

**Committee on Standards and Privileges**

# **Report on a complaint against Mr Alex Maskey MLA**

**Together with the Report of the Northern Ireland Assembly Commissioner  
for Standards and the Minutes of Proceedings of the Committee**

**Ordered by The Committee on Standards and Privileges to be printed on 23 September 2013  
Report: NIA 126/11-15 Standards and Privileges Committee**



# Committee Powers and Membership

1. 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.
2. 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.
3. 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.
4. The membership of the Committee is as follows:
 

Mr Alastair Ross (Chairperson)  
 Mr Kieran McCarthy (Deputy Chairperson)  
 Mr Steven Agnew  
 Mr Mervyn Storey<sup>1 2</sup>  
 Mr Cathal Boylan  
 Ms Paula Bradley<sup>3</sup>  
 Mr Colum Eastwood<sup>4</sup>  
 Mr Declan McAleer<sup>5 6 7</sup>  
 Mr Fra McCann  
 Mr Ian McCrea<sup>8</sup>  
 Mrs Sandra Overend<sup>9</sup>
5. The Report and evidence of the Committee are published by the Stationery Office by order of the Committee. All publications of the Committee are posted on the Assembly's website: ([www.niassembly.gov.uk](http://www.niassembly.gov.uk).)
6. All correspondence should be addressed to the Clerk to the Committee on Standards and Privileges, Committee Office, Northern Ireland Assembly, Room 254, Parliament Buildings, Stormont, Belfast BT4 3XX. Tel: 02890 520333; e-mail: [committee.standards&privileges@niassembly.gov.uk](mailto:committee.standards&privileges@niassembly.gov.uk)

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1 With effect from 7th May 2013 Mr Sydney Anderson replaced Mr David McIlveen  
 2 With effect from 16th September 2013 Mr Mervyn Storey replaced Mr Sydney Anderson  
 3 With effect from 15th April 2013 Ms Paula Bradley replaced Mr Jonathan Craig  
 4 With effect from 23rd April 2012 Mr Colum Eastwood replaced Mr Patsy McGlone  
 5 With effect from 3rd July 2012 Mr Alex Maskey replaced Mr Pat Doherty  
 6 With effect from 7th September 2012 Mr Francie Molly replaced Mr Alex Maskey  
 7 With effect from 15th April 2013 Mr Declan McAleer replaced Mr Francie Molloy  
 8 With effect from 3rd December 2012 Mr Ian McCrea replaced Ms Paula Bradley  
 9 With effect from 26th September 2011 Mrs Sandra Overend replaced Mr Michael Copeland



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# Report

## Introduction

1. The Committee on Standards and Privileges has considered a report from the Northern Ireland Assembly Commissioner for Standards on his investigation into a complaint against Mr Alex Maskey MLA by Mr Peter Weir MLA. The Commissioner's report and the complaint are appended to this report.

## The Complaint

2. Mr Weir's complaint referred to comments made by Mr Maskey on the UTV Live Tonight programme on 14 January 2013. That evening there had been serious public disorder in the Lower Newtownards Road area of Belfast, particularly at a so-called interface area beside the Short Strand. Mr Maskey was interviewed on the programme about the disorder. Mr Weir quoted Mr Maskey as saying during the programme that:

*"What we've been hearing tonight is people from the Short Strand throwing stones back and, if they are, they're defending their homes.... If I lived in the Short Strand, I'd be throwing stones along with those people."*

3. Mr Weir described the comments as wholly inappropriate for a Member of the Assembly. He argued that the invariable result of stone throwing would be injury to an individual or damage to property and that either outcome would constitute a criminal offence. Mr Weir asked for the comments to be investigated under the Code of Conduct, citing paragraphs relating to Public Duty, Leadership, Promoting Good Relations and Respect. Specifically, Mr Weir highlighted the following provision of the Code in relation to the principle of 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."*

## The Commissioner's investigation

4. As part of his investigation the Commissioner obtained a transcript of the full discussion on the UTV Live Tonight programme during which Mr Maskey made the comments which were the subject of the complaint. The Commissioner was provided with information from the PSNI about the disorder in the area that evening. He also received written evidence from Mr Maskey and subsequently interviewed him. The relevant documents in relation to all of this evidence are included within the Commissioner's report.
5. The Commissioner established a number of facts relating to what happened that evening and to the context of Mr Maskey's alleged comments. These are set out in paragraph 12 of the Commissioner's report. Among them is that at the time of the broadcast on 14 January Mr Maskey honestly believed that:
  - a loyalist crowd had thrown stones and petrol bombs at houses in the Short Strand resulting in two houses being set on fire;
  - the police were not present at the scene of the disorder;
  - some Short Strand residents had, in an attempt to protect their homes, thrown stones at the loyalist crowd;

- in the absence of the police, the actions of the residents were necessary to protect their homes; and
  - these residents were acting within the law.
6. The Commissioner considered that the key issue in this complaint was whether the remarks in question were in breach of the public duty principle in the Code which states that Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them. The Commissioner stated that it was therefore crucial to determine whether the actions that Mr Maskey said he would have taken, in the given circumstances, would have amounted to a criminal act.
7. In order to inform his view on this matter, the Commissioner sought Counsel's opinion. Counsel's opinion is set out in document 6 of the Commissioner's report. In essence, the opinion states that even when the throwing of stones results in either personal injury or damage to property it does not invariably follow that there has been a criminal act. There is a defence, in prescribed circumstances, of prevention of crime and protection of property to a person prosecuted for throwing stones. Counsel advised that it was not possible to say determinatively that any of the defences engaged in the circumstances of this matter would definitely have succeeded if prosecution of the stone throwers had followed. Nonetheless it is Counsel's opinion that if a jury was satisfied that the residents had no other option to protect their homes but to throw stones, this would point towards the defences being successfully made out.
8. Given the facts established, and the advice received, the Commissioner was not satisfied that in the part of the interview that was the subject of the complaint Mr Maskey was condoning or supporting an act, namely stone throwing, that would, in the circumstances, have been criminal conduct. Consequently, the Commissioner was not satisfied that Mr Maskey failed to comply with his duty under the public duty principle to uphold the law.
9. The Commissioner also pointed out that on the same programme, before making the comments that were the subject of this complaint, Mr Maskey had said –
- “... I don't want to see any person attacked, any police officer having a petrol bomb thrown at them and certainly no home owner or their family with a petrol bomb thrown at them or anybody throwing stones in the area. What I want to see is total calm brought to this area but let us be very clear this is going on a very dangerous turn and people with influence in that community need to stand up to the wreckers.”*
10. The Commissioner judged that when the comments that were the subject of this complaint were considered in the context of what else Mr Maskey had said on the programme, it was far from clear that Mr Maskey was supporting the throwing of stones.
11. In light of his conclusion that Mr Maskey had not breached the public duty principle, and the broader context in which Mr Maskey was speaking, the Commissioner considered Mr Maskey's comments against the other principles of the Code of Conduct cited by Mr Weir in his complaint. Having done so the Commissioner was not satisfied that there had been any breach of these principles.
12. The Commissioner concluded his report by stating that, although he had found that there had been no breach of the Code of Conduct by Mr Maskey, he felt constrained to observe that Mr Maskey's comments were far from prudent. The Commissioner acknowledged the context to the comments but suggested that the on-going tension should have put Mr Maskey on notice to choose his words with particular care and to avoid the use of language that was open to misunderstanding or misinterpretation.



