



Northern Ireland  
Assembly

Committee on Standards and Privileges

# OFFICIAL REPORT (Hansard)

Review of the Code of Conduct: Dr Tom  
Walker, QUB

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What is covered and what is not is very specifically restricted and written into the rules. I think that something similar is needed for the Assembly, otherwise you will find that people's behaviour in private life will be claimed to bring the Assembly into disrepute under that rule, so it is a breach of that rule even though it is not within the scope of the code. Again, I think that that would be something that is good to avoid while you are revising the code at this point.

The final point is about staff and Members' staff and whether that should be included in the code. I think that if there is a role for Members to be responsible for their staff, I do not think that the code is the right place to introduce it. I think that that would have to be looked at separately. There may be some rules that would apply to Members, but they would be more to do with Members, say, being required to ask their staff whether they have conflicts of interest and what Members should do if they discover that a member of their staff has a conflict of interest on a particular point. In that way, the code covers only what the Members do or do not do, and it does not directly apply to their staff. If staff need to be covered by a code or responsibilities of Members, I think that it is a different process and it should be dealt with differently.

**The Chairperson:** OK. Members?

**Mr Storey:** Thank you, Dr Walker, for your paper and for coming to us today. Do you believe that the issue of staff is better covered by the normal rules and regulations insofar as we are the employer of the staff and, therefore, the responsibility for their conduct falls under the remit of normal employment rules and regulations?

**Dr Walker:** I think that is the best place for it, because you already have that relationship between the Member and their staff. Because it is an employment relationship, I think that is the way to deal with it, rather than having it in a code of conduct for Members.

**Ms Lo:** Just to follow on from Mervyn's question, what about the MLA's conduct with Committee staff? Would that fall under the same rule and be dealt with by labour relations law?

**Dr Walker:** I think, if the Member is employing the staff, wherever those staff are, then that is the right place to deal with it under the employment rules and legislation covering that. I think that adding that into something else is going to add confusion and lack of clarity about what is covered and what is not, and it would be best to avoid it. I do not think there is anything additional needed, but if it was thought that there was, it should be dealt with separately.

**The Chairperson:** In terms of the general rule about bringing the Assembly into disrepute, I think that we have all recognised that that could potentially invite complaints that members of the public or Assembly Members could not find a specific part of the code, so they use bringing into disrepute as a catch-all. However, is there not a danger that, if we do not have a catch-all, certain behaviours of Members that the public may find abhorrent are not covered in the code of conduct, and we will leave ourselves open to criticism?

**Dr Walker:** I think there is potentially a danger of that happening, but the problem with a general rule is that, if you want to make a complaint and there is nowhere else to put it, that seems to cover pretty much everything. Because of that, it perhaps invites more complaints that should not really be covered by the code.

I think it would be better if there were specific rules included that covered everything that we could think of that would bring the Assembly into disrepute, rather than have a general catch-all, which will just invite complaints about any behaviour, because, however people behave, there could always be a claim that they bring the Assembly into disrepute, no matter what they are doing or which area of their life it is in. I think a better option is to have specific rules or, alternatively, to make very clear that that general catch-all only covers behaviour in specific areas; it only covers them when they are acting in their role as a Member but does not cover lawful speech. That very much narrows the kind of thing that would be included in it. As I said, that is an option that has been taken in some other places. Other places have just got rid of general rules altogether.

**Mr Agnew:** Thank you for the information and answers so far. I will continue on that question of disrepute. I think we have a clear intention to bring greater clarity to the code and simplify it so that people can understand what is an admissible complaint and what is not. I do not think it is realistic to say that you can be exhaustive in your lists, foreseeing every possible type of complaint. The other

aspect of it is having principles, which are going to be as vague as "disrepute". How do you feel about the issue of having overarching principles that Members should live up to?

**Dr Walker:** It is good to have principles, but I think they should be aspirational rather than enabling a complaint just because someone has not complied with the principles. There is a danger of confusing the two, so I think a better move is to have a clear set of principles, which Members would be expected to live up to, but also rules that they have to comply with, and they are the ones that the complaints would be under. If you have principles and complaints can be brought if you do not comply with a principle, I think that just muddies the waters and makes it much less clear what is included, what is not included, what is required and what is an aspiration. Codes work better when it is clear which category different things fall into. I would resist having principles to do that kind of catch-all.

