



Northern Ireland
Assembly

Committee on Standards and Privileges

Report on a complaint against Dr Steve Aiken OBE MLA

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.

Ordered by the Committee on Standards and Privileges to be published on 23 March 2022

This report is embargoed until **noon on Friday 25 March 2022**

Report: NIA 208/17-22 Committee on Standards and Privileges.

Contents

List of Abbreviations and Acronyms used in this Report	3
Powers and Membership	4
Introduction	6
Background	7
The Commissioner’s Investigation	9
The Committee’s considerations and conclusions	12
Links to Appendices	26
Appendix 1: The Commissioner for Standards Report on a complaint against Dr Steve Aiken OBE MLA.....	26
Appendix 2: Video Evidence – Oral briefing by the Commissioner for Standards	26
Appendix 3: Written submission from Dr Steve Aiken OBE MLA	26
Appendix 4: Factual response from the Commissioner for Standards to the written submission from Dr Steve Aiken OBE MLA.....	26
Appendix 5: Minutes of Proceedings.....	27

List of Abbreviations and Acronyms used in this Report

DoF:	Department of Finance
Finance Committee:	Committee for Finance
LPS:	Land and Property Services
MLA:	Member of the Legislative Assembly
The 2011 Act:	Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011
The Assembly:	Northern Ireland Assembly
The Code:	Assembly Members' Code of Conduct
The Commissioner:	Assembly Commissioner for Standards
The Committee:	Committee on Standards and Privileges

Powers and Membership

Powers

The Committee on Standards and Privileges is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order Nos. 51 and 57. Further provisions on the Committee's functions are also included in Standing Orders 69, 69A, 69B, 69C and 70. The Committee has 9 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The Committee has power:

- to consider specific matters relating to privilege referred to it by the Assembly;
- to oversee the work of the Assembly Clerk of Standards;
- to examine the arrangement for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the Assembly, and to review from time to time the form and content of those registers;
- to consider any specific complaints made in relation to the registering or declaring of interests referred to it;
- to consider any matter relating to the conduct of Members;
- to recommend any modifications to any Assembly code of conduct as may from time to time appear to be necessary.

The Committee is appointed at the start of every Assembly, and has power to send for persons, papers and records that are relevant to its enquiries.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Ms Linda Dillon (Chairperson)¹
- Vacant (Deputy Chairperson)²
- Dr Steve Aiken OBE³
- Ms Sinéad Bradley⁴
- Mrs Pam Cameron
- Mr Stewart Dickson
- Ms Áine Murphy^{5 6 7}
- Mr Declan McAleer
- Mr Patsy McGlone

¹ From 20 September 2021 Linda Dillon replaced Sinéad Ennis as Chairperson of the Committee.

² From 14 June 2021 until 20 February 2022 Christopher Stalford (deceased) replaced William Irwin as Deputy Chairperson of the Committee.

³ From 6 July 2020 John Stewart replaced Doug Beattie as a member of the Committee. From 19 October 2020 Steve Aiken replaced John Stewart as a member of the Committee.

⁴ From 27 September 2021 Sinéad Bradley replaced George Robinson as a member of the Committee.

⁵ From 5 October 2020 Seán Lynch replaced Colm Gildernew as a member of the Committee.

⁶ On 2 July 2021 Seán Lynch retired as an MLA.

⁷ On 27 September 2021 Áine Murphy joined the Committee.

Introduction

1. The Committee on Standards and Privileges ('the Committee') has considered a report from the Assembly Commissioner for Standards ('the Commissioner') on her investigation into a complaint against Dr Steve Aiken OBE MLA by Mr Maolíosa McHugh MLA, which alleged that Dr Aiken had breached the Assembly Members' Code of Conduct ('the Code').⁸ A link to the Commissioner's investigation report, which includes a copy of the complaint correspondence together with the evidence gathered during the investigation, is included at **Appendix 1**.⁹
2. A link to the video recording of the oral briefing which the Committee received on the Commissioner's investigation report (including the slides and video clips which the Commissioner used during her oral briefing) is included at **Appendix 2**.¹⁰ A link to a written submission from Dr Aiken in response to the Commissioner's investigation report and oral briefing is included at **Appendix 3**. In addition, a link to a written submission from the Commissioner, which provides a record of her factual response to points raised in Dr Aiken's written submission regarding the investigatory process, is included at **Appendix 4**. Finally, a link to the applicable minutes of proceedings of the Committee is included at **Appendix 5**.

