or before scrutiny sessions on critical or complex issues.

### Questioning witnesses

There are various options available to Committees in terms of the approach they use to question witnesses.

- Members agree in advance of the session to focus their questions on a particular theme or aspect of the issue (key themes and issues will be outlined in papers from the Clerk and/or RaISe to the Committee). This could be done at a pre-meeting or by Members e-mailing the Clerk in advance of the meeting.
- Members agree to work in pairs on a particular theme, with one asking the lead questions and the other the supplementaries. This could be done at a pre-meeting or by Members e-mailing the Clerk in advance of the meeting.
- Members agree a system to indicate that they want another Member to come in with supplementaries on the theme they are pursuing with a witness, perhaps to allow the Member time to develop their next line of questioning.
- Members agree in advance of the session who will ask specific questions and in what order, if questions have been prepared by the Clerk.
- The Chair will ask any questions which have been missed or not fully answered by the witnesses at the end of the session.
- Members will not agree in advance of the session who is focusing on a particular theme/question and instead Members will simply indicate to the Chair that they wish to ask a question.

There is significant benefit for committees in considering and agreeing to the purpose of a session and the approach to be used in advance of the session commencing.



### **Sample protocol on conduct and courtesy in committee meetings**

1. Provide an apology in advance when Member is aware that they will not be able to attend a meeting.
2. Arrive in time for the start of the meeting.
3. Remain in a meeting once an evidence session or briefing has commenced.
4. Ensure mobile phones are on silent mode and keep them as far away from the microphones as possible to avoid interference with the audio system.
5. Use tablet devices discreetly and in a way which does not interfere with proceedings, and be aware of the cameras when using the tablet device.
6. Be aware of general noise levels and refrain from conducting private conversations with other members during evidence sessions.
7. Treat witnesses, members of the public, staff and other members with respect and courtesy.
8. Respect the authority of the Chairperson.
9. Respect Committee decisions and maintain confidentiality when dealing with matters in closed session.



## Appendix C

FROM: Jim McManus, Clerk to the Committee for Finance  
TO: Chairperson, Deputy Chairperson and Committee Members  
DATE: 17th January 2020  
SUBJECT: Declaration of Interests in Committees

1. Standing Order 69(5) states:

“A member who has:

(a) A financial interest in any matter; or

(b) A relevant interest in any matter, must declare that interest before taking part in any proceedings of the Assembly relating to that matter.”

2. The requirement to declare an interest complements the registration requirements and applies to almost every aspect of your Assembly duties, including work on committees. The requirements for declaration cover a broader range of interests than registration.
3. Members of committees are required to declare, at various times, any relevant financial or other interests which relate to the work of any committee of which they are a member. In particular, **a financial or other relevant interest should be declared if it might reasonably be thought by others to influence your approach to the matter under consideration** (in this case, by the Committee).
4. The requirements for declaration include the following types of interests which relate to a matter under consideration: financial interests which have been registered; past financial interests (normally limited to those active within last 12 months); indirect financial interests (such as the financial interests of a third party); expected future interests; financial interests of a sort which do not require registration; and any non-financial interests.
5. At your first meeting of a Committee you should declare financial and other interests relevant to the remit of the Committee. In addition, you should declare financial and other relevant interests as and when they arise on the Committee (e.g. when deciding on the subject of an inquiry, during evidence sessions involving witnesses to whom the interest is particularly relevant).
6. Circumstances may arise when you should consider whether, on the grounds of conflict of interest, you should stand aside from the Committee proceedings relating to the matter. In that regard, you should note that, under Rule 1 of the Code of Conduct, all Assembly members are required to base their conduct on a consideration of the public interest, avoid

conflict between personal interest and the public interest and resolve any conflict between the two at once, and in favour of the public interest.

7. Members should also be mindful that, in addition to the rule on declaring interests (Rule 5), other rules contained in the Code of Conduct are applicable when sitting on committees. These include, for example, the rules prohibiting paid advocacy (Rule 7 and Rule 8). **It should be noted that failure to comply with the rules on registering and declaring interests and on paid advocacy may be an offence under section 43 of the Northern Ireland Act 1998.**
8. Members should refer to “The Guide to the Rules relating to the Conduct of Members” for further information on declaring interests (Chapter 2) and on paid advocacy (Chapter 3). Members will already have received a copy of the Code of Conduct and Guide to the Rules. Further advice and guidance is available from the Clerk of Standards, Mr Shane McAteer in Room 254, Parliament Buildings.

Jim McManus Clerk to the Committee for Finance

### Guide to the Role of Committee Chairpersons

#### Introduction

1. The role of a committee chairperson is crucial to the effective operation of committees whether statutory, standing or ad hoc. It is vital therefore that chairpersons prioritise this role. When appointed as chairperson to a committee, the Speaker will write to the member detailing their roles, responsibilities and obligations as a committee chairperson. Some of the main responsibilities of chairpersons are as follows:
  - To uphold the standing orders and procedures governing the operation of the committee and encourage conduct and behaviours conducive to the effective operation of the committee
  - To prioritise their duties as committee chairperson and ensure that they are adequately prepared for committee proceedings
  - To represent the committee publicly, in the media and during Assembly Business
  - To act fairly and objectively at all times
  - To seek to ensure the engagement and commitment of all members of the committee and to encourage members of the committee to develop the knowledge and skills necessary to discharge their duties effectively
  - To promote openness and transparency in committee proceedings
  - To develop the strategic direction of the committee and ensure that delivery of agreed priorities is subject to regular review
  - To ensure that the committee is provided with the expert advice, information, evidence and support necessary to fulfil its agreed priorities
2. This paper includes further details of (a) the procedural role of the chairperson as set out in the Standing Orders of the Assembly or in legislation governing the operation of the Assembly and (b) roles and responsibilities falling to a chairperson to ensure that the committee discharges its duties effectively.

#### (a) Roles in Standing Orders

3. Chairpersons and deputy chairpersons of statutory and standing committees are appointed using the d'Hondt system as required by the Standing Orders of the Assembly. In the absence of the chairperson, the deputy chairperson will assume responsibility for undertaking the roles detailed below.

#### Quorum

4. If, at any time, during the sitting of a committee, the quorum of members is not present, the clerk of the committee shall call this to the attention of the chairperson. The quorum for all but one of the statutory and standing committees is five (the Audit Committee's quorum is two), except when no decision is taken or question put, when the quorum is four. The chairperson must suspend the proceedings of the committee until a

quorum is present, or adjourn the committee to some future day. (Standing Order 46(6)).

### **Voting in the Assembly Chamber**

5. Where it is known to a committee that a vote of any kind is to be taken imminently at a sitting of the Assembly in plenary session, the chairperson must suspend the proceedings of the committee to enable members to vote. (Standing Order 62).

### **Media access to committee proceedings**

6. In relation to committee proceedings, news media are only allowed into places reserved for them by the chairperson. They are not allowed to have any item in a public area which the chairperson considers could interfere with the preservation of order, and the chairperson may, in the interests of preserving order, require them to leave (see Standing Order 67). Increasingly, committee meetings are live streamed. However, if this arrangement is not in place it is the convention that chairpersons will seek the prior agreement of the committee to any request from a member of the news media, to film or record any part of a committee meeting.
7. Should members of the press indicate that they wish to take photographs or film parts of a public committee meeting, the committee clerk will inform the chairperson of the request.

### **Public access to committee proceedings**

8. In relation to committee proceedings members of the public are only allowed into places reserved for them by the chairperson. They are not allowed to have any item in a public area which the chairperson considers could interfere with the preservation of order, and the chairperson may, in the interests of preserving order, require them to leave (see Standing Order 66).

### **Matters of joint concern**

9. Where legislation or other subject matter due for consideration appears to fall within the remit of more than one committee, it may be dealt with in the following ways (Standing Order 64):
  - By one of the relevant committees taking the lead and disposing of the matter;
  - By the entirety of 2 or more committees sitting concurrently;
  - By an ad hoc joint committee established for that purpose.

### **Disposal by one committee**

10. In accordance with Standing Order 64A, the chairpersons of the relevant committees are required to consult and agree upon which committee the matter should fall to for disposal. Where they are unable to agree, the chairpersons affected should make their views known to the Business Committee which shall rule on which committee the matter should fall to for disposal.