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## The Committee's considerations

13. As per the Committee's usual procedure, Mr Maskey was provided with an advance copy of the Commissioner's report. Mr Maskey was informed that he was entitled to provide the Committee with his own comments in respect of any matter raised in the report. He was also informed that he could choose to appear before the Committee to make his comments in person and to answer any questions that members of the Committee may have had. Mr Maskey did not choose to either provide the Committee with comments in writing or to appear before the Committee.
14. The Committee on Standards and Privileges considered the report at its meetings on Wednesday 11 September (when the Commissioner presented his report to the Committee and answered members' questions) and Wednesday 18 September 2013.
15. The Committee has given careful consideration to the evidence gathered by the Commissioner and the reasoning behind his conclusions. The Committee has given particular consideration to the circumstances of the public disorder that evening, the broader context to Mr Maskey's comments and Counsel's opinion. Having taken all of these matters into consideration the Committee is satisfied that Mr Maskey has not breached the Code of Conduct. **The complaint is not upheld.**
16. While the Committee recognises that in the context that Mr Maskey made his remarks, and only in this context, he did not breach the Code of Conduct according to the letter of the law, it wishes to highlight the Commissioner's comments that Mr Maskey's comments "were far from prudent".
17. The Committee believes that the language used by Mr Maskey could have been interpreted by some as inflammatory and could have potentially exacerbated an already tense atmosphere at that time.
18. The Committee would therefore advise Mr Maskey, and all other Members, to exercise great caution in the language that they use when speaking as public representatives, particularly at times when public disorder is occurring or there is the risk that it might occur.





Northern Ireland  
Assembly

Appendix 1

# Report by the Northern Ireland Assembly Commissioner for Standards



**Report  
by the  
Northern Ireland Assembly Commissioner for Standards  
on a complaint by  
Mr Peter Weir MLA  
against  
Mr Alex Maskey MLA**

**This report is privileged and is the property of the Northern Ireland Assembly Commissioner for Standards.**

**It has been prepared for presentation to the Committee on Standards and Privileges (the Committee). Neither the report nor its contents should be disclosed to any person unless such disclosure is authorised by the Northern Ireland Assembly Commissioner for Standards or the Committee.**

**The report remains confidential until such time as it is published by the Committee.**

## **The Complaint**

1. By letter to the Clerk of Standards dated 15 January 2013 [Document1] Mr Peter Weir MLA made a complaint that Mr Alex Maskey MLA had, by comments made during the UTV Tonight programme broadcast the previous evening, breached the Members' Code of Conduct.
2. In particular, Mr Weir asserted that during the programme Mr Maskey had stated:

*'What we've been hearing tonight is people from the Short Strand throwing stones back and, if they are, they're defending their homes [and] if I lived in the Short Strand, I'd be throwing the stones along with those people [because it is disgraceful what those families are having to put up with and people like John had a lot more responsibility to tackle this than they admit.]'* (Words in square brackets omitted in letter of complaint).

3. Mr Weir asked that these comments be considered against the paragraphs of the Code dealing with the principles of public duty, leadership, promoting good relations and respect.
4. He went on to state:

*'I found Mr Maskey's comments to be wholly inappropriate for a Member of the Assembly. Invariably the result of stone throwing is injury to an individual or damage to property. Either of these actions would constitute a criminal offence.'*

5. On receipt of the copy of Mr Weir's letter from your Clerk, I considered the admissibility of the complaint. On 21 January 2013 I wrote to Mr Weir, Mr Maskey and your Clerk informing each that I was satisfied that the complaint was admissible.

### **Relevant Provisions of the Code**

6. The relevant provisions of the Members' Code of Conduct are at Annex A.

### **The Investigation**

7. I obtained a transcript of the programme in question [Document 2] and a letter from the PSNI giving information about the disorder in East Belfast on the evening of 14 January 2013 which had been the subject of the UTV programme [Document 3].
8. On 7 March 2013 I wrote to Mr Weir affording him the opportunity to furnish me with any further information or documents in support of his complaint. Mr Weir did not reply to that letter.
9. On 11 March 2013 I interviewed Mr Maskey who provided me with a letter [Document 4] setting out his views on a number of the issues related to the complaint. Document 5 is the agreed note of that interview.
10. All the information that I obtained in the course of my investigation was provided on a voluntary basis without recourse to my statutory powers. I am grateful to all those who have assisted me in this way.
11. The complaint and the documents I have relied upon in reaching my decision are at Annex B.

### **Facts Established**

12. I found the following facts established:
  1. That on the evening of 14 January 2013 there was significant and serious public disorder in the area of Lower Newtownards Road, in particular at the interface between the so called Loyalist streets and the Short Strand including St Matthews' chapel.
  2. That the disorder on 14 January 2013 was one of a number of occasions of disorder that had occurred in that area since the decision of Belfast City Council to fly the Union flag only on designated days.

3. That as a result of these disorderly incidents tension in the area was high.
4. That around 7.00 pm that night the police received reports that members of a Loyalist crowd had thrown stones and other missiles towards St Matthews' chapel and the Short Strand.
5. That the police received two reports of damage to property as a result of these actions.
6. That when the police attended petrol bombs were thrown at them by members of the Loyalist crowd.
7. That at about 9.25 pm the police received reports of a number of petrol bombs being thrown from the Short Strand area towards Lower Newtownards Road.
8. That the UTV Tonight programme was broadcast shortly after 10.30pm on 14 January 2013.
9. That the part of the programme that is the subject of the complaint was broadcast live.
10. That Mr Maskey appeared on the programme in his capacity as an MLA.
11. That the transcript is an accurate record of what was said during that broadcast.
12. That at the time of the broadcast Mr Maskey honestly believed that:
  - a Loyalist crowd had thrown stones and petrol bombs at houses in the Short Strand resulting in two houses being set on fire
  - the police were not present at the scene of the disorder
  - some Short Strand residents had, in an attempt to protect their homes, thrown stones at the Loyalist crowd
  - in the absence of the police, the actions of the residents were necessary to protect their homes
  - these residents were acting within the law.



