

**PROTOCOL BETWEEN THE POLICE SERVICE OF NORTHERN
IRELAND AND THE NORTHERN IRELAND ASSEMBLY
COMMISSIONER FOR STANDARDS**

1. Purpose

- 1.1 The purpose of this protocol is to record an agreement between the Police Service of Northern Ireland (“the PSNI”) and the Northern Ireland Assembly Commissioner for Standards (“the Commissioner”) in respect of their roles and responsibilities in connection with allegations received concerning the conduct of Members of the Legislative Assembly (“Members”).
- 1.2 In this protocol references to “Member” include a person who was a Member at the time of the alleged contravention only if the allegation is made within four weeks of that person ceasing to be a Member.
- 1.3 The protocol is intended to ensure that –
- public confidence is maintained in respect of the investigation of potentially criminal conduct by Members;
 - the administration of justice is not impeded by actions undertaken by the Commissioner;
 - the Commissioner’s investigations are not unnecessarily impeded or delayed;
 - there is transparency about the relationship between the Commissioner and the PSNI; and
 - Members whose conduct is under investigation are treated fairly.
- 1.4 The protocol sets out high-level principles and commitments. It covers:
- enquiries into possible breaches of the Code of Conduct together with the Rules relating to the Conduct of Members (“the Code”) which also raise questions of criminal responsibility;

- enquiries by the PSNI into the conduct of a Member which may also constitute a breach of the Code; and
- the handling of suspected contraventions of section 31 of the Northern Ireland Assembly (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (“the 2011 Act”) reported to the PSNI by the Commissioner.

1.5 This protocol does not cover allegations that a Member has broken the criminal law except whilst acting in his or her capacity as a Member.

2. Roles and Responsibilities

2.1 The PSNI have responsibility for investigating criminal conduct within its jurisdiction and have sole responsibility for deciding whether to institute a criminal investigation into a Member’s conduct.

2.2 The Commissioner for Standards is an independent statutory office holder whose functions are set out in section 17 of the 2011 Act. One such function is the investigation of allegations that a Member has broken the provisions of the Code.

3. Principles and Communication

3.1 Members are in the same position in respect of alleged criminal behaviour as any other person.

3.2 The Code is not part of the criminal law. Many actions prohibited by the Code fall far short of criminal behaviour. It is nonetheless possible that there could be overlap between a Commissioner’s investigation into an alleged breach of the Code and a PSNI investigation into a criminal offence. As a general principle criminal proceedings against a Member should take precedence. To avoid any risk of prejudice to the criminal investigation the Commissioner will normally suspend his investigation until such risk no longer exists.

3.3 The principles of co-operation, honesty and transparency underpin this protocol. Both parties are to be mindful of the

need to avoid their actions or decisions impeding upon either a prosecution or disciplinary process.

- 3.4 The PSNI will endeavour to inform the Commissioner if they are assessing or investigating a possible breach of the criminal law that is believed may have been committed by a person whilst acting in his or her capacity as a Member. It is, however, acknowledged that there may be occasions when this information is not shared for operational reasons.
- 3.5 Any such information shall be held in confidence unless the PSNI agree to its disclosure.
- 3.6 The PSNI shall inform the Commissioner if they believe that a breach of the Code may have been committed even though their investigation has not resulted in a file being submitted to the Public Prosecution Service.
- 3.7 The PSNI will be mindful of the need to avoid undue delay to the Commissioner's investigations and undertake to update the Commissioner as to ongoing investigations.
- 3.8 To facilitate communication the PSNI shall appoint an officer to be the single point of contact with the Commissioner.

4. Suspected contraventions of section 31

- 4.1 Section 31 of the 2011 Act creates a number of offences in connection with investigations by the Commissioner. They can be committed by any person, including a Member, upon whom the Commissioner has served a notice either to attend to give evidence or to produce documents.
- 4.2 Where the Commissioner considers that there has been a contravention of section 31, he or she will, as soon as reasonably practicable, report it to the officer appointed in accordance with Clause 3.8 above.
- 4.3 The Commissioner's report shall be in writing and shall specify –

- the name and address of the person suspected of the offence;
 - the date and place of the suspected offence;
 - the provision of section 31 it is suspected has been contravened;
 - the names and addresses of potential witnesses; and
 - a list of the potential documentary evidence in the possession or under the control of the Commissioner.
- 4.4 The report shall be supported by a draft witness statement by the Commissioner.
- 4.5 The PSNI shall assess the evidential information presented and shall, as soon as reasonably practicable, advise the Commissioner in writing whether or not a criminal investigation is to be undertaken.
- 4.6 Where a case is accepted for investigation the Commissioner and PSNI will agree an appropriate timescale for the investigation of the case and will ensure that the progress of the case is monitored at regular intervals.

5. Information Sharing and Legislation

To facilitate the decision making processes and investigation it may be necessary to share information between the parties.

- 5.1 Personal data must only be shared and used in accordance with the provisions of the Data Protection Act 1998 (“DPA 1998”), the Human Rights Act 1998 (“HRA 1998”) and the common law duty of confidence, as interpreted by the courts.

5.1.1 The parties shall ensure that:

- an individual’s right to privacy and family life (Article 8 of the European Convention of Human Rights incorporated by the HRA 1998) is interfered with only in accordance with the law and where it is necessary for one or more of the reasons specified in that Article;

- personal data is managed in accordance with the Data Protection Principles (set out in Part 1 of Schedule 1 to the DPA 1998; and
- personal data is treated confidentially and not disclosed except where the data subject has consented to disclosure, or where there is either a legal requirement or an overwhelming duty to the public to disclose it.

5.2 Access and Usage of Information

Except where its disclosure is required by law shared information must not be further disclosed to any third party without the consent of the originating agency.

5.3 Recording and Retention

5.3.1 The parties agree that shared information will be retained only for the minimum period necessary to achieve the objectives of its disclosure.

6. Security

6.1 The parties acknowledge that the security requirements of the DPA 1998 are applicable to the transmission, storage, processing, use and destruction of shared information.

6.2 The parties will ensure that shared information is only accessed by those who 'need to know' in order to effectively discharge their functions.

6.3 The parties will keep a record of shared information which will be available for audit and inspection.

7. Review

7.1 This protocol will be reviewed at least once every four years or upon the request of either party.

Signed on behalf of the Police Service for Northern Ireland on 26 September 2014.

Andrea McMullan D/Superintendent, PW1531

Signed by the Northern Ireland Assembly Commissioner for Standards on 26 September 2014.

Douglas Bain CBE TD Advocate