## **Committees sitting concurrently**

11. In accordance with Standing Order 64B the relevant committees are required to consult and agree that the matter will be disposed of by the committees sitting concurrently and operating as a single committee. The relevant committees must then formally record the decision to sit concurrently in their separate committees. The relevant committees should also formally record a completion date for this type of joint committee.
12. With regard to the chairing arrangements for committees sitting concurrently, the chairpersons of the relevant committees are required to consult and agree that:
  - One of them shall act as chairperson and another as deputy chairperson; or
  - The posts of chairperson and deputy chairperson shall be rotated between them.
13. In making the decision the chairpersons should prefer that the person acting as chairperson should not be of the same party as the Minister who the committees sitting concurrently may advise or assist. The provision in Standing Orders that prohibits a member from being a chairperson of more than one committee (statutory or standing) does not apply to committees sitting concurrently. Where they are unable to agree, the chairpersons affected should make their views known to the Business Committee which shall rule on the matter.

## **Establishment of a joint committee**

14. In accordance with Standing Order 64C the relevant committees are required to consult and agree that the matter will be disposed of by the establishment of an ad hoc joint committee. The relevant committees must formally record the decision to ask for an ad hoc joint committee in their separate committees and then make a joint request to the Business Committee who will bring a motion to create the ad hoc joint committee to the Assembly for approval. The ad hoc joint committee will have a designated remit, terms of reference and timeframe.
15. Membership of the ad hoc joint committee shall be drawn from the memberships of the relevant committees. The ad hoc joint committee shall appoint its own chairperson. If it fails to do so, it should make its views known to the Business Committee which shall rule on the matter.

## **Legislation**

16. Guidance on the Assembly stages of a bill is provided in Standing Orders. The chairperson may table a motion seeking the extension of the Committee Stage of a bill - (Standing Order 33(4)).

## **Evidence under Oath/Affirmation**

17. Standing Order 72 provides that in addition to the Speaker a deputy Speaker, committee chairperson, deputy chairperson, Clerk/Chief Executive, Director of Parliamentary Services, a clerk assistant and committee clerk may administer an oath/affirmation and require any person giving evidence in the proceedings of the Assembly or its committees to take such an oath. Such practice is not usual.
18. The decision to require a witness to take an oath or affirmation would be susceptible to judicial review, for example, on the grounds of unreasonableness, irrationality or illegality.
19. Under no circumstances should a committee take evidence under oath/affirmation without providing prior notice to a witness.
20. Before a committee makes a decision to take evidence under oath/affirmation advice must be taken from the clerk assistant and the Head of Legal Services as knowingly making a false statement whilst under oath/affirmation may constitute a criminal offence. The committee should agree and record in the minutes of the proceedings the reason(s) it has decided to take evidence under oath/affirmation.
21. There are a number of steps that should be taken in advance of administering the oath/affirmation to ensure that the process is fair to the witness and the committee clerk can advise on the procedure.
22. In the context of the potential implications for a witness of knowingly making a false statement under oath/affirmation, it is more likely that the committee will receive requests for legal representation or for witnesses to have someone in attendance to support them during the evidence session. It is for the committee to decide whether to agree to such a request. However, in relation to any request for legal representation the committee may also wish to seek legal advice and consider what if any legal representation it may require.
23. When taking evidence under oath, the chairperson has an important role in ensuring that questions relate to the matter(s) notified to the witness, in advance of the evidence session. Should witnesses feel that questioning is not relevant or appropriate they should ask the chairperson for a ruling.
24. If a person is required to give evidence under oath/affirmation, they will be required to take the oath or affirm on each occasion when they attend before the committee in relation to the particular item of business. If the meeting suspends, but resumes on the same day, the oath/affirmation stands; it does not need to be re-administered.

### **Contempt of court under the strict liability rule**

25. Section 50 of the Northern Ireland Act 1998 affords protection from the risk of strict liability contempt of court for publications made in the context of Assembly proceedings relating to legislation.

26. A person may be guilty of strict liability contempt of court under the Contempt of Court Act 1981 where they publish any matter which creates a substantial risk of serious prejudice to particular, active, legal proceedings – there is no requirement to show that the person intended to cause prejudice.
27. The committee clerk can advise on the effects of, and protection offered, by Section 50 and, if there is any doubt, the clerk will consult the Assembly's Legal Services.
28. The risk of prejudice to active legal proceedings arising in the course of committee proceedings (and the associated risk of committee members committing a contempt of court) is managed by the committee chairperson's application of the sub judice rule in Standing Order 73 which is discussed below.

### **Application of sub judice rules to committees**

29. The sub judice rule required by section 41 and Schedule 6 of the Northern Ireland Act 1998 is intended to protect the distinct constitutional roles of the legislature and the court. Generally, when a matter is sub judice (under consideration by a court) it should not be referred to in committee proceedings. The sub judice rule is contained in Standing Order 73 which provides that any matters in respect of which legal proceedings are "active" should not be referred to in committee proceedings (except to the extent permitted by the committee chairperson). It does not apply to contemplated or hypothetical legal proceedings, nor does it apply to investigations prior to their constituting "active" legal proceedings.
30. The committee clerk can advise on the circumstances when proceedings become, or cease to be, "active" but legal advice should be sought as required.

### **Defamation**

31. Under Section 50 of the Northern Ireland Act 1998, for the purposes of the law of defamation, absolute privilege applies equally to:
  - the making of a statement in proceedings of the Assembly; and
  - the publication of a statement under the Assembly's authority.
32. The term 'proceedings of the Assembly' includes the work of committees. A report ordered to be published by a committee would attract absolute privilege, as the report would be published "under the Assembly's authority." However, it cannot be assumed that a press release agreed by the committee is covered by Assembly privilege. In relation to press conferences, even if members stick to the content of the press release, it is unlikely that an action for defamation could be defended on grounds of absolute privilege since the statement would not be made "in proceedings of the Assembly".

33. This privilege also covers all evidence given by a witness to a committee, whether in oral or in written form. As a result, no action may lie in defamation against a witness in respect of statements, whether written or oral, to a committee. However, committees may be reluctant to provide a platform to allow potentially defamatory remarks and, should concerns be raised, the committee may wish to adjourn to consider how it wishes to handle such evidence. The committee will also need to consider issues relating to the publication of the evidence.

34. Informal proceedings, such as stakeholder meetings or events or conferences do not attract absolute privilege.

### **(b) Roles in ensuring the effective operation of the committee**

#### **Order and conduct**

35. The chairperson must ensure that order is observed in committee meetings.

36. Chairpersons should encourage committees to agree a protocol on the conduct and operation of committees to ensure that conduct and behaviours are conducive to the effective operation of the committee.

37. A key aspect of keeping order is calling members to speak. Chairpersons should call members fairly and not favour members from any particular party. Chairpersons should ensure that members from all parties have the opportunity to speak if they wish.

38. In practical terms, chairpersons may find it helpful to identify speakers they intend to call. The committee clerk can assist in this by keeping a running list of members wishing to speak.

39. Chairpersons should ensure that members' contributions are relevant to the subject under discussion and respectful to other members and witnesses. It is for the chairperson to advise members that they are out of order if the point they raise is not relevant.

40. Chairpersons must ensure that members speak 'through the chair'.

41. It is important that chairpersons summarise and confirm decisions taken by the committee following discussion.

#### **Declaration of interest in committees**

42. The rules governing the declaration of interests by committee members are contained in "The Guide to the Rules Relating to the Conduct of Members". The chairperson should ask members to declare their interests in items of business considered during meetings of a committee. For a more detailed explanation of the requirements to declare an interest in committee see "A Guide to the Powers and Operation of Statutory Committees for Chairpersons and Members".



## **Progressing business**

- 43. It is the chairperson's responsibility to control the committee meeting and retain focus so that, where possible, the items of business on the agenda are progressed within the time available.
- 44. The chairperson should ensure that members receive prior notification of substantive items of business that are to be discussed/considered by including them on the agenda for the next meeting rather than allowing them to be raised under AOB or matters arising.

## **Voting in committee**

- 45. It is for the chairperson to determine when a decision is to be taken on any item of business. It has been practice to date that committees do not routinely divide, but rather seek to take decisions by agreement.
- 46. Where it is necessary to have a vote at a statutory, standing or ad hoc committee meeting all questions are decided by a simple majority. Voting shall be by the show of hands unless otherwise requested by a member of the committee (Standing Order 49(7) and 52(6)).
- 47. Chairpersons do not have a casting vote.

## **Planning and managing the workload**

- 48. Planning and managing the committee's workload in line with members' wishes is a key task for clerks and chairpersons.
- 49. Committees have well established processes for identifying strategic priorities and for agreeing forward work plans. The chairperson plays a lead role in the development of the committee's priorities and in working alongside the clerk to ensure that a deliverable plan of work is prepared for agreement of the committee.
- 50. It is important that, in addition to reacting to items of business referred to the committee, the clerk and chairperson undertake effective forward planning and actively manage the committee agenda over a period of weeks. It is, therefore, strongly recommended that a chairperson and his/her clerk meet regularly to discuss the planning and conduct of committee business.