- that Mr Maskey continues to believe that these residents acted within the law.

### **Reasoned Decision**

13. The key issue in this complaint is whether the remarks of Mr Maskey referred to in the complaint were in breach of his duty under the Code to observe the public duty principle under which:

*'Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.'*

14. In the complaint by Mr Thomas Buchanan MLA against Mr Barry McElduff MLA<sup>1</sup> the Committee decided that encouraging others to break the law (in that case by painting letterboxes green) was not consistent with the public duty principle.

15. Similarly, I do not doubt that a statement by a Member that, in given circumstances, he would engage in criminal conduct would be inconsistent with that principle.

16. It is therefore crucial to determine whether the action that Mr Maskey said he would, in the given circumstances, have taken would have been a criminal act.

17. In his complaint Mr Weir states –

*'Invariably, the result of stone throwing is injury to an individual or damage to property. Either of these actions would constitute a criminal offence.'*

18. I have had the benefit of the opinion of Counsel [Document 6] on this issue. It makes clear that the throwing of stones is not always criminal nor does the throwing of stones always result in personal injury or damage to property e.g. a child who throws a stone into the sea. Further, even when the throwing of a stone does result in either personal injury or damage to property it does not invariably

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<sup>1</sup> Report 30/08/09R (Committee on Standards and Privileges)

follow that there has been a criminal act. One obvious example is where the stone is thrown in self defence and the criteria for that defence are made out. But more germane to the current matter are the defences provided by Section 3 of the Criminal Law Act (Northern Ireland) 1967 and Article 7 of the Criminal Damage (Northern Ireland) Order 1977.

19. These provisions are discussed in detail in Counsel's opinion. They provide a defence, in prescribed circumstances, to a person charged with using force to prevent crime from occurring or continuing, or with causing damage to the property of another to prevent property belonging to that person or another being damaged. In each case there are statutory conditions which must be met if the defence is to be available.
20. Counsel has advised (Document 6 paragraph 32) that, on the facts which I have found established –

*'It is not possible to determinatively say that any of the defences engaged in the circumstances of this matter would definitely succeed if prosecution of the stone throwers followed.'*

21. He further opines (Document 6 paragraph 34) –

*'I would however note that if the jury was satisfied that the residents had no other option to protect their homes but to throw stones (as per the Commissioner's finding at the last bullet point of the matters found to have been within Mr Maskey's honest beliefs), this would, in my view, point towards the defences being successfully made out.'*

22. Given that advice and the facts that I have found established, I am not satisfied that in that part of the interview that is the subject of the complaint Mr Maskey was condoning or supporting an act, namely stone throwing, that would, in the circumstances, have been criminal conduct. It follows that I am not satisfied that Mr Maskey failed to comply with his duty under the public duty principle to uphold the law.

23. Upholding the law must involve not only supporting those parts of the law that create offences but also those parts that provide defences such as those in Section 3 and Article 7. That being so, it could be argued that when considered in context Mr Maskey, having called for calm and an absence of stone throwing, did no more than give support to the right of individuals to take proportionate action to prevent crime or to protect property.
24. Had I been satisfied, which I am not, that the throwing of stones by the Short Strand residents was a criminal act it would have been necessary to consider whether Mr Maskey was supporting such action. The comment complained of was made during a short live TV interview during which Dr Kyle and Mr Maskey were asked and responded to questions. Prior to making the comment that is the subject of this complaint Mr Maskey said –

*'....I don't want to see any person attacked, any police officer having a petrol bomb thrown at them and certainly no home owner or their family with petrol bombs thrown at them or anybody throwing stones in the area. What I want to see is total calm brought to the area but let us be very clear this is going on a very dangerous turn and people with influence in that Community need to stand up to the wreckers.'*

25. It is the well-established practice, when considering complaints that a comment made by a Member breached the Code, to consider the comment in the context of the whole statement or interview<sup>2</sup>. Adopting that approach in the present case it is far from clear that Mr Maskey was supporting the throwing of stones.
26. In his complaint Mr Weir draws attention also to the duty to comply with the principles of leadership, respect and promoting good relations and to the supporting text in relation to that third principle which provides –

*'Members will act in a way that is conducive to promoting good relations by providing a positive example for the wider Community to*

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<sup>2</sup> See for example Report 3/07/08R (Committee on Standards and Privileges) and Report 45/09/10R (Committee on Standards and Privileges)

*follow by acting justly and promoting a culture of respect for the law.'*

27. For the reasons stated in relation to the alleged breach of the public duty principle I am not satisfied that there has been a breach of the promoting good relations principle or of the quoted text.
28. It is plain that rude and offensive behaviour, whether towards another Member or a member of the public, could constitute a breach of the respect principle as set out in the Code. It is also plain that criminal conduct would usually constitute offensive behaviour. However, on the facts as I have found them established, I am not satisfied that the stone throwing contemplated by Mr Maskey would have been criminal conduct. I am not satisfied that there was any breach of the respect principle.
29. Turning to the alleged breach of the leadership principle which requires Members *'to promote and observe'* the ten other Code principles *'by leadership and example'*, I have found nothing to indicate that Mr Maskey did anything contrary to any of these principles. Accordingly, I am not satisfied that there was any breach of the leadership principle.
30. Although I have found that there was no breach of the Code of Conduct by Mr Maskey I feel constrained to observe that his comments were far from prudent. I accept, of course, that they were made during a live TV interview on a night when tensions were high and events on the ground were on-going. But as an experienced Member these circumstances should have put him on notice to choose his words with particular care and to avoid the use of language that was open to misunderstanding or misinterpretation.

### **Conclusion**

31. On the basis of the facts as I have found them established, and having regard to the legal advice I have received, I am not satisfied that the comments of Mr Maskey that are the subject of this complaint, when considered in light of the whole interview, constituted a breach of the Code of Conduct.

**Douglas Bain CBE TD Advocate  
Northern Ireland Assembly Commissioner for Standards  
13 June 2013**

## Annex A

### RELEVANT CODE PROVISIONS

#### **Principles of Conduct**<sup>3</sup>

Members shall observe the following principles of conduct, which include principles based upon the general principles of conduct identified by the Committee on Standards in Public Life as applying to holders of public office, and further principles agreed by the Assembly:

#### **Public Duty**

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

#### **Leadership**

Members should promote and support these principles by leadership and example in order to establish and maintain the trust and confidence of the people of Northern Ireland, and to ensure the integrity of the Assembly and its Members in conducting business.

#### **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 in consideration for others at all times.

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<sup>3</sup> Text on the principles of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty, Equality and Good Working Relationships omitted.