**Mr Agnew:** The issue of reasonably assuming that someone is acting in their capacity as a Member has come up on a number of occasions. A general example is of an overtly political event, and an MLA is at it; an MLA makes a political statement, and somebody believes it to be a breach of the code. That is something that we should investigate. When a politician is being a politician, it is reasonable that they should be covered by the code. I think that the public certainly have that expectation. I know that there are probably different views on that in the Committee. I would be reluctant to lose that simply for clarity. Although clarity is certainly an aspiration, to use the term, of what we are trying to do here with the review of the code, do you not think that it is reasonable to expect a Member, in overtly political acts, to be governed by the code?

**Dr Walker:** The problem is wording it in such a way that you include those kinds of cases but you exclude other kinds of cases where somebody might think that they are reasonably claiming that the Member is acting in their capacity as an MLA but where that is not the case. The problem is going to be with how you define the distinction. It is clearer to say that it applies only when they are actually acting in that capacity. It would be useful perhaps for the public to have some guidance about what is meant by that so that what is included and what is not is clearer. There is a danger that, as soon as we start talking about reasonable presumptions, and given the disagreement about whether a presumption is reasonable, it is harder for Members to judge whether they are covered by the code in a particular case. There will be claims that, "In acting in this way, I wasn't acting in my role as a Member. Somebody mistakenly thought I was, and now I'm suddenly caught by the code." You would want to avoid those kinds of things. If you want to include more, what more do you want to include? How would you draw a line to include only those things? The clearest line is that they are actually acting in their capacity as a Member. You have that line at the moment. It is a line that you should stick to, rather than trying to extend it to deal with things to do with reasonable presumption.

**Mr Agnew:** What about something like Twitter, where the MLA's "about me" section clearly states, "I'm an MLA", for North Down, in my case, and, "Vote for me, because I'm a great guy" and all the rest of it? Coming back to the term "reasonable", do you not think that it is reasonable for people to expect that, in that capacity, you are promoting yourself as an MLA, and so you are acting as an MLA?

**Dr Walker:** Yes. People might presume that you are acting as an MLA sometimes in those roles. There is also the question of whether you are acting as an MLA or a candidate for an election. Which of those roles are you acting in? It is not always very clear to the public. Again, the problem is that, if you think that how people use Twitter should be covered by the code, it is better to cover specific rules about how Twitter is used rather than trying to have some kind of reasonable presumption about the different roles that people might have. People would have to make different judgements about whether they are acting in that role. Would somebody reasonably presume that I am acting in this role when I am acting in this way? It is good to avoid those things. The reasonable presumption idea is too vague; it potentially includes too much. If there are other things that need to be covered, such as Twitter accounts, they should be covered specifically. If there are rules on how people use Twitter, that would be the place to put it.

**The Chairperson:** When you say that a better way would be to provide guidance to those who are reading the code of conduct, are you suggesting that we have a list of activities that we believe are an individual acting as an MLA and a list of activities that we do not believe are a Member acting as an MLA?

**Dr Walker:** It would be more of a kind of indicative list. It would not be exhaustive; it would be hard to be exhaustive. One of the potential problems is the difference between an MLA's opinion about when they are acting as a Member and that of some members of the public, who may well have a broader conception of when you are acting as a Member. It could be something to indicate the kind of things

that we are concerned about people acting in these roles doing and sets out what the code covers. It would help the public to know the scope of the code. It is important to be clear about what the scope is and for the public to be clear about that.

**Mr Boylan:** Thank you for your presentation. I have listened to the conversations, and I want to pick up on two points. If we went down the line of defining things, that would nearly inhibit MLAs from doing certain things. You have to get the balance right between what they are trying to do and what they are allowed to do. If we were to define it, how would you see that? Is there a model that is working elsewhere that we could use?

**Dr Walker:** I do not think that there is. Most codes have it that it applies only when you are acting in the role as a Member or whatever.

**The Chairperson:** Just to clarify: It would not prohibit a Member from doing an activity, but it might inhibit them from behaving in a certain way while doing an activity.