## **Frequency of committee meetings**

- 51. The frequency of committee meetings and the date of the next meeting is agreed by the committee. However, in practical terms the clerk will liaise with the chairperson in relation to the proposed meeting dates and times.

## **Advice, information and evidence**

52. The chairperson will work alongside the clerk to support evidence based decision making within the committee by ensuring that the committee has access to the expert advice, research, information and evidence necessary to enable the committee to fulfil its role.
53. The chairperson shall ensure that members are reminded of their responsibilities when considering evidence of a confidential nature.

### **Representational duties**

54. The chairperson represents the committee at meetings with the Minister and other groups. The chairperson should apprise the committee following meetings with the Minister or groups.
55. The chairperson also represents the committee at meetings with the media. In dealing with the media, it is important that, when speaking on behalf of the committee, chairpersons ensure that the views expressed are those of the committee.
56. The chairperson will normally sign on behalf of the committee, any motions that the committee wishes to have debated in plenary session.

### **Chairpersons' Liaison Group**

57. Chairpersons of statutory and standing committees are members of the Chairpersons' Liaison Group and are encouraged to attend its meetings. The remit of the Liaison Group is to consider matters relating to the work of Assembly committees.



Northern Ireland  
Assembly

## SECTION 6.07

### DIGNITY AT WORK

#### Introduction

1. The Northern Ireland Assembly Commission (the 'Assembly Commission') is committed to equality of opportunity and to creating and sustaining an environment where everyone is treated with respect and dignity, free from any form of inappropriate behaviour, and one in which all employees can give of their best.
2. Unwanted, unreasonable and offensive conduct can occur in any workplace and at any level. It detracts from a productive working environment and can affect health, confidence, morale and performance.
3. The aim of the Dignity at Work Policy is to make staff members aware of the types of behaviour that might cause offence, to highlight the sources of information and assistance which are available and the procedures for dealing with unwanted, unreasonable and offensive behaviours. There are separate informal and formal procedures for resolving complaints under this Policy, the details of which are set out in the appendix to this section of the handbook. It is important to highlight that it will be necessary for a complainant to clearly specify which 'category' he/she is making their complaint under. It is also important to highlight from the outset that the Assembly Secretariat's ('the Secretariat') Equal Opportunities Officer (the Equal Opportunities Officer) has the authority to turn down a request for a formal investigation. For example, a refusal to carry out a formal investigation might occur when it is considered that the nature of the complaint can be dealt with more appropriately under grievance procedures, i.e., the matter is neither harassment, bullying, discrimination nor victimisation. The designated Equal Opportunities Officer, at any time, will have the necessary knowledge and skills to carry out their role and responsibilities.

#### What type of behaviour may affect dignity at work?

4. A variety of terms can be used to describe inappropriate behaviours that may impact on your dignity at work. These are harassment, bullying, discrimination and victimisation. This Policy defines these behaviours as:
5. **Any form of unwanted, unreasonable and offensive conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Conduct shall be regarded as having this effect only if, having regard to all the circumstances and in particular the complainant's perception, it should be reasonably considered as having that effect.**
6. At times the offensive conduct can be unintentional on the perpetrator's part. However, it must be emphasised that it is the impact of the conduct on the recipient and not the intention of the perpetrator that is significant. Staff whose behaviour constitutes harassment, bullying, discrimination or victimisation can be liable for disciplinary action which could lead to their dismissal. To view forms of unwanted, unreasonable and offensive conduct click [here](#).

7. It will always be assumed that complaints have been made in good faith unless there is evidence to the contrary. If it is found that an accusation was deliberately false, mischievous or vexatious, and was not due to a misunderstanding or genuine mistake, it will be treated as a serious matter and will lead to disciplinary action.

## **Data Protection Act**

8. While a complaint under the Dignity at Work Policy is confidential, information and documentation pertaining to a complaint will as far as possible be shared with all parties to the matter. Under the Data Protection Act you have the right to request information held on you and this may, in certain circumstances, apply to information provided in connection with a Dignity at Work complaint. On request the Equal Opportunities Officer will consider supplying information held about the individual making the request, taking advice from the Information Officer as appropriate. The consent of the person who supplied the information will be sought before any disclosure is made. However, if consent to disclose information provided by one individual about another is not given, and it is considered necessary to comply with the request for information, anything that would identify the supplier of the information will be redacted (in other words edited for publication). There may be exceptional occasions where copies of witness statements and other documents and information may not be provided, particularly if a witness has expressed genuine fears. Further information can be obtained from the Human Resources Office.
9. Records will be kept for at least 6 years by the Human Resources Office regarding your complaint and will be retained in accordance with Data Protection provisions. These records will include a copy of your written complaint under the Dignity at Work Policy and will detail the nature of the complaint, the response of the Equal Opportunities Officer, documentation and witness statements pertaining to any investigation and appeal, a record of actions taken and reasons, reasons for any delay in the process and minutes of all interviews/meetings. Copies of minutes of interviews/meetings will be given to the employee attending same.

## **Unacceptable Behaviour**

### **a. Harassment**

10. There is no single, established definition of harassment. Understanding harassment requires an appreciation that those on the receiving end of certain sorts of behaviour may find it threatening, humiliating or offensive. What might be harmless fun in one context can be very damaging in another. It is not necessary for there to be intent to harm or cause offence for harassment to exist. You should give thought to how your words and actions might impact on others. Physical contact can constitute harassment, as can words, spoken and written, images – including those on computer such as jokes and video clips - and gestures.
11. Harassment is unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person and which is linked to any aspect of an individual's personal characteristics, for example their appearance, gender, trade union membership, sexual orientation, gender re-assignment, individual mannerism such as accent, race/ethnic origin, marital or civil partnership status, religious belief, political opinion, age, disability, sexual orientation or whether or not they have dependants. To view examples of harassment, click [here](#).
12. The key point is that the behaviour affects the dignity of men and women. It is unwanted behaviour, which is not encouraged or reciprocated by the recipient, regardless of whether it was meant to cause offence. The test of harassment is not purely objective. If someone makes it clear that the behaviour is unwanted or inappropriate (even if it is not on the face of it behaviour that would offend an objective bystander) then to continue such behaviour may still constitute harassment.

### **b. Bullying**

13. Where the unwanted conduct is not linked to an individual's personal characteristics then it is often referred to as bullying. There is no legal definition of bullying. However, it is generally accepted that bullying comprises "offensive, abusive, intimidating, malicious or insulting behaviour, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines his/her self-confidence and which may cause him/her to suffer stress". Such behaviours will normally be displayed on a frequent or persistent basis. Equally, bullying at work may also be caused by a single act. It can be carried out by senior staff against more junior staff, by staff of the same grade as the victim(s) or by junior staff against more senior staff. Bullying usually results from a misuse of individual power derived from status/position, physical strength or force of personality. It can also arise from collective power arising out of strength of numbers.

Bullying at work may amount to more than an occasional display of anger or the occasional argument. To view examples of bullying click [here](#).

### **c. What is not bullying**

14. Legitimate, constructive and fair criticism of an employee's performance or behaviour at work is not bullying. Isolated incidents of behaviour such as abruptness, sharpness or rudeness, while unacceptable, should not be described as bullying. These should be dealt with in the first instance by letting the person know how their behaviour has made you feel. Only persistent offensive behaviour, or offensive behaviour which is displayed in a single act, should be regarded as bullying.
15. Managers and supervisors have a duty to manage performance, provide employees with accurate feedback, which may be critical, and to take steps to achieve an improvement in performance where that is required. Similarly, managers must take reasonable action to control absenteeism or misconduct by the legitimate exercise of managerial control.
16. Bullying is something more than just a firm management style. If a manager issues an instruction which an employee considers unreasonable, the employee may have a legitimate grievance. However, this should be pursued through the normal grievance procedure.
17. The behaviour of individuals in the workplace can vary from day to day. Someone who is normally perfectly civil may occasionally appear impatient, pre-occupied and fail to show the courtesy expected of them. This may be for a variety of reasons including pressure of work, domestic difficulties or ill health. This Policy is not intended to deal with occasional minor lapses of good manners, courtesy or respect, unless a pattern of behaviour emerges that becomes objectionable or intimidating in itself, in which case such behaviour can constitute bullying.

### **d. Discrimination**

18. Discrimination is unlawful when someone is treated less favourably or unfairly compared to others on the grounds of a protected characteristic, for example their sex (or gender re-assignment), marital or civil partnership status, religious belief and/or political opinion, race, disability, age or membership/non-membership of a Trade Union. It can be direct – when people are treated less favourably because of a protected characteristic, or indirect – when a condition or requirement is applied equally to all but which is harder for one group to meet than another or which has a disproportionate or otherwise detrimental impact on them and cannot be justified. A failure to make a reasonable adjustment for a person with a disability is also a form of discrimination.