Role of the Committee

3. The arrangements for regulating the standards of conduct of MLAs include: the role of the independent Commissioner in investigating complaints of alleged breaches of the Code; the role of the Committee in considering the Commissioner's investigation reports and adjudicating in light of the Commissioner's findings and any other evidence or information obtained; and the role of the Assembly in plenary in deciding upon any sanctions

⁸ The applicable edition of the Code is available at the following link: <http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges/reports/20160628-code-of-conduct.pdf>

⁹ A limited amount of information has been redacted from the Commissioner's report to accord with legal obligations.

¹⁰ The video recording on Microsoft Teams was made because, due to time constraints, it was not possible to produce a Hansard transcript of the Commissioner's oral briefing.

recommended by the Committee where applicable. It is the Committee, therefore, which ultimately decides on whether any breach of the Code is established, on the basis of the evidence, the facts and the legal position in respect of each allegation.

4. It is important to note at this juncture that, to inform its decision making on individual complaint cases, the Committee may seek additional advice and information to supplement the evidence and findings presented by the Commissioner. As outlined below, the Committee obtained legal advice on various aspects of this complaint case in order to inform its decision making and to ensure that it discharges its legal obligations.
5. At the outset, the Committee would also highlight that, while he is a member of the Committee, Dr Aiken recused himself from all of its considerations relating to this complaint.

Background

6. On 4 May 2021, the Commissioner received a complaint from Mr McHugh alleging that, by disclosing at a meeting of the Assembly's Committee for Finance ('the Finance Committee') on 4 November 2020 the fact that he had made a complaint to the Commissioner and the content of that complaint, Dr Aiken breached Rule 17 of the Code as well as the restriction on the disclosure of any information contained in a complaint, which is provided for in section 33 of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 ('the 2011 Act').
7. The Commissioner considered the complaint, decided it was admissible and commenced her investigation in June 2021. On 7 February 2022, the Commissioner forwarded her report on the investigation of the complaint to the Committee for consideration.
8. In accordance with its established disclosure process, on 7 February 2022, the Committee Clerk sent the Commissioner's full investigation report to the respondent, Dr Aiken, for written comment in respect of any matters raised

within the report. Dr Aiken was also offered the opportunity to appear before the Committee to make his comments in person and to answer any questions that members may have.

9. Prior to the Commissioner's briefing to the Committee on 23 February 2022, Dr Aiken had indicated that he did not wish to make a written response to the Commissioner's report but that he did wish to take up the opportunity to appear before the Committee in relation to the matter. The Committee agreed to schedule an oral hearing on 2 March 2022 and the video recording of the Commissioner's briefing (Appendix 2) was also forwarded to Dr Aiken for information. Dr Aiken subsequently advised the Committee that he would be unable to attend the scheduled oral briefing and he instead made a written submission in response to the Commissioner's investigation report and related oral briefing (Appendix 3).

The allegations

10. The Committee noted from the Commissioner's investigation report that Mr McHugh stated the following in his letter of complaint:

'The substance of the complaint is that on 4th November 2020, at a meeting of the Committee For Finance, that was streamed live online and which remains visible online, Mr Aiken stated:

"Members I wish you to be made aware that I today raised a complaint with the Commissioner Of Standards about one of the members of our committee who was in receipt of a small business grant loan or his office was in receipt of a small business grant loan and made no declaration of that interest even though we had LPS in front of us 3 times and the Minister 2 times"

11. Mr McHugh raised the following allegations:

Allegation 1: By disclosing both the fact of his complaint, and the contents of that complaint, Dr Aiken breached Rule 17 of the Code.¹¹

Allegation 2: Dr Aiken, by his comments, has acted in contravention of section 33 the 2011 Act which prohibits disclosure of information about a complaint.¹²

Relevant rules in the Members' Code of Conduct

12. As indicated above, Mr Mc Hugh cited the following rule of conduct in his complaint:

Rule 17: You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority.

13. In addition, as explained below, the following rules of conduct, were cited by the Commissioner in her investigation report:

Rule 12: You shall disclose confidential or protectively marked information only when you are authorised to do so.

Rule 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.¹³

The Commissioner's Investigation

14. In her investigation report, the Commissioner has set out the findings of fact and has detailed the evidence she considered and her reasoned decision in relation to each of the allegations made.¹⁴ Also, as indicated above, separate from Mr

¹¹ See page 17 of the Code applying at the time in question:
<http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges/reports/20160628-code-of-conduct.pdf>

¹² <https://www.legislation.gov.uk/niu/2011/17/section/33>

¹³ See page 8 of the applicable edition of the Code at the following link:
<http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges/reports/20160628-code-of-conduct.pdf>

¹⁴ Commissioner's investigation report, page 5 and pages 6-13 (see Appendix 1).

McHugh's allegations, the Commissioner has made findings of breaches of rules 12 and 16. As explained below, the latter finding was made as a result of a failure by Dr Aiken to respond to two letters inviting him to interview (following which, the Commissioner considered it necessary to serve a formal notice to attend for interview) and his subsequent failure to attend interview under notice.