**Mr Boylan:** I agree with you. However, if we go down the line of definitive lists, you would not do it. You are nearly tying freedom of expression in with everything else that they are trying to do as an MLA, or the perception of what an MLA can and cannot do, and that is the problem. If you start to define things like that, you could get that situation; that is all that I am saying. That is the difficulty — this whole idea of when you are acting as an MLA and when you are not. Do you know what I mean? I do not think that a definitive list would be right in this case, and I wanted to get your views on that.

In relation to the catch-all, we are getting a number of cases of people trying to find a way of asking the question of whether or not people are behaving within the code. Are there any other models for that? If we went down the route of trying to define it, how would you see that working?

**Dr Walker:** I am not suggesting that there should be a definitive list. However, I think that it would be useful to have some guidance about when Members are acting in a particular role or not. That would be only to indicate which behaviours are covered by the code. It would not have any effect on how they could act. It would be a case of, "If they are doing these things, the code applies. If they are not doing these things, the code does not apply." That is the way that I was thinking of it. I do not think that that should particularly inhibit people from doing things. It is just to be clear about when the code applies and when it does not and when a complaint can be made about a behaviour under the code and when it would not be admissible to do that. That is all that I was thinking about as regards clarification on that point.

When it comes to the bringing the Assembly into disrepute catch-all, one way of trying to avoid conflicts between that rule and the broader questions about the scope of the code is to include in the rule something like the proposed rule about unlawful behaviour and criminal offences. The rule is really strict about when people are acting in their role as an MLA. That would have to be in the bringing the Assembly into disrepute catch-all. So, the rule would be better phrased as something like, "Members should not bring the Assembly into disrepute when acting in their role as an MLA." So, it is very clear in the rule that this rule only applies in some things that they do, and there is not the opportunity to say that, although they have brought the Assembly into disrepute, they are acting in their private life or in some other role. They have broken the rule, and the rule says they should not do it. That brings the question of whether the scope takes precedence over the rule or whether the rule takes precedence over the scope. If it were written into the rule, that would help to clarify what is included and what is not.

**The Chairperson:** So, bringing the Assembly into disrepute while acting as an MLA would still involve a breach of other rules in the code to bring the House into disrepute. For us to define what disrepute means, you would need to have —

**Dr Walker:** Yes. I think that if we do that, that rule becomes less useful in many ways, and it might well be that you would want to drop it altogether. I take the point that there is some sense that people want a catch-all rule, but, at the same time, they want to restrict the code so that it only covers certain types of behaviour and behaviour in certain roles. The catch-all tends to undermine all of that because it allows people to say that something brought the Assembly into disrepute. OK, it took place in their private life, but it still broke the rule. It kind of sets up the possibility for disagreements about whether this rule applies, when it applies and when it takes precedent. If you are looking at redrafting the code anyway, I think that it is better not to include something that opens the door for those kinds of considerations.

**Mr Storey:** On that point, has paragraph 16 of the current procedures in the House of Commons been successful in practice, or has its opt out been the means of circumnavigating that?

**Dr Walker:** I do not know how it has worked in practice. I do not have any data on that. Its code is not that clear because, although that is written into the details of the rules, elsewhere there is mention of behaviour in your private life bringing the Parliament into disrepute. So, although it looks very clear in the rules, other parts of its code muddy the waters again. The advantage of something like that is that it makes it clear to people what the scope of that rule is. If you write it into the rule, you are not relying on something earlier in the document to sort out the scope issues.

**Mr Storey:** Have you any view on the comment that is made later on strengthening the rule to the point where there will be a requirement where Members "shall" observe the rules as opposed to having an aspirational attendance to the rules? Do you think that that is strengthening?

**Dr Walker:** I think that the rules should be phrased in a way to say that you shall do this or that or not do this or that, whereas the aspirations would be written in a different way. The aspirations should not say that you shall do this. They should not be written in a way that allows them to be confused with the rules, so I think that language is important. The rules should say, "Here are things that you shall do and here are things that you shall not do, and these are the things that we will hold as binding.". Aspirations, I think, would be worded in a different way. They would say something more positive about the kinds of standards of behaviour that we would expect Members to live up to. They are often very aspirational. They can set the bar very high because they will not be imposed or enforced on people.

**The Chairperson:** You have highlighted three general areas. Obviously, you were involved from the beginning of our process of reviewing the code, and you know where we want to get to. Is your general view that the recommendations that we have made or the draft code are improvements on what we had previously?