### **e. Victimisation**

19. This Policy will also protect staff who make complaints of harassment, bullying or discrimination and others who give evidence or information in connection with a complaint from victimisation. Victimisation occurs where a person who has made a complaint or assisted a complainant or alleged offender under this Policy, is treated less favourably than others as a consequence.

### **f. Work-related social events**

20. Inappropriate behaviour can lead to complaints of bullying, harassment, discrimination or victimisation whether they occur at the workplace or at other venues during work-related events. Recent case law has made it clear that such events are considered under the law as a continuation of the workplace and that inappropriate behaviour which occurs at training courses or social events such as Christmas parties, or in the pub after work, can constitute unlawful discrimination in the same way as if it had occurred in the workplace.

### **g. Social media**

21. Staff should be aware that unacceptable behaviour in another forum e.g. during a conversation, will also be unacceptable behaviour if it is conducted on an online forum. In other words, staff should treat 'electronic behaviour' as they would treat 'non-electronic behaviour'. For example, staff are prohibited from using social media in a manner which is offensive to other staff. Further information is contained in the Social Media Policy.

## **What can you do if you feel your dignity at work has been affected?**

22. If you feel you have been subjected to unwanted, unreasonable and offensive conduct you should discuss your concerns with someone and explore with them your options for resolving the problem. Work

colleagues are obvious sources of help. However, you can also speak to your line manager or supervisor (unless this is the person who has caused the problem, in which case you can speak to another person in the management chain) or a Harassment Contact Officer. Harassment Contact Officers are fully conversant with the Dignity at Work Policy and procedures and are trained to offer confidential advice, guidance and support to any staff member who considers that he/she has been subjected to, or accused of, unwanted, unreasonable and offensive behaviour. To view contact details for Harassment Contact Officers click [here](#).

23. Other sources of help and assistance are the Equal Opportunities Officer or Trade Union Side (TUS) representative. Full details of the informal and formal procedures that can be used to resolve complaints can be found in the 'Internal Complaints Procedures' section of this chapter of the handbook.

## **What can you do if you are advised that your conduct is offensive?**

24. If you are advised that your behaviour is considered to be offensive, you will probably find this accusation very stressful and upsetting. You can speak to a Harassment Contact Officer for advice and/or guidance. You should treat this as a serious matter and do all you can to resolve the situation at an early stage. If you are approached in this context there are a number of things to consider, including:
1. Remember that if a person feels offended by your behaviour, the feelings are very real to them, therefore try to remain calm and objective, be open and receptive to the comments being made;
  2. Do not try to convince the complainant that the complaint is invalid or to withdraw it as this may amount to victimisation;
  3. Look at your behaviour to see how it might have given rise to the complaint and how it might be modified;
  4. An informal meeting often presents an opportunity to clarify actions or behaviour and an apology, for example, if your behaviour has been misinterpreted, often remedies the situation;
  5. You may wish to keep a record of any discussions or meetings that take place subsequent to being approached.

## **What can you do if you witness offensive conduct?**

25. All staff have a role in creating and sustaining a working environment in which individuals are treated with dignity and respect. If you witness inappropriate behaviour it is therefore important that you should try to discourage it by:
1. making it clear that you find the behaviour unacceptable;
  2. showing support to colleagues who suffer such treatment;
  3. reporting the incident to your line manager/supervisor or another officer in the management chain; and
  4. Making a personal note of what happened. This will be useful if you are later asked to provide information as part of an investigation into a formal complaint.

## **Complaints Involving Individuals outside the Secretariat**

### **a. MLAs, MLAs' Staff or Party Staff**

26. A Secretariat Staff / Member Protocol has been developed which provides guidance on the process for raising your concern if you consider that you have been discriminated against, harassed, victimised or bullied by an MLA or by a person employed or engaged by Members or Parties.

### **b. Staff from NICS Departments**

27. Where a complaint involves staff from a Civil Service Department or an Agency of a Civil Service Department, it will be handled by the Equal Opportunities Officer who will liaise closely with the relevant Departmental Equal Opportunities Officer in the alleged offender's department to keep them informed of progress. As with all complaints, it is important that staff involved receive whatever assistance is required.

28. When the investigation is completed, the Equal Opportunities Officer will discuss the outcome of the investigation, and whether or not the complaint should be upheld, with the alleged offender's Departmental Equal Opportunities Officer. Both the Secretariat and Departmental Equal Opportunities Officers will ensure that the decision is quickly communicated to all parties. Where a complaint is upheld, the report will be passed to the alleged offender's department who will decide if disciplinary action is appropriate in accordance with normal procedures.

### **c. Harassment or bullying of staff by members of the Public**

29. If you are subjected to offensive conduct by a member of the public, you should report the incident as soon as possible to your line manager. It is your manager's responsibility to satisfy themselves that the complaint is well founded and take steps to ensure that the behaviour is stopped. Your manager should make the member of the public aware (if possible in writing) that his/her behaviour is unacceptable and must stop. It should be made clear that if the behaviour is not stopped, the member of the public may be excluded from the building/event. Your manager should keep a record of the incident and the action they took to ensure the offensive behaviour was stopped. A copy of this should be sent to the Equal Opportunities Officer.

### **d. Complaints involving contractors**

30. Complaints made by or about employees of contractors working on Assembly premises will normally be handled by the Head of Business with ownership of the contract. If attempts to resolve a complaint through discussion between the Head of Business and the contractor are unsuccessful, the matter can be raised with the Equal Opportunities Officer. If necessary, complaints can be dealt with under the provisions of this Policy.

### **e. Staff on secondment**

31. In all secondments both inward, when staff from other organisations come to work in the Assembly, and outward, when Assembly Commission staff go to work in outside bodies, the secondment agreement should specifically state the arrangements that will apply in the event of a complaint involving the secondee. It is expected that in such cases both organisations will jointly agree on who will take the lead in carrying out the investigation.

## **Procedures that apply to complaints outside the scope of this Policy**

32. Complaints about a protected disclosure under the Public Interest Disclosure Order ("Whistleblowing") can be raised under the procedures set out in the Standards of Conduct Policy, chapter 6.01 in the Staff Handbook.
33. Complaints relating to a matter of conscience under the Assembly Code of Conduct can be raised under the procedures set out in the Whistleblowing Policy, chapter 6.08 of the Staff Handbook.
34. Separate procedures apply if you wish to appeal against the outcome of action taken under the formal Disciplinary or Inefficiency procedures and are set out in the policies 6.03 Discipline; 3.01 Managing Attendance Policy and 6.06 Capability Policy in the Staff Handbook. A complaint about informal disciplinary or inefficiency action will be treated as a grievance and dealt with under the Grievance procedure, set out in Policy 6.04 Grievance.
35. The Occupational Health Service (OHS) has a process for appealing against a medical retirement decision.
36. Separate internal procedures apply when dealing with disputes relating to pension matters.
37. Where the complaint relates to a promotion matter, the existing appeal mechanisms within the promotion process as set out in the Staff Handbook can be used to seek informal resolution. The Grievance procedures can be used to resolve formal complaints.
38. Complaints relating to any employment related matter outside the policies listed above will be dealt with under the Grievance procedures set out in the Staff Handbook.

## **Statutory rights**

39. There are various legal remedies available to those who are subjected to unwanted, unreasonable and offensive conduct in the workplace and the procedures accompanying this Policy do not prevent staff from exercising those rights. Should the behaviour constitute a criminal offence (for example assault) then criminal law will apply otherwise there may be civil remedies in the legislation listed below, which will apply. In addition, the common law duty of care requires an employer to provide a safe environment.

## **a. Anti-Discrimination Legislation**

40. Unwanted, unreasonable and offensive conduct that is based on social identity or protected characteristics, is covered by the following legislation:
1. Sex Discrimination (NI) Order 1976 as amended (sex, marital or civil partnership status);
  2. Fair Employment and Treatment (NI) Order 1998 as amended (religious belief, political opinion and discrimination on grounds of TUS Membership);
  3. Race Relations (NI) Order 1997 as amended (colour, race, nationality or ethnic or national origin, or being a member of the Traveller community);
  4. Disability Discrimination Act 1995 (protection for disabled persons against discrimination on the grounds of disability, and failure to make a reasonable adjustment for a person with a disability);
  5. Employment Equality (Sexual Orientation) Regulations (NI) 2003 (sexual orientation);
  6. Employment Rights (NI) Order 1996 (discrimination on grounds of TUS Membership);
  7. Employment Equality (Age) Regulations (NI) 2006 (age).