**Annex B**

**EVIDENCE OBTAINED AND USED**

<b>Document</b>	<b>Description</b>
1	Copy complaint letter dated 15 January 2013
2	Transcript of UTV Tonight programme 14 January 2013
3	Letter from Supt. McCaughan dated 6 February 2013
4	Letter from Alex Maskey MLA dated 11 March 2013
5	Note of interview Alex Maskey MLA
6	Opinion of Peter Coll BL dated 23 May 2013

Doc 1

## Chief Whip's Office



**Peter Weir MLA**  
**Chief Whip**

15 January 2013

Room 35

**STANDARDS &  
15 JAN 2013  
PRIVILEGES**

Clerk of the Standards and Privileges Committee  
/ Assembly Commissioner for Standards  
Room 254 / 283  
Parliament Buildings  
Belfast  
BT4 3XX

Dear *Paul,*

**Re: Investigation of Alex Maskey stone throwing comments**

I write with reference to comments made by South Belfast Sinn Fein MLA Alex Maskey on UTV on 14<sup>th</sup> January 2013. The comments were made on UTV's Tonight programme and can be found at this link <http://www.u.tv/utvplayer/video/149846/122961>

I request that the Commissioner for Standards establish if these comments are in breach of the Code of Conduct for MLAs. In particular, the comments should be considered alongside the Code of Conduct's paragraphs relating to Public Duty, Leadership, Promoting Good Relations and Respect.

MLAs will express political opinions and are free to do so but as the Code of Conduct states;

*"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."*

During the interview Mr Maskey said;

*"What we've been hearing tonight is people from the Short Strand throwing stones back and, if they are, they're defending their homes. . . . if I lived in the Short Strand, I'd be throwing the stones along with those people."*

I found Mr Maskey's comments to be wholly inappropriate for a member of the Assembly. Invariably, the result of stone throwing is injury to an individual or damage to property. Either of these actions would constitute a criminal offence.

I am happy to assist the Committee in this investigation and arrangements can be made through my office in Room 35, Parliament Buildings if any further information is needed.

Yours sincerely,

Peter Weir MLA

Sydney Anderson MLA  
Whip

Trevor Clarke MLA  
Whip

**RECEIVED**

@ 16.20. *pc.*  
George Robinson MLA  
Whip



Doc 2

UTV Live Interview

**Paul Clarke:** Live in the studio with me is Dr John Kyle from the PUP and the Sinn Fein MLA, Alex Maskey. John Kyle any pleas for violence to end has fallen on deaf ears, people are just not listening.

**Dr John Kyle:** Well Paul certainly the people of East Belfast do not want violence and they recognise that violence is destroying their community and destroy community relations

**Paul Clarke:** That's not what we are seeing tonight

**Dr John Kyle:** Well we have seen, as the Rev Mervyn Gibson said we are seeing a rump of our young people determined on violence and that has been rejected by the people of East Belfast

**Paul Clarke:** How are you going to stop this?

**Dr John Kyle:** Clearly there needs to be urgent action taken

**Paul Clarke:** And what is that urgent action?

**Dr John Kyle:** First of all when there is rioting the police need to deal with the rioting. But more particularly we need to then get people off the streets and we do that by engaging with the protesters and offering alternatives to road blockages we need to offer valid and effective alternatives...

**Paul Clarke:** They're not listening...they're not listening to the community leaders who are on the streets

**Dr John Kyle:** Well the question is have the politicians actively engaged with the protesters..

**Paul Clarke:** Have you?

**Dr John Kyle:** Yes, I have and the PUP has asked for an urgent meeting with the Ulster People's Forum. But there needs to be a proactive approach by the politicians to deal with the grievances and anger of the protesters.

**Paul Clarke:** Alex Maskey there are reports of homes under attack tonight in the Short Strand, what have you been hearing?

**Alex Maskey:** Well I spoke to my colleagues and some residents in the Short Strand tonight again and a number of homes were attacked by petrol bomb and people were actually literally putting out fires at their home. Now you know Paul that I sat here this time last week and I said that we were facing a downward spiral, that someone was going to be seriously hurt – we could have been looking at a family burned to death tonight in the Short Strand and I am sick to death listening to weak and meaningless words from Unionist politicians who are afraid to stand up to those people from within their own community who are hell bent on bringing us back to conflict, who are opposed to the peace process, who are opposed to the changes that are required in this society and I think that these politicians...John I have to say, and we have worked very well with John, in the City Hall and within the East Belfast community but at this point in time they are basically totally irrelevant in this situation unless they stand up.

**Paul Clarke:** You are failing; you are not standing up to these people John.

**Dr John Kyle:** Well I think that a misperception Paul. I think we are making it very clear what our position is in terms of violence. There is no place for violence in Belfast or in East Belfast

**Paul Clarke:** But no one is listening to you

**Dr John Kyle:** Well people are listening to us but clearly there are a rump of people who are intent on violence and they need to be dealt with, they need to be tackled however the underlying issues which are mammoth and crucial and pressing need to be actively addressed by politicians. We can all try and blame one another, we can all say well who threw the first stone, who caused this but the fact of the matter is that we need to get beyond the violence to deal with the underlying issues.

**Paul Clarke:** But this is in danger of becoming a self-perpetuating cycle of violence.

**Alex Maskey:** It is actually quite disgraceful because it is a downward spiral of violence, we have said that and unfortunately our predictions are becoming true. This is becoming very very serious, there is a community there in the Short Strand, and I don't want

to see any person attacked, any police officer having a petrol bomb fired at them and certainly no homeowner or their family with a petrol bomb thrown at them or anybody throwing stones in the area. What I want to see is total calm brought to this area but let us be very clear this is going on a very dangerous turn and people with influence in that community need to stand up to the wreckers.

**Paul Clarke:** Equally there are elements on both sides; this violence is feeding off each other

**Alex Maskey:** There is an on-going assault, and I have to state this very clearly, there is an on-going assault against the Short Strand community

**Paul Clarke:** But we have also heard tonight of evidence of stones and petrol bombs being thrown the other way.

**Alex Maskey:** We haven't heard of people throwing petrol bombs from the Short Strand but what we are hearing tonight are that people from the Short Strand are throwing stones back and if they are they are defending their homes and if I lived in the Short Strand, I would be throwing the stones along with those people because it is disgraceful what those families are having to put up with and people like John have a lot more responsibility to tackle this than they admit.

**Paul Clarke:** Well John is here and he is taking it on the chin.

**Alex Maskey:** They need to go and deal with their own community problems.

**Paul Clarke:** Does the answer to this not lie within the Unionist/Loyalist community

**Dr John Kyle:** Well certainly within the Unionist/Loyalist community there is a major responsibility but we cannot do it alone. It requires the nationalists and republicans to help us in this if we are to have shared society, if we are to live together peacefully we cannot do this on our own. There is provocation and all sorts of grievances and anger, there's inequality these need to be dealt with and we can only deal with them together. Alex has to help us; we have to work with him if we are to achieve that.

**Paul Clarke:** John Kyle and Alex Maskey thank you very much.

Doc 3

Personal, Professional, Protective Policing



Douglas Bain CBE TD Advocate  
Northern Ireland Assembly Commissioner for Standards  
Room 283  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Our Ref: 1954/13

6<sup>th</sup> February 2013

*Dear Mr Bain,*

**Re: COMPLAINT AGAINST ALEX MASKEY MLA**

Thank you for your letter of 29<sup>th</sup> January 2013. I am responding on behalf of Chief Superintendent McCrum.

This related to a complaint by Peter Weir MLA in which he alleges Alex Maskey MLA had breached the MLA's Code of Conduct. I have noted the publication arrangements for your final report and the inclusion of the response in any final papers. The issue of whether an MLA has breached the code of conduct is of course a matter for the Assembly itself. My response will be restricted to answering your specific questions.

1. The night in question witnessed significant and serious disorder in the area of Lower Newtownards Road, in particular at the interface between so called loyalist streets and the Short Strand, including St Matthews Chapel. I can confirm that petrol bombs were thrown at Police Officers who responded to the report of stones and other missiles being thrown by Loyalist crowds towards St Matthews Chapel and the Short Strand.
2. I am advised that police have recorded two reported incidents of damage to property as a result of this initial attack.
3. At a later stage of the evening at approximately 9:25pm reports were received from a Police call sign that a number of petrol bombs had been thrown from the Short Strand area toward the Lower Newtownards Road.

**'B' District**  
**South and East Belfast**  
Musgrave PSNI Station, 60 Victoria Street, Belfast BT1 3GL  
Telephone: 0845 600 8000  
E-mail: [BDistrict@psni.pnn.police.uk](mailto:BDistrict@psni.pnn.police.uk)



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4. The throwing of stones and/or petrol bombs in any circumstance would be considered a criminal act. This applies equally to wherever and whenever such an offence emanates.
5. A comprehensive investigation is ongoing into all offences linked to the ongoing dispute concerning the Belfast City Council decision to fly the Union Flag on designated days. This includes the evening of 14<sup>th</sup> January 2013.

I trust this is of assistance

*Yours sincerely,*

**John McCaughan**  
Superintendent  
Service Delivery

**'B' District**  
**South and East Belfast**  
Musgrave PSNI Station, 60 Victoria Street, Belfast BT1 3GL  
Telephone: 0845 600 8000  
E-mail: [BDistrict@psni.pnn.police.uk](mailto:BDistrict@psni.pnn.police.uk)

Doc 4

Alex Maskey MLA  
Room 319  
Parliament Buildings  
Stormont

Douglas Bain  
Commissioner for Standards  
Parliament Buildings  
Stormont

11/03/13

**COMPLAINT BY PETER WEIR**

A Chara,

I take my responsibilities as an elected representative very seriously.

For 30 years I have represented all sections of the community here without discrimination with regard to their religious, political or ethnic background.

When I served as First Citizen of Belfast it is universally recognised that I went further than any of my predecessors in trying to reach out and build relationships in the city.

This included the historic action of laying a wreath at the cenotaph to commemorate those killed at the Somme.

I will vigorously defend my reputation and defend my record in peace building and in reconciliation particularly in Belfast.

I believe this complaint by Peter Weir is without merit, and is an abuse of the office which you hold.

It is an attempt to use the Standards and Privileges Commissioner to advance a political agenda and score political points at a time when community relations are being put under immense strain by illegal anti-democratic protests.

For the record I did not advocate the use of violence by residents of the Short Strand or anywhere else. I merely pointed out the fact that residents of the Short Strand when faced with attack and with no police presence there to protect them, will inevitably seek to defend their homes. I also made it clear that it was unacceptable for anyone to attack any home and further stressed that if anyone from the Short Strand attacked Protestant families they were wrong and were not acting in the name of me or the people of the Short Strand.

What I would much prefer to see is an end to the attacks on the Short Strand and if such attacks do take place that the Police Service is there to tackle the issue robustly. This is what should happen in any normal society anywhere in the world. It must be remembered that the Chief constable apologised to the people of the Short Strand for leaving them vulnerable to attack.

The decision to pursue this complaint is I believe deeply flawed and without merit.

It also must be seen in the context of the recent case where the Commissioner found against DUP member Jim Wells but unionists in the chamber combined to effectively undermine entirely the work of your office and damage entirely public confidence in this process.

I would encourage you to dismiss this complaint and set about in a proactive way an engagement with the political parties to put in place a system of complaints which cannot in the future be undermined in this fashion.

Is Mise

Alex Maskey MLA

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Northern Ireland  
Assembly

## INVESTIGATION INTO COMPLAINT - ALEX MASKEY MLA

### Meeting with Mr Alex Maskey MLA

11 March 2013

Room 283

Start: 16.00 hrs      End: 16.30 hrs

Present: Douglas Bain, Commissioner for Standards  
Alex Maskey MLA  
Mark McLernon  
Sheila McCaughley (Note taker)

Mr Bain drew attention to his powers to require the attendance of witnesses and the production of documents, to the offence provisions and to the prohibition on disclosure of information. He outlined the procedure both for the interview and for the remaining stages of the investigation.

Mr Bain asked Mr Maskey if he had any questions on the proposed investigation.

Mr Maskey said he had not and provided Mr Bain with a submission which he had prepared setting out some of his own views of the complaint. He added that he had concerns around the attempt to use the Standards Commissioner and the Committee to advance a political agenda and score political points. He expressed concern that whatever the Commissioner said in his report, the Committee would divide on party lines as it had in the complaint against Jim Wells.

Mr Bain asked Mr Maskey if he accepted that when he took part in the UTV Tonight Programme that he was speaking in his capacity as an MLA. Mr Maskey responded that he was.

Mr Bain then enquired if Mr Maskey had seen a transcript of the interview and offered him some time to read it. Having read the document Mr Maskey accepted that it was a true record.

Mr Bain then enquired about Mr Maskey's understanding, at the time of the interview, of what had taken place at Short Strand earlier that night. Mr Maskey

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responded saying that he was aware that petrol bombs had been thrown at residents' homes in the Short Strand and these had been thrown by Loyalists. Mr Maskey explained that he had taken part in a pre-recorded interview for the programme earlier that evening but that in view of the on-going serious disorder he had been asked to give a further interview. The transcript was of that second interview which had been broadcast live.

Mr Bain asked Mr Maskey if it was his understanding at the time of the live interview that houses had also been set on fire. Mr Maskey replied yes, that actual homes were attacked. Mr Bain further asked Mr Maskey if, at that time, his understanding was that some residents threw stones back. Mr Maskey confirmed that this was his belief and explained that the residents were only trying to defend their homes when their property had caught fire and that they had no choice but to try and defend their homes.

Mr Bain asked Mr Maskey why the residents could not have left it to the police to sort the situation out. Mr Maskey responded by saying that the police were not there at the time and that ironically the Chief Constable had only that day made a point of apologising to the people of the Short Strand for leaving them vulnerable to attack in the previous days.

Mr Bain then asked Mr Maskey if, at the time of the interview, he thought that the actions of the residents were lawful. Mr Maskey said he did. He added that he and other colleagues were liaising fully with the police that evening. He had not and did not advocate the use of violence by residents of the Short Strand or anywhere else. He said that the residents were faced with attacks on their homes with no police presence or support and had little choice but to defend their homes. He added that other Unionist leaders had afterwards indicated to him, and publicly, that they had understood what he was saying.

Mr Bain pointed out to Mr Maskey that it was alleged that he was in breach of the principle of public duty by making the comment around throwing stones back if faced with the same circumstances and asked Mr Maskey to respond to that allegation. Mr Maskey said that he did not accept this point. He added that in his capacity he would be in the business of promoting law and working within the law. He added that he did not want anyone to throw stones and that they were not doing so in his name.

Mr Bain referred Mr Maskey to pages 1 and 2 of the transcript where it stated:

*"I don't want to see any person attacked, any police officer having a petrol bomb fired etc"*

Mr Bain asked if by saying this Mr Maskey was trying to make it clear that he was urging everyone to uphold the law. Mr Maskey said that he made it absolutely clear that he did not want to see any of the violence that erupted that night and

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that events had spiralled out of control. He added that he did not want to see anyone throwing stones and that if anyone from the Short Strand attacked Protestant families then this was wrong and they were not acting in the name of the people from the Short Strand.

Mr Bain referred Mr Maskey to *'that community'* and to *'the wreckers'* referred to in the last two lines of the passage and asked Mr Maskey to clarify what *'community'* and which *'wreckers'* he was referring to. Mr Maskey said that he was referring to the Loyalist community and the Loyalists within that community who had engaged in the attack on the Short Strand that night.

Mr Bain informed Mr Maskey that it was alleged that he was in breach of the principle of leadership in that by saying that in similar circumstances he would have thrown stones he failed to set a good example. Mr Bain asked Mr Maskey to respond to that allegation. Mr Maskey said that he did not accept this. He was merely providing leadership and standing up for the residents of that community. Mr Maskey added that his presence and commentary had had a calming effect on the whole situation (because it gave support to the local community and also drew out empathetic comments from Unionist representatives including people like Jim Wilson).

Mr Bain asked Mr Maskey if he believed that he was setting a good example by making the particular comments that were the subject of the complaint. Mr Maskey informed Mr Bain that he was merely telling the truth and wished that more political leaders from the Unionist side stood up and condemned these acts of violence. He asserted that looking at the interview as a whole it was plain that he was opposed to all violence.

Mr Bain asked Mr Maskey to respond to the allegation that he was in breach of the principle of promoting good relations. Mr Maskey said that during the interview he said that he did not accept any violence in any community. He had made that clear in all his media comments since the interview. He added that he had done, and still does, a lot of work for both communities.

Mr Bain asked Mr Maskey to respond to the allegation that by the comments he made he had breached the principle of respect. Mr Maskey said that he did not accept this because he did not want any violence to occur in any community and had represented all sections of the community without discrimination with regard to their religious or political belief. He added that he continually works with the police on trying to resolve all tensions in both communities and respects residents from both sides.

Mr Bain asked Mr Maskey if he wished to add anything further about the complaint against him. Mr Maskey only wished to add that he found the whole process infuriating. Petrol bombs were thrown at homes which subsequently

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went on fire and residents were only trying to defend themselves and their homes.

Mr Bain thanked Mr Maskey for his assistance with the investigation.

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OPINION TO ADVISE THE NORTHERN IRELAND ASSEMBLY

COMMISSIONER FOR STANDARDS

RE: A COMPLAINT AGAINST ALEX MASKEY MLA

Background:

1. I am instructed that the Northern Ireland Assembly Commissioner for Standards ("The Commissioner") is conducting an investigation pursuant to Section 17 of the Assembly Members (Independent Financial Review and Standards) Act (NI) 2011 into a complaint that Alex Maskey MLA failed to maintain the duty under the Code of Conduct to uphold the law and to promote a culture of respect for the law.
2. The Complaint arises in connection with a statement made by Mr Maskey during a live TV interview on 14<sup>th</sup> January 2013 concerning serious public disorder in the Short Strand area of Belfast on that date. I am instructed that Mr. Maskey said,

*"What we've been hearing tonight is people from the Short Strand throwing stones back and, if they are, they are defending their homes and if I lived in the Short Strand, I'd be throwing the stones along with those people because it is disgraceful what those families are having to put up with and people like John had a lot more responsibility to tackle this than they admit."*

3. The complaint alleges that,

*"Invariably the result of stone throwing is injury to the individual or damage to property. Either of these actions would constitute a criminal offence".*

4. I am instructed by the Commissioner that he is satisfied that at the time of his remarks Mr Maskey honestly believed the following:
  - Members of a Loyalist crowd had thrown petrol bombs at houses in the Short Strand.
  - Two houses had been set on fire.
  - The PSNI were not present.

- Some Short Strand residents had thrown stones at the Loyalist crowd in an attempt to protect their homes.
- These residents had no other option to protect their homes.

5. I have been asked to advise as follows:

- (1) Does the Complainant's statement to the effect that the throwing of stones is always a criminal offence represent the law?
- (2) In the circumstances as the Commissioner has found them established, would Section 3 of the Criminal Law Act (NI) 1967 ["the 1967 Act"] be likely to provide a defence to a charge of assault by the throwing of stones?
- (3) In the circumstances as the Commissioner has found them established, would Article 7 of the Criminal Damage (NI) Order 1977 ["the 1977 Order"] be likely to provide a defence to a charge of damage to property by the throwing of stones?
- (4) Does Counsel have any further observations?

Relevant Legislative Provisions:

6. Section 3 of the 1967 Act provides,

- (1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.
- (2) Subsection (1) shall replace the rules of the common law as to the matters dealt with by that subsection.

7. As relevant Articles 3 and 7 of the 1977 Order provide,

3.—(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another—

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered;

shall be guilty of an offence.

7.—(1) This Article applies to any offence under Article 3(1) or Article 3(1) and (3) and any offence under Article 4 or 5 other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or cause or permit the use of something in his custody or under his control so to destroy or damage property.