**Dr Walker:** Yes, I think that they are. There are two areas in particular where it has improved. It will be clearer what is not included in the code and what the rules do not cover. Taking out that ambiguity makes for a better code. It will be clearer to everyone involved what is covered and what is not covered. The other particular improvement is the split between the rules and aspirations. There is an overlap in the existing code and there are some paragraphs that seem to include rules and aspirations almost in the same sentence. If that is separated out it will make it a lot clearer what is expected and what is required — what the aspirations are and what the rules are that are required to be obeyed. Those are the two main areas where improvements have been made; the separating out of aspirations and rules and being clearer about what is what is not included.

**The Chairperson:** My next question is more general and is not specific to our code of conduct. You will be aware, with the RPA process, that there will be a new code of conduct for councillors. If they have a radically different code of conduct from ours, will that undermine the changes that we have made because there will be greater public confusion about the two codes that exist for what they see as politicians, as opposed to making a distinction between councillors and Members?

**Dr Walker:** I do not think so. There are already lots of different codes. There are codes at Westminster and codes here, and it depends on how radically different they are. Without knowing what they might suggest, it is so hard to know. There is a sense that there are already lots of different bodies that have codes of conduct, and, as long as it is clear what is required for the Assembly, there should not be a problem. There is a sense in which the Assembly is a different body from councils, which will make a difference to what the code says; it should make a difference to what the code says. Just as there are differences between what the Assembly does and what the House of Lords does — its code is different from what you have here — the code should vary depending on the role of the body to which it applies. There should not be a problem.

**Mr Boylan:** I mean no disrespect to the general public, but they may view the codes as one and the same. A lot of people go to councillors thinking that councils and this place do similar things, and they may view both codes in that way. Is that an issue?

**Dr Walker:** Again, it is hard to say without knowing how different their codes are or will be. I agree that sometimes the public are unclear about what is covered by the council and what is covered by the

Assembly and that there is uncertainty about who covers what and who to go to in different cases. Without knowing what the councils' codes say it is hard to say whether there is going to be a problem. I do not think there is a problem at the moment around the differences between the Assembly's code of conduct and the code at Westminster. We will have to wait and see whether there will be problems; I do not think that there should be any differences, but I would expect their code to cover many of the same things and to contain many of same kinds of rules and aspirations. If the code is radically different, then we will have wait and see whether it causes problems.

**The Chairperson:** I suppose the end of the dual mandates is hugely helpful in that regard, because it will take away that confusion about whether a Member was acting as an MLA or a councillor and, likewise I suppose, between the code in the House of Commons and the Assembly code, whether the Member is acting as an MLA or an MP.

**Mr Boylan:** I do not disagree, Chairperson. It is just that, knowing about dealing with the public, it is about the way in which the public look at it. That is all I am saying. It was a good point; I just wanted an opinion on it, that is all.

**Ms Lo:** The Chairperson is right to make the point that there may be confusion, but, apart from confusion, there is, perhaps, an implied judgement that we expect less of councillors in a code of conduct and that, presumably, our standard of conduct is going to be slightly higher and the scope is wider. Would that give the impression to people that we expect less of councillors and more of MLAs?

**Dr Walker:** I think that depends on what they say in their code. A lot of the codes are going to have a similar basis in the Nolan principles of public life. They are going to say the same kind of things in relation to those, so it might turn out that the code is very similar in any case. I do not have much more to say than that, without knowing what their code will be or having sight of it. I would expect them to have the same general principles and cover the same things.

**Ms Lo:** They are very much based on the seven Nolan principles. It is out for consultation at the moment.

**The Chairperson:** Nobody from the Department has approached you?

**Dr Walker:** No, they have not.

**Mrs Overend:** Thanks very much for everything today. I just want to pick up on what Stephen was saying earlier about social media. Do you think it would be helpful to have an annex for how to behave, what to do and what not to do on social media as an MLA?

**Dr Walker:** I think that guidance on social media is a good thing in general. A lot of different organisations have already started thinking about guidelines for use of social media when you are acting in a particular role. I think that what is needed, if anything, is guidelines about good practice, rather than specific rules written into the code about what you can and cannot do.

**The Chairperson:** Thank you very much. We appreciate your time and your contribution.