## **b. Other Legislation**

41. Where the above legislation is not relevant (in other words, where the unwanted conduct is not related to social identity or protected characteristics) the following legislation may be cited:
1. Health & Safety at Work (NI) Order 1978
  2. Protection from Harassment (NI) Order 1997

## **c. Time Limits**

42. There are time limits within which legal action must be taken and anyone considering this option should consult their legal advisers. Other sources of advice include TUS, Citizens Advice, the Equality Commission and the Labour Relations Agency.

## **Personal Liability**

43. If legal proceedings are invoked then the alleged offender (the respondent) may be held personally liable for acts of unwanted, unreasonable and offensive conduct. If a staff member is considered to have been acting outside the scope of his/her duty or in contravention of this Policy, the Assembly Commission is unlikely to accept legal responsibility, and the officer will have to arrange his/her own representation. In such circumstances the Assembly Commission will not accept responsibility for compensation or damages.

## **Rights, roles & responsibilities**

### **a. All Staff**

44. Every staff member has the right to work in an environment free from unwanted, unreasonable and offensive conduct that may violate his/her dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. The Secretariat fully recognises the right of staff to raise a complaint about such behaviour if it occurs and all complaints will be dealt with seriously and as quickly as possible.
45. Every employee has a responsibility to familiarise themselves with the Dignity at Work Policy and to comply with it. In addition, there is a legal requirement to comply with the relevant legislation, in other words the Fair Employment and Treatment (NI) Order 1998, the Sex Discrimination (NI) Order 1976, the Employment Equality (Sexual Orientation) Regulations (NI) 2003, the Disability Discrimination Act 1995, the Employment Equality (Age) Regulations (NI) 2006, the Race Relations (NI) Order 1997 and the Employment (Northern Ireland) Order 2003.
46. All employees also have a role to play in helping to create and sustain a working environment in which individuals are treated with dignity and respect. They can contribute to preventing inappropriate behaviour by ensuring that their own standards of conduct do not cause offence and should discourage inappropriate behaviour by others by making it clear that they find such actions unacceptable and by supporting colleagues who suffer such treatment.



47. All staff involved in an investigation are required to fully participate in and co-operate with any investigations being conducted by an Investigating Officer. This includes making themselves available for interview and providing detailed responses when answering questions. Staff do not have the right to decline participation and any person who fails to co-operate with an investigation may be subject to disciplinary procedures. Should an alleged offender refuse or fail to participate then the investigation will proceed on the evidence available.

## **b. Managers/Supervisors**

48. Managers and supervisors have a duty to implement this Policy and to make every effort to ensure that unwanted, unreasonable and offensive behaviour does not occur. They should set a good example by treating all staff and stakeholders with dignity and respect. They must act on alleged incidents of unwanted, unreasonable and offensive behaviour, which comes to their attention from whatever source, by taking prompt and appropriate action to end the behaviour. Persistent or serious failure on the part of managers or supervisors in this respect can, in certain circumstances, give rise to disciplinary proceedings.
49. Managers and supervisors should be fully conversant with this Policy and procedures for dealing with complaints and should ensure that their staff are also aware of them. Managers and supervisors should be aware of the services offered by the Harassment Contact Officer network for both complainants and alleged offenders. This network can also provide advice for managers.
50. Staff affected by bullying, harassment, discrimination or victimisation may be reluctant or nervous about complaining. They may be worried about not being taken seriously, about reprisal, about damaging their career prospects and about creating a bad atmosphere in the workplace. Managers and supervisors must therefore take steps to quickly resolve any problems in a sensitive manner supporting and reassuring staff as necessary.
51. Following the resolution of a complaint, managers and supervisors will be expected to monitor the situation to ensure that further problems or victimisation of anyone involved does not occur.

## **c. Staff Welfare and Employee Assistance Programme**

52. The Welfare Support Service and/or the Employee Assistance Programme (EAP) provider can provide emotional support for anyone involved in a complaint or who may be contemplating this action.

## **d. Harassment Contact Officers**

53. The Secretariat has appointed a network of Harassment Contact Officers who are fully conversant with the Dignity at Work Policy to provide confidential advice, guidance and support to those who feel they have been subjected to, or accused of, offensive behaviour. The same Harassment Contact Officer cannot act for both parties.
54. The role of the Harassment Contact Officer is to:
1. Offer a private and confidential environment to encourage discussion of the alleged incident(s);
  2. Give the individual the opportunity to think matters over;
  3. Discuss the options and courses of action available to the individual;
  4. Provide support to the individual as they reach their own conclusions and undertake their chosen course of action;
  5. Approach the alleged offender on behalf of the complainant if requested.

## **e. Investigating Officer**

55. Investigating Officers, who may be external to the Assembly, are appointed under stage 2 of the formal procedures to carry out formal investigations. They are trained in investigation techniques and upon appointment will receive detailed terms of reference setting out what is expected from them in the investigation. This document will make it clear that the Investigating Officer's role does not extend to recommending disciplinary action, nor suggesting or recommending any penalty which might be imposed. They will interview the parties to a complaint and any relevant witnesses and, following completion of their enquiries, prepare a written report setting out the facts and their conclusion as to whether or not the complaint should be upheld. Reports are submitted to the Secretariat Equal Opportunities Officer and the information remains the property of the Secretariat.

## **f. Equal Opportunities Officer**

56. The Head of Human Resources and Equal Opportunities Officer will act to ensure that this Policy and procedures are properly implemented and operated, and in particular that:
1. Details of the Policy and procedures are communicated to all staff;
  2. Appropriate training is provided to make each employee aware of his/her responsibilities;
  3. Complaints are processed appropriately through informal and formal channels;
  4. Adequate resources are made available to implement the Policy, achieve its objectives and operate the procedures;
  5. Designated staff are given appropriate training to enable them to perform their roles sensitively and effectively.
57. The Equal Opportunities Officer or a nominated officer at the same grade as the Equal Opportunities Officer (or a higher grade) will carry out preliminary enquiry meetings as part of the formal procedures and on receipt of the investigation report, the Equal Opportunities Officer or nominated officer will decide whether or not to uphold the complaint. They will monitor and review complaints and how they have been resolved on a regular basis in order to ensure that proper standards are being maintained and that the procedures are working effectively. They will also prepare statistical returns in an anonymous format on the incidence of various types of cases to senior management in the Secretariat and the TUS on an annual basis.

## **Confidentiality**

58. Confidentiality must be maintained at all times by those involved in the process – the alleged offender, complainant, witnesses and those managing the investigations or appeals. Failure to do so will be considered a breach of conduct and may result in disciplinary action.

## **Internal Complaints Procedures**

### **Introduction**

59. There are two separate procedures for resolving complaints under this Policy:
- I. Informal Procedure:** where the complainant, either directly or with assistance, seeks to have the offensive behaviour stopped; and
  - II. Formal Procedure:** a two-stage process involving a preliminary meeting between the complainant and the Equal Opportunities Officer, and if appropriate the appointment of an Investigating Officer to carry out an investigation of the complaint.
60. Where at all possible, attempts should be made to resolve the matter using the informal procedure. However, the seriousness of the complaint may prevent this course of action, or the complainant may prefer to use the formal procedure immediately. The formal procedures may also be appropriate where a previous attempt at an informal resolution has failed.
61. If at any stage in either the informal or formal process it appears that a criminal offence may have been committed; the case will be dealt with under the disciplinary procedures. The matter should be brought to the immediate attention of the Head of Human Resources who will inform the police.
62. It is important that anyone who feels they have suffered unwanted, unreasonable and offensive behaviour should keep a record of each incident as set out below. This should be done as soon as possible after each incident, irrespective of whether the complaint is to be handled informally or formally.
- Date, time and place of incident;
  - Name of alleged offender;
  - What actually happened;
  - How the complainant felt at the time;
  - Name of anyone else present at the time;
  - Action taken, including whether the matter was reported to line management;

- Any correspondence relating to the incident(s).

In certain situations, it may be necessary to make reasonable adjustments for a person with disabilities, due to the nature of their disability, to make a complaint. This may include, for example, assistance in writing a complaint. Such situations will be considered on a case by case basis. Similar adjustments might also be required for persons not fluent in English or sufficiently literate.

#### **a. Time Limits**

63. It is always preferable to attempt to resolve problems as soon as they arise. Formal complaints of bullying, harassment, discrimination or victimisation should be made in writing as soon as is reasonable after the incident which gave rise to the complaint as this will facilitate more effective investigation and the accuracy of statements etc.
64. In most cases a delay of more than 3 months in making a complaint may be regarded as unreasonable although account will be taken where there have been attempts to resolve the complaint informally. Where a complaint is made more than 3 months after the incident complained of, or after the most recent incident complained of, the Equal Opportunities Officer or nominated officer will consider fully the reasons for the delay before deciding if this was reasonable, taking into account all the circumstances. If it is concluded that it was not, the complaint may be rejected and the complainant will be advised of this decision and the reasons for same in writing. In such cases the complainant can appeal to the Head of Human Resources who will decide if the delay was reasonable.