The Commissioner's reasoned decisions

15. The following extracts from the investigation report outline the Commissioner's reasoning in relation to why she did not uphold the allegation made in regards to a breach of Rule 17 and why she found that Dr Aiken did breach Rules 12 and 16:

Allegation 1: Dr Aiken's Disclosure and Rule 17

'A complaint is not entirely synonymous with an investigation by the Commissioner and Rule 17 does not expressly prohibit reference to the fact of a complaint. If at the time of Dr Aiken's disclosure I had already considered that the complaint was admissible, it is my view that the disclosure would have involved the revelation of "details in relation to such an investigation" and would have been in breach of Rule 17. However, I had made no assessment of the complaint at the time Dr Aiken made the disclosure. Therefore, I do not find that Dr Aiken breached Rule 17 of the Code of Conduct.'

Breach of Rule 12 and (Allegation 2) Section 33 of the 2011 Act

'The prohibition on disclosure of confidential information in Rule 12 must be read alongside the statutory prohibition on disclosure in section 33 of the 2011 Act. Information relating to the discharge of the Commissioner's functions is subject to a statutory duty of confidentiality although there is no specific sanction contained in the 2011 Act for a breach. However, the disclosure of information relating to a complaint is prohibited by section 33 which, in turn, engages Rule 12 of the MLA Code of Conduct.'

Mr McHugh's complaint does not refer to Rule 12. However, Section 17 of the 2011 Act does not require that the complainant specify a particular

Rule of the Code when making the complaint. The investigation is conducted by reference to the Code of Conduct as a whole rather than being expressly limited in relation to a specific Rule(s) identified by the complainant.

It is my view that the protection of information provided to the Commissioner in the discharge of her investigative functions in section 33 of the 2011 Act captures both the fact of the complaint and the information generated by and for the investigation.

For the above reasons, I have found Dr Aiken to have contravened Section 33 of the 2011 Act and to have breached Rule 12 of the Code of Conduct.’

The Commissioner also explains in her report why she does not accept Dr Aiken’s contention, in his statement in response to the complaint, that he made the disclosure because he was declaring an interest and revealing a conflict of interest to the Finance Committee.¹⁵

Breach of Rule 16

‘I consider that it ought not to be necessary to serve an MLA with a formal Notice to Attend for an interview.

It is my view that Dr Aiken’s failure to cooperate resulted in the needless waste of significant public funds and resources.

Dr Aiken’s behaviour is inconsistent the Seven Principles of Public Life: Respect and Leadership.

It is my conclusion after considering all of the facts and evidence, that Dr Aiken did not co-operate at all times with my investigation as required under the Code of Conduct and therefore breached Rule 16 of the MLA Code of Conduct.”

¹⁵ Commissioner’s investigation report, pages 9-10 (see Appendix 1).

Also, in her oral briefing on 23 February 2022, the Commissioner summarised her position by stating that Dr Aiken breached Rule 16 by:

'1. Failing to respond to letters of 7th and 28th June 2021 inviting him to interview

2. Failing to attend interview twice under Notice to Attend'.¹⁶

The Committee's considerations and conclusions

16. After receiving the Commissioner's oral briefing on her investigation report on 23 February 2022, the Committee commissioned legal advice on various aspects of the complaint case. The legal advice was considered at the Committee's meeting on 2 March 2022 and this informed the Committee's subsequent deliberation on the complaint case.

Considerations in advance of deliberation

17. In advance of undertaking its deliberation on 2 March 2022, the Committee considered Dr Aiken's written submission (Appendix 3) in which he disputed the Commissioner's reasoned decisions in relation to allegations 1 and 2 and a breach of Rule 16. As Dr Aiken raised issues regarding the investigatory process, the Committee decided to immediately forward a redacted copy of his written submission to the Commissioner in order for her to provide a factual response to the Committee during the meeting and before it undertook its deliberation. The Commissioner therefore attended the meeting on 2 March 2022 and provided her factual response orally (which was followed up with a written submission, as a record of her factual response to Dr Aiken's written submission – Appendix 4)
18. The Committee also considered its legal advice regarding the publication of the Committee's report and/or the Commissioner's report on the complaint case

¹⁶ See Appendix 2.

prior to the end of the mandate. The Committee noted that it is under a statutory duty to publish the Commissioner's investigation report as soon as reasonably practicable.¹⁷ Further, the Committee was also clear that it needed to progress the matter without undue delay, in the interests of fairness and principles of natural justice for all parties involved. It was further noted that there is no impediment to the Committee also publishing its report on the complaint before the end of mandate and that there would be merit in doing so where the Committee has come to different conclusions from the Commissioner.

19. In light of these considerations, the Committee agreed at the outset that, while it would endeavour to conclude its deliberation on the complaint case and publish its report in advance of dissolution, the Commissioner's investigation report would be published prior to dissolution in order to discharge the related statutory duty on the Assembly. The Committee then proceeded to deliberate on the case.

Factual background and context

20. In addition to the Commissioner's findings of fact, as set out in her investigation report, the Committee noted the following pertinent facts:
 - Dr Aiken was at the material time the Chairperson of the Finance Committee, a statutory committee established by the Assembly which has a scrutiny, policy development and consultation role with respect to the Department of Finance (DoF) and has a role in the initiation of legislation.¹⁸
 - There was media coverage on 28 October 2020 of Land & Property Services (LPS), which is an agency of the DoF, having made payments in error to four MLA and MP party/constituency offices (including Mr McHugh's) of Covid-19 Business Support Scheme grants of £10,000 each.¹⁹

¹⁷ <https://www.legislation.gov.uk/niu/2011/17/section/27>

¹⁸ See paragraphs 8 and 9 of Strand One of the Belfast Agreement and Standing Order 48.

¹⁹ See Document 9, Annex B9, pages 85-107 at the following link:
<http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/standards-and-privileges/reports-of-commissioner-for-standards/maolisa-mchugh/report-by-the-assembly->

- At a public session of the Finance Committee on 4 November 2020, Dr Aiken disclosed that he had submitted a complaint to the Commissioner relating to a member of that committee (understood to be Mr McHugh). The disclosure included both the fact and detail of his complaint (in particular, Dr Aiken's allegation that Mr McHugh had failed to declare an interest in that he or his office had been in receipt of a Covid-19 Business Support grant when representatives from the LPS and the DoF attended the Finance Committee on a number of occasions).²⁰
- Whilst Dr Aiken was chairing the Finance Committee meeting on 4 November 2020, there was a public discussion by members of that committee, lasting 27 minutes, which included references to Dr Aiken's specific allegation against Mr McHugh as well as references to the general issue of Covid-19 Business Support Scheme payments made in error by LPS.²¹
- The disclosure by Dr Aiken of both the fact of and detail of his complaint against Mr McHugh was reported in the media on 5 November 2020.²²
- It is the function of the Commissioner to, inter alia, conduct investigations into admissible complaints of alleged breaches of the Code.²³
- Dr Aiken was at the material time also a member of the Committee on Standards and Privileges.
- It is the function of the Committee on Standards and Privileges to, inter alia: consider any matter relating to the conduct of members; consider any reports by the Commissioner on investigations into alleged breaches of the

[commissioner-for-standards-on-a-complaint-against-maoliosa-mchugh-mla-by-steve-aiken-obe-mla-and-jim-allister-qc-mla.pdf](#)

²⁰ See from 1 minute and 15 seconds in <https://niassembly.tv/committee-for-finance-meeting-wednesday-4-november-2020/>

²¹ See from 1 minute and 15 seconds in <https://niassembly.tv/committee-for-finance-meeting-wednesday-4-november-2020/>

²² Document 3, pages 24-25 of Appendix 1.

²³ <https://www.legislation.gov.uk/nia/2011/17/section/17> ;
<http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/standards-and-privileges/direction-on-general-procedures/>

Code; and to report to the Assembly, which may include the recommendation that a sanction be imposed upon the Member where the Committee determines that the Member has failed to comply with the Code.²⁴

- Dr Aiken's complaint against Mr McHugh was investigated by the Commissioner and, following adjudication by the Committee on Standards and Privileges, Dr Aiken's allegations were not upheld and Mr McHugh was found not to have breached the Code.²⁵

21. Given the nature of the Committee's abovementioned functions, it applies particular procedures and practices to its proceedings, including to ensure the confidentiality of complaints until they have been adjudicated upon and, more generally, to meet the requirements regarding procedural fairness and natural justice. The Committee has been clear that, were one of its members to discuss a live complaint case outside of the Committee proceedings (e.g. in another Assembly committee or in the media), there may be implications for, inter alia, the Member in terms of a potential breach of rules of conduct (i.e. rules 12, 13 and/or 17).

Examination of the issues and allegations

22. At its meeting on 2 March 2022, the Committee deliberated on the allegations raised by Mr McHugh in relation to Rule 17 and section 33 of the 2011 Act, together with the Commissioner's findings of breaches in relation to rules 12 and 16. The Committee deliberation was undertaken in light of: the evidence; the findings of fact and the reasoned decisions of the Commissioner, as set out in her investigation report; the Commissioner's oral briefing on her investigation report; the legal advice received by the Committee; the written submission from Dr Aiken; and the Commissioner's factual response to Dr Aiken's written submission. In undertaking its adjudication function, the Committee remains

²⁴ See Standing Orders 57, 69A and 69B.