(2) A person charged with an offence to which this Article applies shall, whether or not he would be treated for the purposes of this Order as having a lawful excuse apart from this paragraph, be treated for those purposes as having a lawful excuse—

(a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under Article 5, intended to use or cause or permit the use of something to destroy or damage it, in order to protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed—

(i) that the property, right or interest was in immediate need of protection; and

(ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this Article it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of paragraph (2) a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This Article shall not be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

### Consideration of Questions Posed:

**(1) Does the Complainant's statement to the effect that the throwing of stones is always a criminal offence represent the law?**

8. In my view the answer to this is, no, it will not always be a criminal offence to throw stones. The *engagement* of criminality in the throwing of stones will be circumstance specific. For example, at one end of the spectrum it could be said to be highly unlikely that the simple throwing of stones into the sea at a beach would involve criminality whereas at the other end of the spectrum the deliberate, and wanton (in the sense of clearly having no lawful purpose or excuse) throwing of stones through the window of a house would in all likelihood involve criminality.

9. Essentially, whether the throwing of stones amounted to a criminal offence can only be considered in context.

10. The real question in this matter, as arising from the wording of the complaint, is whether stone throwing which results in injury to an individual or damage to property (or one might add, stone throwing in an unsuccessful attempt to injure or to damage property) would always constitute an offence.
11. For current purposes I discount the situation of accidental causing of injury or property damage. In such circumstances the person conducting the act may not have committed a criminal offence on the basis that he did not have the requisite intent, or recklessness for the mental element (*mens rea*) of the criminal offence to be established.
12. The instant context calls for consideration of whether the stone thrower has available to him defences recognised at common law or in statutory form for the deliberate use of force in that regard. Largely this will be addressed in answer to the questions below.
13. However there is one main defence that might be available (in the right circumstances) other than those to be discussed in answer to questions 2 and 3; that of self-defence.
14. Self-defence is recognised at common law as a defence to what would otherwise amount to a crime committed by the use of force. The defence permits of the use of such force as is reasonable in the circumstances as the person honestly believes them to be in the defence of himself or another. The degree of force used will only be reasonable if the person concerned thought it necessary to use that degree of force and viewed objectively (while bearing in mind the position the person was in at the time) the force used was not excessive/disproportionate in the circumstances he honestly believed existed. (See *Beckford v The Queen* [1988] AC 130, and *R v Clegg* [1995] 1 AC 482). (This test has been "clarified" by Section 76 of the Criminal Justice and Immigration Act 2008).
15. The defence of self-defence is cast in very similar terms as the defences of prevention of crime and protection of property (these are more specifically considered in answer to questions 2 and 3 below).
16. In short therefore, my conclusion on question 1 is that throwing of stones, even where it results in injury to another or damage to property, will not necessarily

mean that a criminal offence has been committed. The circumstances in which the throwing of the stones occurred may either fail to engage criminality at all, or may be such as to justify that use of force.

**(2) In the circumstances as the Commissioner has found them established, would Section 3 of the Criminal Law Act (NI) 1967 [“the 1967 Act”] be likely to provide a defence to a charge of assault by the throwing of stones?**

17. In the circumstances found established by the Commissioner the relevant element of Section 3 of the 1967 Act is that of the prevention of crime. As per the foregoing this form of defence, permitting the use of force, is very similar in nature to the defence of self-defence.

18. The main elements of the defence are;

- The crime being prevented by the exercise of force must not have been completed. In other words retaliation for a crime that has already been committed and is not on-going is not acceptable. The use of force must be to prevent the crime from occurring or from continuing.
- The use of force must be reasonable in the circumstances that the person using it honestly believed existed.
- As with self-defence, the degree of force used must be such that the person concerned thought necessary and viewed objectively (while bearing in mind the position the person was in at the time) the force used was not excessive/disproportionate in the circumstances he honestly believed existed. For example it would be difficult to justify shooting a criminal who was in the process of shoplifting, whereas it may be that a Court would more readily accept the proportionality of the use of force in shooting a criminal who himself was about to shoot a third party. The person using the force may not have much time to consider the *niceties* of the matter and will have to strike a reasonable balance between the risk of injury to the subject of the force and the perceived risk of failing to act.
- Once the defence is raised evidentially by the person who seeks to rely upon it, it falls to the prosecution to satisfy the jury to the standard of beyond reasonable doubt that the defence is not made out on the facts.



19. Effectively therefore in consideration of the defence of prevention of crime to an alleged offence involving the use of force the facts assumed will be those as the person concerned honestly believed them to be (subjective element). If those facts demonstrate a crime as defined by law, the person is entitled to use such force as was reasonable to prevent it. However the force used must be reasonable by objective standards (objective element).
20. Applying the foregoing to the circumstances found established by the Commissioner I consider that the Section 3 defence of prevention of crime would be available and arguable. It is of course not possible to say in abstract whether it would in fact succeed as this would be dependent upon the jury assessment of whether the extent of the force deployed by the residents concerned was proportionate and this can only be determined on the basis of detailed examination of the circumstances pertaining at the time that the force (in the form of the throwing of stones) was used. Put another way the jury would have to assess the facts proved of the situation in order to be satisfied that what was done was in the prevention of crime underway or perceived as to occur in the context of the honest belief as to the facts as held by residents concerned and that it was a reasonable defensive action and not excessive or over-reaction. For example it may be key as to what the loyalist crowd was doing at the exact time of the throwing of stones by the residents, how far away the crowd was and what direction it was moving in.
21. Without sight of witness statements, video evidence, etc it is not possible to say determinatively that the defence would succeed, but in my view it can be said that Section 3 would likely provide a potential/arguable defence to a charge concerning the throwing of stones in the circumstances outlined in my instructions. (Please see my further comments on the potential strength of the defence at paragraph 34 below).
- (3) In the circumstances as the Commissioner has found them established, would Article 7 of the Criminal Damage (NI) Order 1977 [“the 1977 Order”] be likely to provide a defence to a charge of damage to property by the throwing of stones?**
22. The initial point I would make about the application of this potential defence of use of force to protect property is that it appears to me less likely on the facts as found that this would be engaged. There is nothing to suggest that the throwing

of stones by the residents gave rise to damage to property (whereas the throwing of stones at persons in the loyalist crowd could constitute assault or battery or a range of other offences connected with injury or potential injury to the person).

23. If there was no damage to property then there could be no charge of criminal damage under Article 3 of the 1977 Order and reliance on the defence would not arise.
24. Notwithstanding the foregoing I turn to consider the potential application of the Article 7 defence in the event that Article 3 charges were brought.
25. Article 7(2)(b) essentially provides a lawful excuse for the damage to property if,
  - i. the person conducting the act damaged the property in question in order to protect property belonging to himself or another,
  - ii. and at the time of causing the damage he honestly believed that the property was in immediate need of protection (subjective element)
  - iii. and he honestly believed that the means of protection adopted by him were reasonable having regard to all the circumstances (subjective element).
26. Once raised evidentially it would be for the Prosecution to prove beyond reasonable doubt that the elements of the defence were not made out. While this defence is to some degree similar to the prevention of crime defence it differs in that the assessment of reasonableness in the circumstances is not to be an objective one requiring reasonable grounds, rather it is consideration as to whether the stone-thrower himself honestly believed that what he was doing was reasonable in the circumstances. This serves to strengthen and widen the utility of the defence in the stone thrower's favour.
27. Consequently, while again it is not possible in the abstract to say determinatively that in any hypothetical prosecution for criminal damage arising in connection with this matter the protection of property defence would succeed given the fact-sensitive nature of the defence, it appears to me that if the residents throwing stones at the loyalist crowd were prosecuted for criminal damage to property the

Article 7 defence would at least be available as a arguable/potential defence. (Please see my further comments on the potential strength of the defence at paragraph 34 below).

**(4) Does Counsel have any further observations?**

28. No.

Summary and Conclusions:

29. In essence the complaint against Mr. Maskey MLA is that he has failed to comply with a duty under the relevant Code of Conduct to uphold the law and to promote a culture of respect for the law.

30. The basis for this complaint arises from his public remarks, as recorded at paragraph 2 above, regarding the throwing of stones. The complainant contends that stone throwing resulting in injury to the individual or damage to property would constitute a criminal offence (emphasis added).

31. As per my advices above, it is my opinion that it is not correct in law to say that stone throwing resulting in injury to the individual or damage to property would constitute a criminal offence. There will of course be situations where stone throwing resulting in injury or property damage will constitute a criminal offence. However it does not automatically follow that every occasion of stone throwing resulting in injury to the individual or damage to property will constitute a criminal offence, on the basis that either the necessary *mens rea* element will be missing, or, and for current purposes perhaps more pertinently, the stone thrower's actions and the outcome of same in causing injury or damage are justified and lawful under the defences discussed in the foregoing.

32. I reiterate that it is not possible to determinatively say that any of the defences engaged in the circumstances of this matter would definitely succeed if prosecutions of the stone throwers had followed.

33. However I consider that if the facts the Commissioner has found were honestly believed by Mr. Maskey were hypothetically deemed by a jury to have been honestly believed by the stone throwers at the time of the use of force then the

defences of prevention of crime and protection of property would be applicable and engaged, and if raised evidentially by the stone throwers would then in effect have to be disproved by the Prosecution to the high standard of beyond reasonable doubt. The actual decision on same would probably turn on consideration of the reasonableness of the use of force in the circumstances and whether it was excessive or proportionate; this in turn depends upon a range of variables such as the immediacy of the threat, the relative size of the residents' group as against the loyalist crowd, the distances involved, the amount of stones thrown, and any evidence as to the apparent intentions of the crowd at the time as demonstrated by its direction of movement, voicing of intentions, etc.

34. I would however note that if the jury was satisfied that the residents had no other option to protect their homes but to throw stones (as per the Commissioner's finding at the last bullet point of the matters found to be have been within Mr. Maskey's honest beliefs), this would, in my view, point towards the defences being successfully made out.

35. In short, it is my opinion that it cannot be said that the throwing of stones in the relevant context, even if resulting in injury or damage, would, (meant in the sense of could only be seen to), constitute a criminal offence, as the available defences may render the said actions justifiable and lawful.

I trust that the above is in order. If any further advices are required arising from the above I would be happy to consider same.

**Peter Coll**  
**Barrister**  
**The Bar Library**  
**23<sup>rd</sup> May 2013**



Northern Ireland  
Assembly

Appendix 2

# Minutes of Proceedings of the Committee relating to the Report



# Wednesday, 11th September 2013

## Room 21, Parliament Buildings

**Present:** Mr Alastair Ross (Chairperson)  
Mr Steven Agnew  
Mr Sydney Anderson  
Mr Cathal Boylan  
Ms Paula Bradley  
Mr Colum Eastwood  
Mr Declan McAleer  
Mr Fra McCann  
Mr Ian McCrea  
Mrs Sandra Overend

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Assembly Clerk)  
Mr Jonathan Watson (Clerical Supervisor)

**Apologies:** Mr Kieran McCarthy (Deputy Chairperson)

**1.34pm** The meeting commenced in closed session.

### **5. Report dated 13th June 2013 from the Assembly Commissioner for Standards**

Members noted the Clerk's Paper and the Report from the Assembly Commissioner for Standards.

**1.36pm** Mr Colum Eastwood joined the meeting.

The Chairperson welcomed Mr Douglas Bain, Northern Ireland Assembly Commissioner for Standards and invited him to brief the Committee on his Report.

Following discussion the Chairperson thanked Mr Bain.

*Agreed:* Following discussion the Committee agreed to give further consideration to the report at its next meeting on Wednesday 18th September 2013.

*Agreed:* The Committee agreed that the Commissioner's report should be made available for Members to read in a Committee room on Monday 16th and Tuesday 17th September 2013

**[EXTRACT]**

## Wednesday, 18th September 2013

### Room 21, Parliament Buildings

**Present:** Mr Alastair Ross (Chairperson)  
Mr Kieran McCarthy (Deputy Chairperson)  
Mr Steven Agnew  
Mr Cathal Boylan  
Ms Paula Bradley  
Mr Colum Eastwood  
Mr Declan McAleer  
Mr Fra McCann  
Mr Ian McCrea

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Assembly Clerk)  
Mr Jonathan Watson (Clerical Supervisor)

**Apologies:** Mrs Sandra Overend  
Mr Mervyn Storey

**5. Report dated 13th June 2013 from the Assembly Commissioner for Standards on a complaint against a Member**

Members noted the Clerk's Paper and the Report from the Assembly Commissioner for Standards.

*Agreed:* Following discussion the Committee agreed with the Commissioner's conclusion that the Member complained of had not breached the Code of Conduct.

*Agreed:* The Committee agreed that the Clerk should prepare a draft report reflecting the Committee's views for consideration by the Committee at its next meeting.

**[EXTRACT]**



# Monday, 23rd September 2013

## Room 21, Parliament Buildings

**Present:** Mr Alastair Ross (Chairperson)  
Mr Steven Agnew  
Mr Cathal Boylan  
Ms Paula Bradley  
Mr Colum Eastwood  
Mr Fra McCann  
Mr Ian McCrea

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Assembly Clerk)  
Mr Jonathan Watson (Clerical Supervisor)

**Apologies:** None

### **5. Committee Report on a complaint against a Member**

*Agreed:* Members discussed and agreed the draft Committee Report (as amended) and ordered that the report be printed today.

**[EXTRACT]**







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