#### **b. Informal Complaints Procedure**

65. Under the informal procedure you may seek to have the offensive behaviour ended either through a direct approach to the alleged offender (possibly with the assistance of or by a third party) or through mediation.
66. Using the informal procedure you inform the alleged offender, either verbally or in writing, that the behaviour in question is unwanted, unreasonable and offensive and should be stopped immediately. It should also be made clear that if the behaviour continues it may result in a formal complaint. This can be done in a number of ways including:
  1. Approaching the alleged offender directly or with the support of a Harassment Contact Officer, work colleague, TUS representative, or line manager (or someone in a more senior position if the line manager is the alleged offender);
  2. Asking a Harassment Contact Officer, TUS representative or line manager to approach the alleged offender on your behalf.
67. Throughout the process both parties are entitled to the same rights. They can approach any of the following to request advice or support:
  1. a Harassment Contact Officer;
  2. their line manager (or someone in a more senior position if the line manager is the alleged offender);
  3. a TUS representative.
68. It can be helpful to the successful resolution of a problem if your line manager and the alleged offender's line manager are made aware of the existence of a complaint. This may only be done with the agreement of you and the alleged offender respectively.
69. Where the alleged offender accepts that their conduct has been or could be construed as offensive, and undertakes to amend their behaviour in the future and provided that you are satisfied with the outcome, the matter will usually end there and no further action is required. Where this is not the case you have the option of pursuing the matter formally.
70. Irrespective of the outcome you are advised to retain a note of what has occurred in case the unacceptable behaviour resumes.
71. The Harassment Contact Officer will discuss the options available to you and will provide support as you reach your own decision on your chosen course of action. If you do not wish to take any action, this will be recorded by the Harassment Contact Officer and confirmed to you in writing. There may be instances where the nature of the complaint is too serious to be dealt with informally and the Secretariat will consider it necessary to undertake a formal investigation. Such decisions will be taken by a Senior Human Resources Manager (at AG5 or above).

72. It should be noted that the informal procedures do not normally involve formal disciplinary action.

### **c. Mediation**

73. Mediation is also an option under the informal procedures and is a way of solving problems so that you can come to a workable agreement with someone else. The advantage of mediation is that you work out the solution to the problem; it is not imposed.
74. The Secretariat has a group of staff trained in mediation skills who will help you work through your concerns, will not take sides or make judgments, and will not tell you what to do. Their role is to help those involved come to an agreement.
75. The main aim of the mediation process is to look forward to a future settlement rather than be concerned with a retrospective apportionment of blame. Mediation is problem solving, it encourages accountability and achieves effective and workable outcomes. Mediation can be a helpful and effective approach where there is room for manoeuvre and accommodation.
76. The principles of mediation are as follows:
1. Both parties are committed to using mediation;
  2. Any agreements have to be acceptable to the parties concerned;
  3. The parties agree a resolution is needed;
  4. The content of the mediation is confidential;
  5. The mediator is neutral and impartial and has to be seen as such throughout the proceedings;
  6. Mediation is without prejudice;
  7. The parties have the authority to settle.

### **d. How can I use Mediation?**

77. If you wish to use mediation to resolve issues arising from offensive behaviour in the workplace you should contact the Equal Opportunities Officer who will explain how the process works and establish if the other party(ies) involved are also prepared to consider this option. The use of mediation does not prevent you from getting advice from a Harassment Contact Officer, TUS representative, or a work colleague. You may still use the formal complaints procedure should mediation prove unsuccessful in resolving the issues.

### **e. Formal Complaints Procedure**

78. In order to initiate the formal procedures your complaint should be made in writing to the Equal Opportunities Officer as soon as is reasonable after the incident which has given rise to the complaint. A proforma (Formal Complaints Form) which sets out the information that should be included in a formal complaint is available from the related policies, guidance and forms section at the end of this Policy. All complaints lodged will be dealt with as quickly as possible and ideally investigations will be completed within 28 days. In exceptional circumstances there may be a requirement to extend the timescale but this should be kept to a minimum.

#### **i. Stage 1 - Preliminary Enquiry Meeting**

79. On receipt of your written formal complaint the Equal Opportunities Officer or nominated officer (at the same grade or higher) will meet with you to carry out a preliminary enquiry. This will be carried out without delay and in all cases within 10 working days of the complaint being received. You may be accompanied by a Harassment Contact Officer, a TUS representative or work colleague. You are asked to choose someone to accompany you who has no involvement in the matter under consideration and who will not therefore need to be interviewed as a potential witness. You will be expected to make every effort to attend. However, where you or your TUS representative/work colleague are unable to attend, another meeting will be re-arranged within 5 working days of the original date. Notes will be taken during the meeting from which minutes will be prepared and copied to you usually within 5 working days of the meeting. You will be allowed a further 5 working days to agree the minutes or suggest any factual amendments. The minutes should be agreed as soon as possible following the meeting (usually within 10 days). If these cannot be agreed the two versions of the minutes will be kept as a record of the hearing. Staff involved in a preliminary enquiry meeting should appreciate it is conducted on a strictly confidential basis and therefore they must not discuss the matter with any other person.
80. The preliminary enquiry has several purposes:

- i. To ensure that the complaint has been outlined in full and that it involves either harassment, bullying, discrimination or victimisation. You will be required to set out clearly whom your complaint is against and the behaviours/conduct which you deem to be harassment, bullying, discrimination or victimisation;
- ii. To allow you to say how you think the complaint should be settled;
- iii. To allow the Equal Opportunities Officer or nominated officer to explore the use of the informal procedures or mediation with you where these have not already been attempted or have been declined. (The use of the informal procedures or mediation will not prejudice any future use of the formal procedure should this prove necessary);
- iv. Should the informal or mediation options be inappropriate (because they have already been unsuccessfully attempted or if the behaviour is too serious to be dealt with using informal procedures) or if you prefer to use the formal procedures, the Equal Opportunities Officer or nominated officer will then consider, on the basis of the complaint made and information from the preliminary enquiry meeting, if justification exists for a formal investigation to be carried out, i.e. that on the face of it there is a case for investigation. It should be noted that you do not have the automatic right to demand a formal investigation. However, in arriving at their decision, the Equal Opportunities Officer will take your wishes into account.

## **ii. Non-Investigation: Appeals**

81. Should the Equal Opportunities Officer or nominated officer conclude that although the complaint falls under the Dignity at Work Policy, a formal investigation would not be appropriate; you will be informed in writing within 5 working days of the minutes of the preliminary enquiry meeting being finalised including an explanation of the basis of the decision. In this letter, you will be advised of your right to appeal this decision and the name of the officer who will consider the appeal (the Appeal Officer). The Appeal Officer will normally be a higher grade than the Equal Opportunities Officer and will have no previous involvement in the matter. Appeals must be submitted in writing to the Appeal Officer as soon as possible (usually within 5 working days) after the date of the letter from the Equal Opportunities Officer.
82. The Appeal Officer will meet with you to discuss your appeal. You may be accompanied by a TUS representative or work colleague. Notes will be taken during the hearing from which minutes will be prepared and copied to you within 5 working days of the hearing. You will be allowed a further 5 working days to agree the minutes or suggest any factual amendments. The minutes should be agreed as soon as possible (usually within a total of 10 working days from the date of the meeting). If these cannot be agreed the two versions of the minutes will be kept as a record of the hearing. The Appeal Officer will inform you of their decision in writing as soon as possible (usually within 5 working days of the minutes being finalised) and advise you of your right to a further appeal and to whom this should be submitted. The officer considering your second appeal (the Further Appeal Officer) will normally be at a higher grade than the Appeal Officer and will have no previous involvement in the matter.
83. If you are unhappy with the outcome of the first appeal, you should lodge your further appeal, in writing, as soon as possible (usually within 5 working days of the date of the first appeal decision letter). Your further appeal will be managed in accordance with the above paragraph.
84. In writing to you regarding the outcome of your further appeal, the Further Appeal Officer will confirm that their decision is final.

## **iii. Stage 2 Formal Investigation**

85. Should the Equal Opportunities Officer or nominated officer conclude that a formal investigation is appropriate they will inform both you and the officer against whom the complaint is made within 5 working days of the minutes of the preliminary enquiry meeting being finalised. The officer against whom the complaint is made will be provided with full information on the allegation(s) made against them, including the identity of the person making the allegation(s). The minutes of the preliminary enquiry meeting between you and the Equal Opportunities Officer will normally be provided to the officer against whom the complaint is made at this stage, subject to the rules relating to disclosure of such documents shown at paragraph 8. Both parties will be advised to familiarise themselves with the procedures as set out in this document and will be advised not to approach the other party or any potential witnesses about the case as this could be construed as victimisation. The officer against whom the complaint is made will also be informed that they can submit a written response on the complaint to the Equal Opportunities Officer as soon as possible (and within 10 working days). This, together with the notes from your interview and the terms of reference, will be passed to the Investigating Officer and these will form the basis for the investigation. The Heads of Business will be informed that a complaint has been made and that an investigation is to be carried out. The aim of the investigation is to establish the facts of the complaint and it should be carried out as quickly

as possible (where possible within 28 days) and in such a way as to protect the rights of all parties to the complaint.