²⁵ <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/standards-and-privileges/reports/maolisa-mchugh/committee-on-standards-and-privileges-report-on-complaints-against-mr-maoliosa-mchugh-mla.pdf>

mindful that Members will only be found to have breached the Code when they have breached one of the rules of conduct.

23. The Committee considered the points made in Dr Aiken's statement in response to Mr McHugh's allegations, including that he was making a **declaration of interest** when he made the disclosure (in accordance with the applicable requirements in Standing Orders and the Code). In his statement, Dr Aiken also commented:

*'As matters during the 4th November 2020 meeting of the Finance Committee were likely to include issues relating to the behaviour of Maoliosa McHugh MLA, it was important that the other members of the Committee were aware of my conflict of interest – in particular that I would not be asking questions of the member about his failure to declare an interest; furthermore, that as Chair, other members may have expected me to do so.'*²⁶

24. On the issue of whether Dr Aiken was declaring an interest when he made the disclosure, the Commissioner took the view that this was not the case and pointed out that, inter alia:²⁷
- The video evidence showed Dr Aiken stating on a number of occasions at the Finance Committee meeting on 4 November 2020 that he was not declaring an interest;
 - There was no record in the minutes of that meeting that Dr Aiken declared an interest.²⁸
 - Dr Aiken cannot make a declaration for others or insist another Member declare an interest as it is the Member's sole responsibility.²⁹

²⁶ Appendix 1 – Document 10, page 34.

²⁷ See Commissioner's presentation slides at Appendix 2.

²⁸ Paragraph 18 of Chapter 2 of the Guide to the Rules states that: 'Any declarations will be recorded in the Committee's minutes of proceedings.'

²⁹ Paragraph 8 of Chapter 1 of the Guide to the Rules states: 'The sole responsibility for complying with the duties placed upon them by this Guide rests with Members.'

25. The Commissioner further explained that, even if Dr Aiken was declaring an interest, then he should have made a brief declaration with specific reference to the nature of the interest.³⁰ The Commissioner was of the view that:

‘Instead he appears on video to have initiated, facilitated and participated in a twenty seven minute discussion relating to his substantive complaint against Mr McHugh.’³¹

26. The Committee concurs with the Commissioner’s reasoning on this issue and would further add that if, as he contended in his statement, Dr Aiken considered that he had a **conflict of interest** then he would have been expected to consider recusing himself from (rather than participating in) any discussion of the matter (as a failure to do so could engage Rule 1). Notwithstanding this point, the Committee also agrees with the Commissioner that, during the Finance Committee meeting on 4 November 2020 and in his subsequent statement, Dr Aiken appears to have conflated the Finance Committee’s role in scrutinising the general matter of LPS payments made in error with scrutinising a specific complaint he made to the Commissioner against another member. Arising from this, the issue of **committee remits** is a key consideration.
27. As alluded to above, the Finance Committee has no remit in considering/investigating or adjudicating on alleged misconduct by a Member; those functions rest squarely with the Commissioner and with the Committee on Standards and Privileges respectively. The Committee also believes that any confusion on the part of Dr Aiken (or other members of the Finance Committee) in this regard could have been readily addressed had Dr Aiken, when chairing the Finance Committee meeting on 4 November 2020, given the Committee Clerk an opportunity to provide procedural advice.
28. Having addressed the issues regarding declaration of interests and committee remits, the Committee considered **Allegation 1** in which the complainant alleged a breach of Rule 17. The Committee noted the Commissioner’s point regarding the use of the term ‘investigation’, rather than ‘complaint’, in the

³⁰ Paragraph 8 of Chapter 2 of the Guide to the Rules states: ‘A declaration should be brief but should make specific reference to the nature of your interest.’

³¹ See Commissioner’s presentation slides at Appendix 2.

wording of Rule 17. In her report, the Commissioner explained that: ‘A complaint is not entirely synonymous with an investigation by the Commissioner and Rule 17 does not expressly prohibit reference to the fact of a complaint.’

Therefore, **in relation to Allegation 1, the Committee agreed with the Commissioner’s reasoned decision that there was no breach of Rule 17.**

That said, as indicated below (under the ‘Future improvements’ subsection) the Committee will be recommending that its successor committee in the next mandate considers the Commissioner’s recommendation that the wording of Rule 17 is revised to fully reflect the protections for the confidentiality of the Commissioner’s functions.

29. In **Allegation 2** the complainant alleged that Dr Aiken also contravened the statutory requirements contained in **section 33** of the 2011 Act, which aim to prevent unauthorised disclosure of information on complaints. Following external legal advice, the Commissioner concluded that, in contravening section 33 of the 2011 Act, Dr Aiken also breached Rule 12.
30. From its legal advice, however, the Committee noted that the scope of section 33 of the 2011 Act is open to interpretation in terms of who the restriction on disclosure of information on complaints applies to. In particular, while the Commissioner has taken a broad interpretation, that the restriction operates to prohibit Members and complainants from disclosing any details in relation to complaints to the Commissioner, it is also possible to take a narrow interpretation, that it applies only to the Commissioner and those who assist her in the discharge of functions (such as administrative or investigative support).
31. As indicated below (under the ‘Future improvements’ subsection) the Committee will be recommending that its successor committee in the next mandate examines the case for amending section 33 of the 2011 Act to ensure that the restriction on the disclosure of information on complaints and investigations also applies to complainants and respondents and to create a statutory offence for breaches of this requirement. However, in terms of Allegation 2, **because the scope of section 33 of the 2011 Act is open to interpretation, the Committee agreed to set aside consideration of any potential contravention of this statutory requirement and to decide, as a separate matter, whether Dr Aiken breached Rule 12 of the Code.**

32. As outlined above, **Rule 12** requires that Members 'shall disclose confidential or protectively marked information only when you are authorised to do so'. In that regard, the Committee believes that maintaining **confidentiality during the complaints process** is to the benefit of everyone involved. The types of complaints made against Members might range from frivolous, vexatious or unsubstantiated allegations to complaints of a serious nature (e.g. potentially including complaints of inappropriate behaviour which contain sensitive personal information on the complainants). Whilst the Committee publishes information on admissible complaints following their investigation and adjudication, it is imperative that the confidentiality of complaints is upheld until that point in time; thereby safeguarding the fairness and integrity of the process and avoiding any unnecessary reputational damage to any of the parties involved.
33. It is noted that, arising from her interpretation of section 33 of the 2011 Act, the Commissioner has taken the view that both the fact of the complaint and any information regarding the complaint and investigation is confidential. The Committee does not consider that the fact of making a complaint in itself need necessarily to be treated as confidential information. Circumstances can arise whereby a Member may require to declare the fact of having made a complaint against another Member (including during proceedings of the Committee). As outlined in the Commissioner's investigation report, there is a requirement on Members to declare relevant interests in proceedings of the Assembly and on other occasions (and failure to do so may be an offence under section 43 of the Northern Ireland Act 1998).³² However, the Committee is clear that, where circumstances require a declaration of having made a complaint against a Member, this does not necessitate disclosure or discussion of the details of the complaint itself.
34. Following receipt of legal advice, the Committee noted that Rule 12 may be considered as a standalone issue, distinct from section 33 of the 2011 Act, and that the appropriate application of the rule is not incompatible with Members'

³² See: <https://www.legislation.gov.uk/ukpga/1998/47/section/43> ; Standing Order 69; Rule of Conduct 5 and Chapter 2 of the *Guide to the Rules* <http://www.niassembly.gov.uk/your-mlas/code-of-conduct/the-code-of-conduct-and-the-guide-to-the-rules-as-amended-on-23-march-2021/>

right to freedom of expression (which the Code upholds). The Committee therefore considered whether the comments made by Dr Aiken during the Finance Committee meeting on 4 November 2020 would be deemed to be disclosing 'confidential information'.

35. The Committee considered the specific circumstances of this case to be a key determinant. This includes the fact that, at the Finance Committee meeting on 4 November 2020, Dr Aiken needlessly disclosed detail of his complaint against Mr McHugh and participated in the subsequent discussion that followed which referenced the issues involved in the complaint. Also pertinent is the fact that Dr Aiken was a member of the Committee on Standards and Privileges at the time in question. Dr Aiken had attended a meeting of the Committee on Standards and Privileges immediately prior to attending the Finance Committee meeting on 4 November 2020.³³ It can be reasonably expected that Dr Aiken was aware of the confidentiality of complaints, given that the Committee on Standards and Privileges holds its discussion of complaint cases in closed session and has special procedures on the handling of and access to the related documents, which safeguard the confidentiality of complaints (all of which were applied at its meeting on 4 November 2020 attended by Dr Aiken).
36. Also, in terms of awareness of related procedure and practice, the Committee notes from the records of the proceedings of its meeting on 4 November 2020 that Dr Aiken was aware of the appropriate action to take in terms of how to declare an interest relating to a complaint against a Member (and subsequently, where a conflict of interest arose, in recusing himself from the applicable Committee considerations).³⁴ It is also notable that Dr Aiken protectively marked various of his letters/submissions to the Commissioner and/or to the Committee regarding complaints, including his letter to the Commissioner raising the

³³ See Minutes of Proceedings at following link:

<http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/standards-and-privileges/minutes-of-proceedings/2020---2021/mops-4-november-2020.pdf>

³⁴ See for example: Declaration made from 28 seconds in <https://niassembly.tv/committee-on-standards-and-privileges-meeting-wednesday-04-november-2020/> ; <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/standards-and-privileges/minutes-of-proceedings/session-2021---2022/28-september-2021/>

complaint against Mr McHugh.³⁵ This further indicates that Dr Aiken was aware, or could be reasonably expected to have been aware, of the confidentiality attaching to complaints.

37. Therefore, **in relation to Rule 12, given the specific circumstances of the case, the Committee agreed to find that Dr Aiken's conduct was in breach of Rule 12.**
38. Turning to **Rule 16**, which the Commissioner cited as having been breached by Dr Aiken during the course of the investigation. This rule requires Members to '*co-operate at all times with any investigation*', and is drafted in terms which are mandatory and imperative. From its legal advice, the Committee noted that the phrase '*at all times*' is particularly significant and has the effect of placing a continuing duty on Members to co-operate throughout the course of any investigation. As such, a failure to co-operate on any one occasion would be sufficient to breach the rule.
39. The Committee examined the points of contention between Dr Aiken and the Commissioner regarding the former's non-attendance on two interview dates (5 July 2021 and 21 July 2021) that were set in the Commissioner's notices to attend, which issued on 28 June 2021 and 7 July 2021 respectively. Following deliberation, the Committee concluded that, even if Dr Aiken's non-attendance at the two scheduled interviews is set aside from considerations, his failure to respond to the Commissioner's earlier invites of 2 and 18 June 2021 provides sufficient grounds for establishing a breach of Rule 16.
40. From Dr Aiken's written submission (Appendix 3), it is evident to the Committee that he chose to deprioritise responding to the Commissioner's invitations to attend for interview, in favour of other commitments. The Committee recognises that Dr Aiken had various competing priorities, including family commitments, during the period in question. However, this is true of MLAs generally and it

³⁵ See for example: Document 2, Annex B2, page 17 at following link: <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/standards-and-privileges/reports-of-commissioner-for-standards/maolisa-mchugh/report-by-the-assembly-commissioner-for-standards-on-a-complaint-against-maoliosa-mchugh-mla-by-steve-aiken-obe-mla-and-jim-allister-qc-mla.pdf> ; Document 10, page 33 of Appendix 1; and Written Submission at Appendix 3.

does not excuse Dr Aiken's failure to respond to the Commissioner's correspondence of 2 and 18 June 2021. Moreover, it is not for a respondent to decide that a complaint against them is vexatious and to deprioritise it accordingly (as Dr Aiken did). As the Commissioner has pointed out, the decision on whether a complaint is vexatious rests with her (Appendix 4).

41. The Committee considers that it would be reasonable to expect that Members would respond to requests from the Commissioner in some manner in order to progress and assist the investigation. The requirement in Rule 16 that MLAs cooperate *at all times* with any investigation by the Commissioner protects the integrity of the independent investigation process. It is clear that, as a matter of fact, this requirement was not met in the instant case and, therefore, **the Committee agreed with the Commissioner's reasoned decision that Dr Aiken breached Rule 16.**

42. The Committee noted that, during her briefing on 23 February 2022, the Commissioner also cited a potential breach of Rule 13 as a matter for the Committee to consider. Rule 13 states:

*'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.'*³⁶

Following discussion of this matter at its meeting on 2 March 2022, the Committee decided not to consider whether this rule had been breached as it had not been examined in the Commissioner's investigation report.

43. In summary, therefore, following thorough examination and deliberation, and having regard to its legal advice, **the Committee has concluded that Dr Aiken breached the Code by breaking rules of conduct 12 and 16. The Committee considers that this is an egregious breach of the Code given that, as a member of the Committee on Standards and Privileges, Dr**

³⁶ See page 8 of the applicable edition of the Code at the following link: <http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges/reports/20160628-code-of-conduct.pdf>

Aiken should have been leading by example in maintaining the confidentiality of complaints and in co-operating *at all times* with the Commissioner's investigation. In terms of the latter, the Committee firmly believes that the vital role which the independent Commissioner plays in the Assembly's ethical standards regime must be recognised, respected and safeguarded by all Members – to not do so undermines the office of the Commissioner and, consequently, the Committee and the wider Assembly

The Respect and Leadership Principles

44. As part of its considerations, the Committee also considered the Commissioner's finding that Dr Aiken's lack of co-operation with her investigation was inconsistent with the following two principles of conduct:

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

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.'* (Principle 7)

45. **The Committee agreed with the Commissioner's finding that Dr Aiken's conduct was inconsistent with both the Respect Principle and the Leadership Principle within the Seven Principles of Public Life.** While recognising that the principles of conduct are aspirational rather than enforceable, the Committee reiterates its recent call for all MLAs to observe the principles of conduct when acting in their capacity as Assembly Members.

Sanctions

46. In light of its findings that Dr Aiken breached rules 12 and 16, the Committee considered whether the conduct warranted that a recommendation be made to the Assembly that a sanction be imposed under Standing Order 69B. Such sanctions may include, but are not limited to:

- a requirement that the Member apologise to the Assembly;
 - censure of the Member by the Assembly;
 - exclusion of the member from proceedings of the Assembly for a specified period; and
 - withdrawal of any of the Member's rights and privileges (including salary and allowances) as a Member for that period.
47. The Committee is clear that whether any sanction which is recommended should be imposed, or whether some other sanction (or none) should be imposed, is a matter to be determined by the Assembly in plenary. Furthermore, any sanction that might be recommended by the Committee must be proportionate and appropriate, bearing in mind all of the circumstances of the case. On this latter point, during its discussion of the matter, the Committee noted that a recommendation of an apology to Assembly may not be a suitable option because there has been no indication from Dr Aiken's responses to the complaint and investigation that he would be minded to apologise (on the contrary, Dr Aiken has sought an apology from the Commissioner) and there is a risk of such an apology to the Assembly not being made in a full and unequivocal manner.
48. **The Committee concluded that, in its view, the circumstances of the case warrant a recommendation being made to the Assembly for the imposition of a sanction upon Dr Aiken under Standing Order 69B. However, given that there would be insufficient time remaining in the current mandate for any recommended sanction to be debated in the Assembly, the Committee proposes that the successor committee identifies an appropriate sanction for recommending to the next Assembly and tables the necessary plenary motion early in the next mandate as applicable.**

Future improvements

49. The Committee agreed that, given the limited time remaining in the current mandate, it will recommend in its Legacy Report that the successor committee considers taking forward the Commissioner's recommendations regarding:

amending the wording of rules of conduct 16 and 17 to underpin the confidentiality requirements attaching to complaints; improving the provisions in the 2011 Act regarding notices; and amending the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures) Direction 2021 ('the General Procedures Direction') to recognise the Commissioner's discretion on admissibility requirements.

50. Also with a view to underpinning the confidentiality of complaints, as alluded to above, the Committee will recommend to its successor committee that it examines the case for legislation to amend section 33 of the 2011 Act to make clear that the restriction on the disclosure of information applies to complainants and respondents and to create a statutory offence for breaches of this requirement. Such work will necessitate examination of how any amending legislation might include exceptions to allow for disclosure of information for the purpose of Members properly declaring their interests and disclosure of information for the purpose of assisting the Committee and the Assembly in relation to their consideration of complaints cases.

Links to Appendices

Appendix 1: The Commissioner for Standards Report on a complaint against Dr Steve Aiken OBE MLA

View the Commissioner for Standards Report on a complaint against Dr Steve Aiken MLA at the following link:

[Link to Commissioner for Standards Report](#)

Appendix 2: Video Evidence – Oral briefing by the Commissioner for Standards

View Microsoft Teams video recording of the oral briefing by the Commissioner for Standards on 23 February 2022 at the following link (includes video clips of the Committee for Finance meeting on 4 November 2020):

[Link to video of oral briefing by the Commissioner for Standards](#)

Presentation slides used in the Commissioner’s oral briefing on 23 February 2022:

[Link to presentation slides](#)

Appendix 3: Written submission from Dr Steve Aiken OBE MLA

View Dr Aiken’s written submission dated 1 March 2022 at the following link:

[Link to written submission from Dr Steve Aiken OBE MLA](#)

Appendix 4: Factual response from the Commissioner for Standards to the written submission from Dr Steve Aiken OBE MLA

View the Commissioner’s written response (which was submitted as a record of her oral response provided at the meeting on 2 March 2022) at the following link:

[Link to factual response from the Commissioner for Standards](#)

Appendix 5: Minutes of Proceedings

View Minutes of Proceedings of Committee meetings related to the report (meetings on 23 February, 2 March 2022 and 23 March 2022) at the following link:

[Minutes of Proceedings - Session 2021-22](#)

You may re-use this publication (not including images or logos) free of charge in any format or medium, under the terms of the Open Northern Ireland Assembly Licence.

[Find out more about the Open Northern Ireland Assembly Licence.](#)

This Report can be made available in a range of formats including large print, Braille etc. For more information please contact:

Committee on Standards and Privileges
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Telephone: 028 90 521 843

Email: committee.standardsprivileges@niassembly.gov.uk