86. Before the investigation proceeds, consideration may be given to a precautionary suspension (on full pay) of the officer against whom the complaint is made where a case of serious or gross misconduct has been alleged. In other cases, if deemed necessary, appropriate action will be taken to avoid contact between you and the officer against whom the complaint is made. As far as reasonably practicable, your wishes will be taken into account, especially where you request to be removed from the situation.
87. The Equal Opportunities Officer will appoint an Investigating Officer and note-taker and will write to the complainant and alleged offender to advise of this action. Neither the Investigating Officer nor note-taker will be connected in any way with the allegations. The Equal Opportunities Officer will provide the Investigating Officer with clear written terms of reference for the investigation and the timeframe within which the investigation should be completed (28 days). This should include the authority and role of the Investigating Officer and set out where the role begins and ends. The Investigating Officer will have the authority to interview all persons and examine all documents considered by him/her to be relevant to the complaint.
88. The Investigating Officer will emphasise to all parties, including witnesses, that the investigation is confidential and must not be discussed outside the interview unless there is a legitimate reason for doing so. Failure to comply with this requirement may be treated as a disciplinary offence, depending on the circumstances.
89. All parties should be advised that information provided by them may have to be put to others being interviewed in connection with the investigation. To maintain the principle of confidentiality the source of the information will not normally be disclosed without the permission of the person who supplied it. If permission is not given, the Equal Opportunities Officer will consider if, in the interests of ensuring a fair investigation and to allow the officer against whom the complaint is made to respond fully to the allegations, the identity of a witness should be revealed. Where a witness requests anonymity due to concerns regarding the implications for them in the workplace, e.g. serious damage to work relationships, the Equal Opportunities Officer may decide not to reveal their identity. However, should the matter go to a Fair Employment or Industrial Tribunal all material including statements will most likely have to be made available to the relevant parties and/or their representatives.
90. The Investigating Officer will initially interview you and you may be accompanied at the interview by a Harassment Contact Officer, TUS representative or work colleague. This interview will be arranged without delay following referral of the matter from the Equal Opportunities Officer to the Investigating Officer. You will be notified at least 5 working days before the time and date of the interview. If the suggested time and date are unsuitable, the interview may be rescheduled by mutual consent.
91. The purpose of the interview is to allow you to explain your complaint. Where you are not able to attend the interview, a further date will be arranged within 5 days. If you fail to attend the second scheduled interview, depending on the reasons for your non-attendance, you will be advised that decisions on the way forward may be made without your input.
92. At the interview, your TUS representative or work colleague may explain your complaint, sum up your complaint, confer with you and respond on your behalf to any view expressed and confer with you during the interview. They may not answer questions on your behalf if you do not wish it, address the interview if you do not wish it, or act in a manner which would prevent either your employer from explaining their case or any other person at the meeting from making their contribution to it.
93. The Investigating Officer will then contact the officer against whom the complaint is made to arrange a formal interview and advise them that they may be accompanied by a Harassment Contact Officer, TUS representative or work colleague. If accompanied by a work colleague, the officer is asked to choose a colleague who has no involvement in the matter under consideration and who will not therefore need to be interviewed as a potential witness.
94. If during the interview the officer, against whom the complaint is made, admits the alleged actions then there will normally be no need to involve witnesses. The Investigating Officer will prepare a full report of their findings and submit it to the Equal Opportunities Officer.
95. If the officer against whom the complaint is made denies the alleged actions, the Investigating Officer will proceed to interview all relevant witnesses. Depending on the outcome of these interviews it may be necessary for the Investigating Officer to re-interview you, the officer against whom the complaint is made, or witnesses.
96. Interviews will be conducted in private and will normally be held in the workplace unless you request an alternative arrangement e.g. if you are suspended and prefer not to attend your work location. If you are on

sickness absence, arrangements may be agreed, if circumstances permit, to interview you at home or at a suitable neutral location. If for medical reasons you cannot be interviewed in the workplace or at another location, a submission may be provided in writing to the Investigating Officer.

97. During all interviews, notes will be taken by the note-taker and where possible should be agreed by the interviewee within 5 working days following the meeting. If they are not agreed, a note should be made of the areas in dispute and attached to the minutes when they are returned to the Investigating Officer for future reference.
98. Everyone involved in an investigation will be expected to co-operate fully with the Investigating Officer by making themselves available for interview and, where possible, by giving detailed responses when answering questions. A person who fails to co-operate with an investigation may be subject to disciplinary procedures. Should the officer against whom the complaint is made fail to co-operate, the investigation will proceed on the evidence available.
99. During the investigation process it is important that both parties to the complaint are treated equally and kept well informed of progress. The Equal Opportunities Officer will write to both you and the officer against whom the complaint is made (copied to your representatives) at least every two weeks to keep you updated on the status of the investigation and, if known, to provide an estimate of when it might be finalised.
100. On completion of the investigation the Investigating Officer will prepare a report setting out the facts of the case, summarising the evidence gathered and concluding whether or not the complaint should be upheld. It will NOT recommend disciplinary action, nor will any penalty be suggested or recommended. The report and all notes taken during the interviews will be presented to the Equal Opportunities Officer. Copies of documentation pertaining to the investigation may be requested from the Human Resources Office. Such requests will be managed in accordance with the provisions of Data Protection and/or Freedom of Information legislation.
101. The Equal Opportunities Officer or nominated officer will decide whether or not to uphold the complaint based on the facts as presented in the report, or on the balance of probability. This decision will be communicated in writing to both parties and to the Investigating Officer. You will also be advised of your right of appeal and of the name of the officer who will consider any appeal (the Appeal Officer).
102. If the complaint is upheld the report will be passed to the Head of Human Resources or nominated officer to consider if disciplinary action is appropriate. The Head of Business of the officer against whom the complaint is made will be made aware of the actions upheld by the Investigating Officer and will be expected to ensure that relationships are closely monitored so that the unwanted actions/conduct does not continue or that victimisation does not occur.
103. If the complaint is not upheld no further action will be taken. However, the Head of Business will be expected to ensure that relationships are monitored in the initial period after the investigation.
104. If you are not satisfied with the decision of the Equal Opportunities Officer or nominated officer, you may appeal as set out in the paragraphs below.

## **f. Appeals**

### **i. Complainant**

105. Appeals must be made in writing to the Appeal Officer within 5 working days of the date of the decision letter. The reason for appeal must be made explicit, e.g. more or new evidence has come to light, there was a fundamental flaw in the investigation process or on the grounds of reasonableness. An appeal form is available here. The Appeal Officer will conduct an appeal hearing and will inform the alleged offender that an appeal has been submitted. The appeal hearing will be arranged without unreasonable delay (and in all cases within 10 working days) and you will be advised in writing of the date and time of the hearing.

At the appeal hearing, you may be accompanied by a TUS representative or work colleague. Notes will be taken during the hearing from which minutes will be prepared and copied to you within 5 working days of the hearing. You will be allowed a further 5 working days to agree the minutes or suggest any factual amendments. If these cannot be agreed the two versions of the minutes will be kept as a record of the hearing. The Appeal Officer will inform you and the officer against whom the complaint is made of their decision in writing within 5 working days of the minutes being finalised. They will also advise you of your right to a further appeal and whom this should be made to (the Further Appeal Officer). The Further Appeal Officer will normally be of a higher grade than the Appeal Officer and will have no previous involvement in the matter.

106. If you are unhappy with the outcome of the first appeal, you should submit your further appeal in writing within 5 working days of the date of the first appeal outcome letter. Your further appeal will be managed in accordance with paragraph 105 above.
107. In writing to you regarding the outcome of your further appeal, the Further Appeal Officer will confirm that their decision is final.

**ii. Officer against whom complaint is made**

108. Officers against whom complaints are made who are unhappy with the decision of the Equal Opportunities Officer or nominated officer may lodge a Grievance through the normal grievance procedures. In such cases the Grievance will be progressed by the Human Resources Office.

## **Further Policies, Guidance & Forms**

- [Recruitment and Career Management](#)
- [6.01 Standards of Conduct](#)
- [6.03 Discipline](#)
- [6.04 Grievance](#)
- [6.08 Whistleblowing Policy](#)
- [10.03 Capability Policy](#)
- [Northern Ireland Assembly Secretariat Staff / MLA Protocol](#)
- [Policy on the Use of IT Resources by Assembly Secretariat staff](#)
- [Social Media Policy](#)
- [Formal Complaints Form](#)
- [Application to Appeal Form](#)
- [Examples of Unacceptable Behaviours](#)
- [Further information about Harassment and Bullying in the Workplace](#)
- [Further information on Overview of the Key changes brought about by the Disability Discrimination \(NI\) Order 2006](#)
- [Further Information from the Labour Relations Agency](#)
- Harassment Contact Officer details



**Document 10: Excerpt form CSP 2015 Report**

**Committee on Standards and Privileges**

**Review of the Code of Conduct and  
Guide to the Rules Relating to  
the Conduct of Members**

**Together with the Minutes of Proceedings, Minutes of Evidence, Issues Paper  
and Written Submissions and Other Evidence relating to the Report**

**Ordered by the Committee on Standards and Privileges to be printed 10 June 2015**

This report is the property of the Committee on Standards and Privileges. Neither the report nor its contents should be disclosed to any person unless such disclosure is authorised by the Committee.

**THE REPORT REMAINS EMBARGOED  
UNTIL COMMENCEMENT OF THE DEBATE IN PLENARY**

## Members conduct in the Chamber and in Committee

92. The Committee had previously considered correspondence from the Assembly's Chairpersons' Liaison Group (CLG) on the application of the Code of Conduct to Members in committee. CLG referred to a previous Committee report on a complaint about a Member's behaviour during a committee meeting. CLG drew attention to the fact that the Commissioner for Standards is precluded from investigating complaints about Members in plenary and suggested that committee members may become less willing to pursue forceful lines of questioning if they were concerned that a complaint may be made to the Commissioner. CLG went on to point out that committee chairpersons are responsible for keeping order in committee and can intervene when it is necessary to do so. CLG recommended that the Committee consider the matter during any future review of the Code.
93. The Code of Conduct does not extend to the conduct of Members in the Chamber, as in this domain the Speaker has responsibility. Standing Order 65 provides that the Speaker may order Members to withdraw immediately from Parliament Buildings when they have behaved in a certain manner in the Chamber. It also provides for the Speaker to "name" a Member and for him to put the question that such a Member be suspended from the service of the Assembly for a period of up to five working days. Committee chairpersons have no comparable powers. If a committee member refuses to comply with or wilfully disregards the rulings of the chairperson, the chairperson can suspend or adjourn the meeting, but cannot exclude any individual member from proceedings or impose any sort of sanction.
94. The Committee has recognised that committees play an important oversight role and to fulfil it may have to challenge witnesses in a way that they find uncomfortable. The Committee concluded a previous report on a complaint about a member's conduct in committee by saying:
- "The Committee would only expect complaints about conduct in committee to be admissible in exceptional circumstances, and the conduct of a Member would have to be of a significantly greater magnitude than the conduct in this case before the Committee would consider upholding such a complaint."*<sup>18</sup>
95. It should be clear, therefore, that Members are not inhibited from subjecting witnesses to challenging and robust questioning.
96. During the review stakeholders recognised and accepted that robust questioning may be necessary as part of the democratic process. However some pointed out that in carrying out this role committee members should have due regard to the need for respect and good working relations.
97. The Commissioner stated in his written evidence that:
- "...Members should not be required to modify their behaviour in Committee in a way that undermines the democratic process ... (however)... The need for challenging and robust questioning should never be an excuse for gratuitously offensive conduct or deliberately untruthful statements"*<sup>19</sup>
98. The Ombudsman said:
- "Members should not feel inhibited in questioning witnesses in a robust manner ...this should be balanced against the need to respect ...and promote good relations"*<sup>20</sup>

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18 NIA 114/11-15 <http://www.niassembly.gov.uk/assembly-business/committees/standards-and-privileges/reports/report-on-a-complaint-against-mr-pat-ramsey-mla-from-mr-bertie-faulkner-obe/>

19 Appendix 3 – Written Submissions

20 Appendix 3 – Written Submissions

99. Subsequently, during oral evidence, when discussing the questioning of witnesses and other behaviour in Committee meetings, the Ombudsman made, amongst others, the following remarks:
- "...one of the key areas is the chairmanship of a Committee and how that is managed."*
- "There is a training issue and a development issue, and there is a briefing of witnesses as well."<sup>21</sup>*
100. The Committee remains satisfied that the difference between the powers of the Speaker and the powers of committee chairpersons provide a sound rationale for the Code excluding from its scope conduct in the Chamber but not conduct in committees. The Assembly needs to have a mechanism for dealing with instances of serious and unacceptable behaviour by members in committee.
101. Despite the scope of the Code extending to committees, the fact that it upholds Members' right to freedom of expression (and to privilege) means committee members should not feel inhibited from subjecting witnesses to challenging questioning. The Committee accepts that it would be entirely wrong if the Code of Conduct required members to modify their behaviour in committee in a way that undermined the democratic process.
102. Of course this position does not mean that members are free to subject witnesses, or others, to bullying behaviour. The provisions of Rule 15, which is considered in further detail below, continues to apply to Members when they are in committee.
103. The application of the Code of Conduct to committees does not mean that it should be invoked to deal with the disputes and disagreements that occur in the normal course of committee business. Maintaining good order in committee continues to be the responsibility of the Chairperson and committee members should accept the Chairperson's authority in this regard.
104. Rule 13, which is considered in further detail at paragraphs 196 to 208, also continues to apply to Members when they are in committee. Rule 13 provides that Members shall not act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member, officer or staff of the Assembly of their duties. Therefore, if a Member's behaviour in committee was so improper, unreasonable and persistent that a Committee was unable to exercise its functions, that Member could be in breach of Rule 13.
105. The Committee is also clear, however, that Rule 13 cannot be used as means of challenging how committee chairpersons choose to use their discretion in carrying out their functions. This issue arose during a recent inadmissible complaint. The Committee accepted that perhaps where a decision by a chairperson is irrational and without any conceivable justification his or her actions might constitute a breach of the new Rule 13. However, unless that very high threshold was reached, neither the Commissioner nor the Committee on Standards and Privileges would accept as admissible complaints under Rule 13 about allegedly improper decisions by a committee chair.
106. In its report on the Review of the Committee System, the Committee Review Group (CRG) recommended that:
- "...each committee agrees protocols relating to conduct during committee meetings which, in particular, discourage members from leaving, other than in exceptional circumstances, after an evidence session or briefing has commenced."<sup>22</sup>*

21 Appendix 2 – Oral Evidence

22 NIA 135/11-15 <http://www.niassembly.gov.uk/assembly-business/committees/report-of-the-committee-review-group-review-of-the-committee-system-of-the-northern-ireland-assembly-october-2013/>

52. The Committee believes that in order for the principles to be meaningful there must be rules which explain how the principles apply in specific circumstances. The two should complement each other. Currently, however, there are no explicit rules of conduct in the Code which are directly linked to the principles of Equality, Promoting Good Relations, Respect or Good Working Relationships (although some of the descriptions of these principles read like rules and have been interpreted as such in the past). Those principles are as follows:

**Equality**

*Members should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.*

**Promoting Good Relations**

*Members will act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow by acting justly and promoting a culture of respect for the law.*

**Respect**

*It is acknowledged that the exchange of ideas, and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. Members should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in, Members and the Assembly itself. Members should therefore show respect and consideration for others at all times.*

**Good Working Relationships**

■ Between Members

*Members should work responsibly with other Members of the Assembly for the benefit of the whole community. Members must treat other Members and the staff of other Members with courtesy and respect. Members must abide by the Assembly Standing Orders and should promote an effective working environment within the Assembly.*

■ Between Members and Assembly staff

*The relationship between Members and Assembly staff must at all times be professional, courteous and based on mutual respect. This also applies to contract staff at the Assembly.*

53. **The Committee has considered these principles and has agreed that the principles of respect and good working relationships should be recast as a single principle. As part of this review, the Committee shall give consideration to what sort of enforceable rule should be derived from this new principle.**
54. When considering the principles of equality and good working relations, and the question of whether any enforceable rules should arise from them, the Committee sought legal advice. The Committee wanted to clarify how discrimination law applies to Members. The Committee noted that there are a number of duties imposed on Members, and urges Members to perform them scrupulously, as they would do for any other legal duties.
55. **The Committee believes, however, that the Code of Conduct should not impose additional duties upon Members over and above those laid down in statute.** The Code should not give the impression that the current existing principles of equality and promoting good relations create duties specific to Members above those set out in legislation. The Committee shall consider, as part of the review, how this might be addressed.
56. The Committee also considered the current Public Duty Principle. It provides that: