

Committee on Standards and Privileges

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

Issues Paper

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Introduction

1. The Code of Conduct and Guide to the Rules Relating to the Conduct of Members regulates the official life of Members of the Northern Ireland Assembly. The responsibility for interpreting and applying it belongs to the Northern Ireland Assembly Commissioner for Standards and the Committee on Standards and Privileges.
2. The current Code of Conduct was approved by the Northern Ireland Assembly during the previous mandate and came into effect on 12 October 2009. All Members of the Assembly are required to comply, and alleged breaches are investigated by the Northern Ireland Assembly Commissioner for Standards (“the Commissioner”). Reports by the Commissioner are considered by the Committee on Standards and Privileges. The Committee decides whether a breach has occurred and may recommend sanctions, which are imposed by the Assembly itself in plenary session.
3. The Committee and the Commissioner have expressed their desire to improve certain aspects of the Code in its current form. As with any code, the task of applying it to diverse circumstances over time has revealed shortcomings in the original drafting: distinctions are not always clearly made and certain provisions are ambiguous.
4. Meanwhile, the experience of other jurisdictions and regulatory bodies has generated new insights on best practice. The Council of Europe’s Group of States against Corruption (GRECO) has recently published its fourth round evaluation report on the United Kingdom, which focuses on the prevention of corruption among elected members of legislatures, judges and prosecutors. A number of its recommendations apply to the Northern Ireland Assembly (as well as to the other UK legislatures). The Committee on Standards in Public Life has also published a review of best practice in promoting good behaviour in public life, “Standards Matter”.
5. The Committee on Standards and Privileges therefore believes that it is timely for a review of the Assembly’s Code of Conduct and Guide to the Rules relating to the Conduct of Members (“the Code of Conduct”) to be carried out.
6. This paper provides the necessary background to the various issues coming up for consideration during the review. It also indicates areas in which the Committee has reached a provisional consensus—provisional because any agreed positions are without prejudice to the outcome of the consultation. It is hoped that the paper will provoke and inform a wide ranging public debate on the standards that should apply to Members of the Assembly.

Terms of Reference

7. The Committee on Standards and Privileges has agreed to carry out a wholesale review of the current Code of Conduct and to bring forward to the Assembly for its approval a new Code of Conduct.

The Committee aims to:

- Agree and clarify what the purpose of the new Code of Conduct should be;
 - Define clearly the scope of the Code and set out those circumstances where it does not apply;
 - Ensure the structure of the Code makes clear the difference between any aspirational sections and those sections which are mandatory and enforceable;
 - Identify all areas of Members' conduct which should be governed by enforceable rules within the Code of Conduct; and
 - Ultimately produce a new draft Code of Conduct which:
 - is relevant, appropriate, comprehensive, well-structured, clear and enforceable;
 - gives confidence to the public about the probity of the Assembly and the accountability of its Members; and
 - is proportionate and reasonable in the requirements it places upon Members.
8. In carrying out its review the Committee will have particular regard to:
 - The Committee on Standards in Public Life's review of best practice in promoting good behaviour in public life ("Standards Matter"); and
 - The recommendations relevant to the Northern Ireland Assembly contained within the Council of Europe's Group of States against Corruption (GRECO) fourth round evaluation report on the United Kingdom.

Purpose of the Code of Conduct

9. The existing Code aims to support and promote the good conduct of Members by adopting high ethical standards and providing the necessary accountability mechanisms. This is a prerequisite for maintaining both public confidence in Members and the reputation of the Assembly.
10. The purpose of the current Code of Conduct is set out as follows:

The purpose of the Code of Conduct of the Northern Ireland Assembly (‘the Code’) is to assist Members in the discharge of their obligations to the Northern Ireland Assembly (the Assembly), their constituents and the public at large.

The Code aims to:

- *Provide guidance to Members and to the public on the standards of conduct expected of Members in discharging their duties as Members of the Assembly;*
 - *Ensure public confidence and trust in the integrity of Members by establishing openness and accountability as the key elements of the Code;*
 - *Provide a transparent system to ensure that Members place the public interest ahead of their private interests and to provide greater clarity to Members on how to reconcile the two; and*
 - *Maintain the integrity of the Assembly by holding its Members to the high ethical standards expected of them by the whole community in Northern Ireland*
11. None of these complementary objectives has become less important since the Code was approved by the Assembly in 2009. However, the Committee has recognised that the language used in the current purpose of the Code does not accurately reflect the binding nature of the obligations imposed. The Code of Conduct does more than “assist” Members, and it goes further than providing “guidance”.
 12. The Committee has therefore proposed the following definition for the purpose of the Code:

The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the Assembly, their constituents and the public at large by:

- (a) *establishing the principles of conduct expected of all Members in undertaking their duties;*

- (b) *setting the rules of conduct which flow from these standards and to which all Members must adhere; and in so doing*
- (c) *providing openness and accountability to ensure public confidence in the standards regime at the Assembly.*

Scope of the Code of Conduct

13. The scope of the current Code of Conduct is set out as follows:

It is important to note that this Code aims to cover the conduct of all Members with respect to anything Members say or do in their capacity as an elected Member of the Assembly. However, it does not, for example, cover:

- *The conduct or activities of Members in their private and family life;*
- *Allegations in respect of the conduct of Ministers, where such an allegation is essentially an allegation that falls within the scope of the Ministerial Code of Conduct and where the allegation does not clearly overlap with the Minister's conduct and duties as a Member; or*
- *Conduct or comments made by Members in the Chamber when the Assembly is sitting (other than that referred to in Standing Order 70).*

Furthermore, Members are entitled to legally express any political opinion that they may hold. In doing so, however, Members should have regard to the Principles of Conduct and should not express opinions in a manner that is manifestly in conflict with the Principles of Conduct.

It is also important to understand that the obligations of Members detailed in this Code are complementary to those that apply to all Members by virtue of the procedural and other rules of the Assembly including the rulings of the Speaker.

Acting in the capacity as a Member

14. The application of the Code to “the conduct of all Members with respect to anything Members say or do in their capacity as an elected Member of the Assembly” is intended to be clear and comprehensive. However, some recent complaints have had for their subject actions which the Commissioner and the Acting Commissioner have not been persuaded to attribute to the political representative. On one such occasion the Commissioner agreed with the complainant that a person might reasonably presume that the action in question had been undertaken in the respondent's capacity as a Member. The Commissioner observed that:

“Had the Code provided that acts or omissions of Members which could reasonably be presumed to have been in a person's capacity as a

Member were within the scope of the Code then there would have been no doubt that the conduct complained of was within the scope of the Code. But the Code does not so provide. Rather, the provision is to the effect that that the conduct must in fact be in the person's capacity as a Member."

15. The Committee accepted the Commissioner's analysis and agreed that, as part of this review, it would give consideration to the scope of the Code and whether it should apply to Members when it could reasonably be presumed that a Member was acting in that capacity. On the one hand the Committee recognises that Members have a life outside of and unrelated to their role at the Assembly. The Committee does not believe that the Code should seek to regulate this part of Members' lives (see paragraphs 21 – 25 below). On the other hand, Members often have a public life and profile which might be perceived (not unreasonably) to arise out of or be related to their role at the Assembly. Members also may have public lives entirely unconnected to their role at the Assembly.
16. The Committee aims to define clearly the scope of the Code and set out those circumstances where it does not apply. The Committee therefore recognises the arguments against introducing a more subjective test of reasonable presumption when determining admissibility. However, the Committee shall give careful consideration to all the evidence it receives as part of this review before taking its final decision.

Application of the Code to Ministers

17. All Ministers are also Members. It is clear that when Ministers are acting in their capacity as Members, the Assembly's Code of Conduct applies to them as it does to any other Member.
18. The conduct of Ministers is also governed by the Ministerial Code of Conduct, which is an integral part of the Ministerial Code, as provided for by Section 28A of the Northern Ireland Act 1998. The Ministerial Code of Conduct is not a Code which has been drafted by, approved by, or is in any other way 'owned' by the Committee on Standards and Privileges. Complaints that the Ministerial Code of Conduct has been breached fall outside the scope of the Assembly's Code of Conduct and outside the remit of the Committee and the Commissioner.
19. However, there are circumstances in relation to Members' interests where the duties of a Member and a Minister overlap (e.g. the requirement to register gifts received as a Minister). In these circumstances the relevant provisions of the Code of Conduct continue to apply to Ministers. A

complaint in these circumstances that a Minister had failed to comply with the requirements set out in the Code of Conduct would be admissible.

20. The Commissioner has pointed out, and the Committee has accepted, that the wording of the scope of the Code of Conduct in relation to Ministers is ambiguous and ripe for revision. The Committee shall therefore take this opportunity to clarify the wording.

Members' private lives

21. The current Code of Conduct does not cover the activities of Members in their private and family life. Although it has been widely accepted that Codes of Conduct should not regulate what elected Members do in their purely private and personal lives, the Committee on Standards in Public Life recently commented in *Standards Matters* that:

*“Public office-holders are entitled to privacy in their personal lives. But it is important to recognise that there can be circumstances in which private behaviour can affect the reputation and integrity of a public institution, and which require an appropriate response. Such intrusion should only happen where there is a clear public interest to justify it, and should always be proportionate.”*¹

22. Last year the Committee discussed with the Commissioner the scope of the Code in relation to criminal conduct. At this time the Commissioner accepted there was an argument that such conduct on the part of a Member, even in a manner totally unconnected with his or her official duties, would not “*tend to maintain and strengthen the public’s trust and confidence in the integrity of the Assembly*” and that it would “*tend to bring the Assembly into disrepute.*” However, the Commissioner went on to identify real practical difficulties in seeking to apply this approach through the Code.
23. The Committee has considered whether there are ever circumstances in which the private behaviour of Members, including criminal conduct in their private lives, could affect the reputation and integrity of the Assembly and, if so, whether there could be a public interest in the Assembly becoming involved.
24. During its consideration of this matter the Committee noted that the law provides for disqualification from membership of the Assembly in various circumstances, including for some kinds of conduct in a Member’s personal or private life. Members may become disqualified if they are

¹ The Committee on Standards in Public Life, *Standards Matter: a review of best practice in promoting good behaviour in public life*, p.26.

convicted of treason; sentenced or ordered to be imprisoned or detained indefinitely, or for more than one year; guilty of corrupt and illegal practice at elections; or subject to a bankruptcy restrictions order, a debt relief restrictions order, or a sequestration award.

25. Given that the law already provides for the removal of Members when convicted of serious criminal offences or in the case of some other irregularities in their private life, the Committee does not believe that it would be either reasonable or proportionate to seek to extend the scope of the Code to Members' private behaviour.

Free Speech

26. The Code of Conduct currently provides “*that Members are entitled to legally express any political opinion that they may hold. In doing so, however, Members should have regard to the Principles of Conduct and should not express opinions in a manner that is manifestly in conflict with the Principles of Conduct*”. When agreeing this position the previous Committee on Standards and Privileges said:

“The Committee believes that it is fundamental within a democracy that elected representatives should be free, within the law, to express any political opinion that they may hold and that the Assembly should not therefore seek to prevent or limit any political opinion being expressed legally. To do so would suppress a Member’s right to free speech and would be inconsistent with the principles of a democratic society

...however ... while Members must be entitled to express their opinions, as public representatives they nonetheless have a particular responsibility for the manner in which they express their opinions, beliefs and views. It is essential that in acting in the interests of the community as a whole, Members recognise their responsibility in this important area.”²

27. Since then the Committee has received reports from the former interim Commissioner, the Commissioner and the Acting Commissioner on investigations into complaints about views expressed by Members on political, social and moral questions³. Despite the scope of the current Code appearing to rule out such complaints, complainants have sought to

² Committee on Standards and Privileges, *Report on the Review of Northern Ireland Assembly Code of Conduct and the Guide to the Rules Relating to the Conduct of Members*, p. 6.

³ *Report on Complaints against Mrs Iris Robinson MP MLA, Report on a Complaint against Mr Sammy Wilson MP MLA by Ms Jennifer McCann on behalf of the All Party Group on Ethnic Minority Communities, Report on a Complaint against Mr Maskey MLA, Report on complaints against Mr Gerry Kelly MLA.*

rely variously on other parts of the Code (usually the duty to uphold the law or the principle of promoting good relations).

28. On each occasion the respective Commissioners have found in favour of the Member. The Committee has consistently affirmed these conclusions and restated its position that it would not be appropriate for the Assembly to seek to prevent or limit the expression of any political opinion (including opinions on social or moral issues) within the law.

29. The Committee has also quoted from the *Standards Matter* report, which cautions that:

*“For political office-holders the right to freedom of speech under the European Convention on Human Rights places some restriction on the extent to which some behaviour which might otherwise be perceived as inappropriate can be sanctioned.”*⁴

30. The Committee is aware of two high profile court cases where elected representatives in the UK successfully overturned a decision that their comments were in breach of the applicable code of conduct.⁵ In light of these decisions the Committee sought legal advice on the extent to which, if at all, the Assembly could restrict a Member’s right to free speech. That legal advice has informed the Committee’s approach in this paper.

31. The position on free speech was well summed up by the Acting Commissioner in his Report on complaints against Mr Gerry Kelly MLA⁶. The Acting Commissioner cited the European Convention on Human Rights which protects the right to freedom of expression. The Acting Commissioner pointed out that this right is not absolute but conditional. It is subject to restrictions considered necessary in a democratic society in the interests of (among other things) public safety or the prevention of disorder or crime. These restrictions, however, are narrowly defined.

32. The Acting Commissioner advised the Committee that Members are entitled to the high level of protection afforded by the ECHR when expressing political opinions. The Acting Commissioner noted that the right to free speech:

“...applies not only to opinions, information or ideas that are favourably received or regarded as inoffensive but also to those that offend, shock, disturb or might be regarded as irresponsible. The demands of pluralism,

⁴ The Committee on Standards in Public Life, *op. cit.*, p.33.

⁵ *Ibid.*, p.33.

⁶ Committee on Standards and Privileges, *Report on complaints against Mr Gerry Kelly MLA.*

*tolerance and broad mindedness are regarded as an essential part of a democratic society”.*⁷

33. At paragraph 51 of his report the Acting Commissioner reflected on the caveat in the current Code of Conduct [that Members should not express opinions in a manner that is manifestly in conflict with the Principles of Conduct] and queried:

*“whether the caveat – which is broadly expressed – is wholly consistent with the specific areas for restricting freedom of expression set out in the European Convention on Human Rights”.*⁸

34. The Committee acknowledges this concern and therefore, having also taken into consideration its own legal advice, proposes that the scope of the Code of Conduct should be clarified to provide that it does not extend in any circumstances to the expression of lawful comments by Members.

Conduct in Committees and the Chamber

35. The Committee has considered correspondence from the Assembly’s Chairpersons’ Liaison Group (CLG) on the application of the Code of Conduct to Members in committee. CLG referred to a Committee report on a complaint about a Member’s behaviour during a committee meeting⁹. CLG drew attention to the fact that that the Commissioner for Standards is precluded from investigating complaints about Members in plenary and suggested that Members may become less willing to pursue forceful lines of questioning if they were concerned that a complaint may be made to the Commissioner for Standards. The Group went on to point out that committee chairpersons are responsible for keeping order in committee and can intervene when it is necessary to do so. CLG recommended that the Committee consider the matter during any future review of the Code.
36. The Code of Conduct does not extend to the conduct of Members in the Chamber, as this is a matter for which the Speaker is responsible. Standing Order 65 provides that the Speaker may order Members to withdraw immediately from Parliament Buildings when they have behaved in a certain manner in the Chamber. It also provides for the Speaker to “name” a Member and for him to put the question that such a Member be suspended from the service of the Assembly for a period of up to five working days. Committee chairpersons have no comparable powers. If a Member refuses to comply with or wilfully disregards the rulings of the

⁷ *Ibid.*, p. 24. *Lingens v Austria* (1986) 8 EHRR 407

⁸ *Ibid.*, p.25.

⁹ Committee on Standards and Privileges, *Report on a complaint against Mr Pat Ramsey MLA from Mr Bertie Faulkner OBE.*

chairperson, the chairperson can suspend or adjourn the meeting, but cannot exclude any individual member from proceedings or impose any sort of sanction. The Committee is satisfied that this difference between the powers of the Speaker and the powers of committee chairpersons provides a sound rationale for the Code excluding from its scope conduct in the Chamber but not conduct in committees.

37. On the single occasion the Committee looked at Members' conduct in committee it did not uphold the complaint. In its report the Committee said it was sympathetic to the view that the complaint should have been treated as inadmissible on the grounds of triviality. The Committee recognised that committees play an important oversight role and to fulfil it may have to challenge witnesses in a way that they find uncomfortable. The Committee concluded its report by saying:

*"The Committee would only expect complaints about conduct in committee to be admissible in exceptional circumstances, and the conduct of a Member would have to be of a significantly greater magnitude than the conduct in this case before the Committee would consider upholding such a complaint."*¹⁰

38. It should be clear, therefore, that committee members should not feel inhibited from subjecting witnesses to challenging questioning. The Committee accepts that it would be entirely wrong if the Code of Conduct required Members to modify their behaviour in committee a way that undermined the democratic process. The Committee is happy for the Code to make this point explicit in order to provide Members with the reassurance that CLG feel is needed.

Quality of service provided by Members

39. The Commissioner and the Committee have, on a number of occasions, received complaints which have expressed dissatisfaction with how Members have addressed a constituency matter. Both the Commissioner and the Committee have taken the view that such complaints are not admissible under the current Code. The Committee specifically addressed this matter in its sixth report of this mandate when it said:

*"The Committee is clear that the Code of Conduct does not place upon Members a duty to respond to or even acknowledge all correspondence sent to them".*¹¹

¹⁰ The Committee on Standards and Privileges, *Report on a complaint against Mr Pat Ramsey MLA from Mr Bertie Faulkner OBE*, p.2.

¹¹ The Committee on Standards and Privileges, *Report on a complaint against Mr Dominic Bradley MLA*, p.2.

40. The Committee has long taken the position that the Code imposes no minimum standard of service on Members. It imposes ethical standards rather than service or performance standards. It does not require Members to support particular causes, make particular representations, or advocate for a constituent irrespective of their own views on the matter in question. Members must be free, within the law, to use their discretion when deciding whether or how to provide services to constituents. Members should answer to the electorate for their performance, not to the Committee.
41. The Committee proposes maintaining this position but acknowledges the desirability of expressing it more clearly in the text of the new Code to prevent misunderstanding, and therefore reduce the proportion of inadmissible complaints.

Principles of Conduct

42. The Committee has given careful consideration to *Standards Matter*, the Committee on Standards in Public Life's review of best practice in promoting good behaviour in public life. The authors of this report conclude that:

*The basic building blocks for promoting high standards remain much as identified by the original Nolan Committee – a set of broadly expressed values which everyone understands, codes of practice elaborating what the principles mean in the particular circumstances of an organisation, effective internal processes to embed a culture of high standards, leadership by example and proportionate, risk-based external scrutiny.*¹²

43. The report includes a number of other relevant comments and recommendations. On values it says:
- Any values system needs to be based on clear, broadly expressed principles which are aspirational, rooted in the core purposes of an organisation and easy to communicate and understand;
 - The seven principles of public life fulfil this purpose. They have now been disseminated widely and remain broadly relevant. However, the descriptors usually associated with each have been revised to bring them up to date and to provide greater clarity
 - Many organisations have chosen to adapt the principles for their own purposes. Some have only chosen to promote four values while some have added to the original seven principles
 - Principles alone are often not enough as a guide for behaviour in everyday life. Research undertaken with the public demonstrates that there can be genuine disagreement about what they imply in specific circumstances. Organisations need their ethical principles to be elaborated in codes which contextualise them by expanding on their practical implications. Holders of public office can then be clear what is expected of them, particularly in grey areas where the application of principles may not be self-evident.
44. On Codes of Conduct *Standards Matter* says:
- They (Codes) need to be sufficiently detailed to provide helpful guidance. But if they become too elaborate people can lose sight of the principles on which they are based, and fail to exercise their judgement or take responsibility for their decisions;¹³

¹² The Committee on Standards in Public Life, *op. cit.*, p. 10.

¹³ *Ibid.*, p. 7.

- For a Code of Conduct to be effective it needs to be:
 - seen as relevant every day and not exceptional
 - proportionate – giving enough detail to help guide actions without being so elaborate that people lose sight of the underlying principles. Over-elaboration can lead to codes being resented and ignored, or encourage creative compliance. Good practice suggests that every code should be reviewed from time to time with this in mind.
 - adapted to the needs and context of each organisation.
 - clear about the consequences of not complying with the code, both for the individual and others.
 - wherever possible, framed positively.
 - personalised.
 - reinforced by positive leadership and embedded in the culture of the organisation.

45. On the relationship between Principles and Codes of Conduct *Standards Matter* makes the following points:
- Codes should never, however, override principles. Behaviour can technically be within the rules set out in a code and yet still offend against underlying principles and values as judged by peers or the general public (whose views may, of course, differ). Adherence to a code of conduct may not, therefore, always provide an adequate defence of poor behaviour; nor should it.
 - It may sometimes seem unfair to those who believe they have followed the letter of the rules to be judged subsequently to have been offended against principles. This can give rise to the perception that what is appropriate behaviour is being reinterpreted after the event. The alternative, however, would be to absolve people from personal responsibility for moral judgements about their own behaviour. It might also create an incentive to expand codes to attempt to cover every eventuality. Neither would be desirable.
 - Principles and codes should therefore be viewed as complementary rather than as alternatives. It is essential to get the right balance between the two. That balance may change over time.
46. The Committee has looked carefully at the relationship between principles and rules in the codes of conduct of other legislatures. It has noted that at the House of Commons, the House of Lords and the Scottish Parliament the principles are both aspirational and used for guidance when applying the rules but are not in themselves enforceable.
47. Although the Assembly's current Code of Conduct has separate sections on principles and rules it does not set out the relationship between the two or what differentiates them. While some principles are abstract and more

easily understood as aspirational (e.g. the Good relations principle states that “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”,) others read more like rules (e.g. the Good Working Relations principle states that “Members must treat other Members and the staff of other Members with courtesy and respect”).

48. Likewise, some of the current rules of conduct read more like principles. For example, the rules state that:

Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public’s trust and confidence in the integrity of the Assembly and never undertake any action which would bring the Assembly into disrepute

49. As recognised by the former Parliamentary Commissioner for Standards (who was considering the same issue at the House of Commons), it is impractical and largely unreasonable for first part of this rule - the positive injunction – to be anything other than aspirational. It would be impossible to require a Member to explain how each and every action they had taken had the effect of maintaining and strengthening the public trust and confidence in the integrity of the Assembly.
50. The Committee therefore believes that the new Code of Conduct should provide for both aspirational principles and enforceable rules. The principles should be taken into consideration when any allegation of breaches of the rules was under investigation. However, the principles would not by themselves provide the basis for a complaint.
51. The Committee also believes that the revised seven principles of public life should be included among the aspirational principles in the Code. The seven principles are widely recognised and understood. They form the cornerstone of ethical behaviour in all other aspects of public life. However, the Committee has agreed that it will consider amending the descriptors of each to reflect specifically the role of a Member.
52. The Committee believes that in order for the principles to be meaningful there must be rules which explain how the principles apply in specific circumstances. The two should complement each other. Currently, however, there are no explicit rules of conduct in the Code which are directly linked to the principles of Equality, Promoting Good Relations, Respect or Good Working Relationships (although some of the descriptions of these principles read like rules and have been interpreted as such in the past). Those principles are as follows:

Equality

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

Promoting Good Relations

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

Respect

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

Good Working Relationships

- *Between Members*
Members should work responsibly with other Members of the Assembly for the benefit of the whole community. Members must treat other Members and the staff of other Members with courtesy and respect. Members must abide by the Assembly Standing Orders and should promote an effective working environment within the Assembly.
- *Between Members and Assembly staff*
The relationship between Members and Assembly staff must at all times be professional, courteous and based on mutual respect. This also applies to contract staff at the Assembly.

53. The Committee has considered these principles and has agreed that the principles of respect and good working relationships should be recast as a single principle. As part of this review, the Committee shall give consideration to what sort of enforceable rule should be derived from this new principle.
54. When considering the principles of equality and good working relations, and the question of whether any enforceable rules should arise from them, the Committee sought legal advice. The Committee wanted to clarify how discrimination law applies to Members. The Committee noted that there are a number of duties imposed on Members, and urges Members to perform them scrupulously, as they would do for any other legal duties.

55. The Committee believes, however, that the Code of Conduct should not impose additional duties upon Members over and above those laid down in statute. The Code should not give the impression that the current existing principles of equality and promoting good relations create duties specific to Members above those set out in legislation. The Committee shall consider, as part of the review, how this might be addressed.
56. The Committee also considered the current Public Duty Principle. It provides that:
- Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.*
- Members have a general duty to act in the interests of the community as a whole.*
- Members have a special duty to their constituents and are responsible to the electorate who are the final arbiter of their conduct as public representatives.*
57. The Committee consider the second and third limbs of the public duty principle to be aspirational principles, as it is difficult to see how these could be translated into absolute duties or rules. However, the provision that 'Members have a duty to uphold the law' has been used in the past as a basis for complaints. Indeed, it was cited in one of the few complaints which led to a Member being found in breach of the Code.
58. The Committee believes that the duty to uphold the law should become an enforceable rule. That rule would be breached only if a Member is convicted of, or admits, an offence committed whilst acting in his or her capacity as a Member.

Rules of Conduct

59. The current rules of Conduct includes rules on managing conflicts of interest; not bringing the Assembly into disrepute; not accepting bribes; having to register and declare interests; not acting as a paid advocate; not making improper use of payments or allowances; complying with guidance issued by the Assembly or the Assembly Commission; not using confidential information for personal gain; upholding the duty of confidentiality in respect of information provided by constituents; and cooperating with an investigation. Each of these rules is considered further below, with the exception of the rules on having to register and declare interests; and not acting as a paid advocate. These rules are considered further in the section on Members' Interests.

Managing Conflicts of Interest

60. The Rules of Conduct currently provide that

“Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest”.

61. This rule duplicates exactly one from the Code of Conduct of the House of Commons. It embodies the original intentions of the Code, as articulated in the First Report of the Committee on Standards in Public Life (which was a response to, inter alia, the cash for questions scandal), and is therefore considered to be a founding provision of that code.

62. The Committee has noted that this rule is broad and as drafted applies to all aspects of a Member's conduct which fall within the scope of the Code. The Committee recognises that the rule may call for difficult and subjective judgements on whether a personal interest has been preferred over a public interest but believes that it is crucial that such a rule should be retained within the Code.

Bribery

63. The Rules of Conduct currently provide that:

“The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter

submitted, or intended to be submitted to the Assembly, or to any Committee of the Assembly, is contrary to law. Any Member who is offered a bribe as described above shall refer the matter to the appropriate authority and to the Committee on Standards and Privileges.”

64. Bribery is perhaps the most serious type of corruption which could occur at the Assembly. As such it is contrary not only to the provisions of the Code but to the law. The current rule is broadly similar to the one found in the House of Commons’ Code of Conduct. That rule was introduced in 1695 and remains no less important today.
65. It hardly needs saying that the general prohibition on bribery is not up for discussion. However, the Bribery Act 2010 has come into force since the last review of the Code, and it will therefore be necessary for the Committee to determine what consequences, if any, this has for the treatment of bribery in the rules.
66. The current rule requires a Member who is offered a bribe to refer the matter to the appropriate authority and to the Committee on Standards and Privileges. There are no known instances of a Member at the Assembly ever having been offered a bribe. However, it is essential that the obligation to report any such instance to the Committee be retained, so that the Committee understands the context in which Members operate and can take remedial action.

Improper use of payments or allowances

67. The Rules of Conduct currently provide that

“No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules applying to such payments, allowances and resources must be strictly observed.”

68. There are similar rules in the Codes of Conduct for each of the UK legislatures. In recent years, the majority of complaints against Members of the House of Commons and the House of Lords have been founded on variations of this rule, something which can be attributed to the long-running expenses scandal.
69. Since the previous review of the Code the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 has come into effect. This Act established an Independent Financial Review Panel (the Panel) to make all determinations in relation to the salaries, allowances and pensions payable to Members of the Northern Ireland Assembly. The Panel was established in July 2011 and the first

report and determination were published on 14 March 2012, with a further determination published on 10 December 2012. Following the publication of the Panel's report and determinations, a number of changes have been incorporated into an updated version of the 'Financial Support for Members Handbook'. This handbook, which has been agreed by the Assembly Commission, clearly sets out the rules which govern the financial support available for Members. It also provides detailed guidance on the governance of the expenditure and expenses regime.

70. There is, once more, no conceivable rationale for eliminating this rule. The public needs to know that there is a robust and independent mechanism in place for investigating alleged misuse by Members of expenses and allowances. Including this rule within the Code of Conduct allows for the Commissioner to investigate alleged breaches and for the Assembly to impose sanctions when such breaches have occurred. It may be, however, that the wording of the rule would benefit from adjustment in the light of new legislative arrangements for allowances payable to Members and the new provisions of the Financial Support for Members Handbook. The Committee shall therefore consult with the Assembly Commission over the wording of the rule.

Compliance with guidance or instructions approved by the Assembly, or issued by the Assembly Commission

71. The Rules of Conduct currently provide that:

“Members shall at all times observe and comply with any guidance or instructions of any kind approved by the Assembly, or issued by the Commission or Assembly Directorates on its behalf or with its authority.”

72. The Assembly Commission is the body corporate of the Northern Ireland Assembly. It has responsibility for ensuring that the Assembly is provided with, the property, staff and services necessary to carry out its functions. In so doing the Assembly Commission, or the Assembly secretariat acting on its behalf, issues authoritative guidance or instructions, differing widely in subject matter and importance. Examples range from the Financial Support for Members Handbook referred to above through to more general housekeeping rules.
73. The Code of Conduct does not set out a comprehensive overview of the various instructions and guidance issued by the Commission. The precise nature and limits of the obligations imposed under this rule are therefore unclear. While it is undoubtedly important for the Assembly Commission to ensure that the Assembly's resources, premises, facilities and services are protected from misuse (or even the perception of misuse), the

appropriateness of enforcing all corporate policies on Members through the Code of Conduct has not been demonstrated.

74. The Committee shall therefore consult with the Assembly Commission to identify the guidance and instructions falling under this rule and to determine in which cases non-compliance should amount to a breach of the Code.

Information Received in Confidence

75. The Rules of Conduct currently provide that:

“Members must bear in mind that information which they receive in confidence in the course of their Assembly duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain”.

It goes on to say that:

“Members shall be mindful of the Data Protection Act and their duty of confidentiality in respect of information provided by constituents”.

76. Two distinct issues are addressed by this rule. The first half is concerned with misuse of information; the second half with proper storage. Members who have access to confidential material in the course of their Assembly duties should not use it for their own purposes or for financial gain. This is intended to prevent what is effectively “insider dealing”. The second half applies to treatment of personal or confidential information obtained by Members in their constituency work. It is less a rule than a reminder of duties created by the Data Protection Act. As it does not supplement what is already imposed by statute, the Committee is minded to remove this half of the rule altogether.

Duty to cooperate with investigations

77. The Rules of Conduct currently provide that:

“Members shall co-operate at all times with any investigation into their conduct by or under the authority of the Assembly. Any substantiated allegation of non-compliance with an investigation will constitute a breach of the Code of Conduct”.

It adds:

“No Member shall lobby a member of the Committee on Standards and Privileges, or the Commissioner in a manner calculated or intended to influence their consideration of a complaint alleging a breach of this Code”

78. These paragraphs establish the responsibilities of Members towards the Commissioner and the Committee on Standards and Privileges. This rule still performs a useful function insofar as it applies to the Committee. However, since the Code was agreed in 2009 the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 has come into effect. The Act provides that in particular circumstances a person who—

- (a) refuses or fails to attend before the Commissioner as required by the notice,
- (b) refuses or fails, when attending before the Commissioner as required by the notice, to answer any question concerning any matter specified in the notice,
- (c) intentionally alters, suppresses, conceals or destroys any document required to be produced by the notice, or
- (d) refuses or fails to produce any such document

is guilty of an offence. Therefore, insofar as this existing rule in the Code applies to the Commissioner, the Committee shall consider whether it has been rendered obsolete by these provisions.

79. On more than one occasion Members who are involved in a complaint – whether as complainants, witnesses or respondents – have made public statements on the progress of the Commissioner’s investigation. The Commissioner has drawn to the Committee’s attention some of the inconveniences associated with this practice. The Committee therefore believes that the duty to cooperate with investigations should be supplemented with a rule requiring Members to maintain the confidentiality of the Commissioner’s investigation.

Unauthorised disclosure of confidential information and other privilege issues

80. On 13 March 2013 the Committee on Standards and Privileges published its second report on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee¹⁴. That report responded to an investigation

¹⁴ Committee on Standards and Privileges, *Second Report on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee*.

by the then interim Assembly Commissioner for Standards into the leak as an alleged breach of privilege.

81. The interim Commissioner made a number of recommendations on the basis of his findings. The following recommendation was directed to the Committee on Standards and Privileges:

“The Committee on Standards and Privileges should consider the need to review the Code of Conduct for Members to reflect more specifically that the unauthorised disclosure of Assembly information constitutes a breach of the provisions of that Code”.

82. The Committee addressed this recommendation in its second report:

“The Committee is clear that leaks of confidential documents by Members are intolerable and amount to a serious breach of the Assembly’s Code of Conduct. The Code requires Members to at all times observe and comply with any guidance or instructions of any kind approved by the Assembly, or issued by the Assembly Directorates on its behalf or with its authority. The Committee is clear that this includes an instruction to treat information in confidence. The Committee would not hesitate to recommend a sanction where a Member was found to have leaked a confidential document.”

83. The interim Commissioner suggested that the Committee should consider reviewing the Code of Conduct for Members to reflect more specifically that the unauthorised disclosure of Assembly information constitutes a breach of the provisions of that Code. The Committee accepted that recommendation.

84. The Committee therefore believes that the new Code of Conduct should include an explicit rule prohibiting the unauthorised disclosure of Assembly information.

Privilege and ‘Contempt’

85. On the occasion of the leaked PAC report, the Commissioner had been asked to investigate the matter as a breach of privilege (under Standing Order 70), as opposed to an alleged breach of the Assembly’s Code of Conduct. The Committee considered this distinction in its second report and observed:

“47. The Interim Commissioner has noted the difference between an investigation into an unauthorised disclosure carried out as a result of a

complaint under the Assembly's Code of Conduct and one arising from a referral of an alleged breach of privilege.

48. In the former case, the complaint would have to meet the usual admissibility criteria. These include a requirement to name the Member who is the subject of the complaint and that the complaint is substantiated (i.e. that it includes enough supporting evidence to establish a prima facie case that a breach of the Code of Conduct has occurred).

49. In the latter case, the requirements of Standing Order 70 apply and the Speaker would have to be satisfied that a breach of privilege had been made out.

50. The Committee is satisfied that, where there is a prima facie case that a Member has disclosed a confidential document without authorisation, it is the Commissioner's role to investigate and determine whether a breach of the Code of Conduct has occurred. The Committee would expect an admissible complaint to have been made in such an instance. However, where no complaint has been made, the Commissioner may choose to undertake an investigation at his own initiative."¹⁵

86. The Committee therefore expressed its preference for investigating leaks as an alleged breach of the Code of Conduct rather than as alleged breach of privilege.

87. Of course, it is not just leaks that might constitute a breach of privilege by Members. The Speaker wrote to the Committee on Standards and Privileges in February 2011 on this issue. In this correspondence he referred to and discussed:

"a broader range of issues which might be described as matters of privilege. This might include Members seeking to interfere with the proceedings of the Assembly by, for example, leaking committee reports or by abusing privileges, such as the right to freely access and use Parliament Buildings for parliamentary purposes. I note that in Scotland some such 'privilege' matters are provided for in the Code of Conduct for MSPs and are therefore considered to be standards issues. It might be useful for the Committee to consider whether this approach would also be appropriate for the Assembly."

88. The Committee understands that the "privilege" matters that are provided for in the Code of Conduct for MSPs are primarily concerned with upholding the confidentiality of Parliamentary papers and proceedings. However, they also address issues such as conduct in the Chamber or in Committee and the use of services of staff of the Parliament.

¹⁵ *Ibid.*, p.8.

89. Elsewhere, the Houses of Parliament claim a jurisdiction in contempt against those who by their actions interfere improperly with the discharge of its functions. Parliament has at its disposal powers of punishment which it may exert against those, whether Members or non-Members, whom it finds guilty of contempt of Parliament. Erskine May defines contempt as:

*“...any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results”*¹⁶

90. A first report by the Joint Committee on Parliamentary Privilege (the Joint Committee report), published in 1999, gave further detail. It defined contempts as:

*“...any conduct (including words) which improperly interferes, or is intended or is likely to improperly interfere, with the performance by either House of its functions, or the performance by a member or officer of the House of his duties as a member or officer. The scope of contempt is broad, because the actions which may obstruct a House or one of its committees in the performance of their functions are diverse in character. Each House has the exclusive right to judge whether conduct amounts to improper interference and hence contempt. The categories of conduct constituting contempt are not closed.”*¹⁷

91. It went on to provide the following comprehensive, though not definitive, list of examples:

- *interrupting or disturbing the proceedings of, or engaging in other misconduct in the presence of, the House or a committee*
- *assaulting, threatening, obstructing or intimidating a member or officer of the House in the discharge of the member's or officer's duty*
- *deliberately attempting to mislead the House or a committee (by way of statement, evidence, or petition)*
- *deliberately publishing a false or misleading report of the proceedings of a House or a committee*
- *removing, without authority, papers belonging to the House*
- *falsifying or altering any papers belonging to the House or formally submitted to a committee of the House*
- *deliberately altering, suppressing, concealing or destroying a paper required to be produced for the House or a committee*

¹⁶ Erskine May, *Parliamentary Practice*, 22nd edition (1997), p.108.

¹⁷ Joint Committee on Parliamentary Practice, *Parliamentary Privilege—First Report*, Paragraph 264.

- *without reasonable excuse, failing to attend before the House or a committee after being summoned to do so*
 - *without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a committee*
 - *without reasonable excuse, disobeying a lawful order of the House or a committee*
 - *interfering with or obstructing a person who is carrying out a lawful order of the House or a committee*
 - *bribing or attempting to bribe a member to influence the member's conduct in respect of proceedings of the House or a committee*
 - *intimidating, preventing or hindering a witness from giving evidence or giving evidence in full to the House or a committee*
 - *bribing or attempting to bribe a witness*
 - *assaulting, threatening or disadvantaging a member, or a former member, on account of the member's conduct in Parliament*
 - *divulging or publishing the content of any report or evidence of a select committee before it has been reported to the House.*
92. The report noted that in the case of Members the following would also constitute contempt:
- *accepting a bribe intended to influence a member's conduct in respect of proceedings of the House or a committee*
 - *acting in breach of any orders of the House*
 - *failing to fulfil any requirement of the House, as declared in a code of conduct or otherwise, relating to the possession, declaration, or registration of financial interests or participation in debate or other proceedings.*
 - *failing to fulfil any requirement of the House, as declared in a code of conduct or otherwise, relating to the possession, declaration, or registration of financial interests or participation in debate or other proceedings.*
93. Some of the matters, but not all, are addressed in the respective codes of conduct of the House of Commons or the House of Lords. However, Parliament retains the authority to require Members not to act in contempt and to impose punishment summarily when they do.
94. Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by the Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Contempts are part of the control exercised by Parliament over parliamentary affairs. Parliament is unique in also possessing its own inherent powers of punishment over non-members. This penal jurisdiction derives from the status of the High Court of

Parliament and the need for each House to have the means to carry out its functions properly. If non-members improperly interfere with Parliament or its Members or officers in discharging their public duties, Parliament for its own protection must have power to take appropriate action.

95. The position at the Northern Ireland Assembly, which is a creature of statute, is clearly very different to that at Westminster. The Assembly does not have parliamentary privilege of the type that exists at Parliament. Nor does it have penal jurisdiction. However, the Assembly does have the power to require Members to adhere to particular standards of conduct and to impose sanctions when these standards are breached. These standards are, of course, set out in the Code.
96. The Committee has agreed to consider the merits of a rule requiring Members not to act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member or officer of the Assembly of his duties as a Member or officer.

Bringing the Assembly into disrepute

97. The Code currently provides that:

“Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public’s trust and confidence in the integrity of the Assembly and never undertake any action which would bring the Assembly into disrepute”.

98. For the reasons given above (see para 49) the first part of this rule can only be understood as an aspirational principle.
99. During this review the Committee shall consider whether the latter part (shall ... never undertake any action which would bring the Assembly into disrepute) should be included as a rule. The Committee recognises that such a provision is subjective and shall therefore consider whether its inclusion would be fair. On the one hand, it might be argued that it should be obvious to Members when conduct could reasonably be regarded as bringing the Assembly or its Members generally into disrepute. On the other hand, if the types of conduct falling under this provision are easily identified, it would be better to specify them under independent rules. The Committee shall also consider whether the Assembly could justify not including a rule which would allow it to take action when a Member had behaved in a manner which did cause damage to the integrity of the Assembly but had not been explicitly prohibited in the Code of Conduct.

Lobbying

100. As part of its review the Committee shall give careful consideration to the issue of lobbying and to how the Code of Conduct could provide additional standards or guidance for Members and their staff when dealing with lobbyists. The issue of lobbying has caused significant concerns at other legislatures where some Members have clearly acted improperly when making representations on behalf of lobbyists.

101. On lobbying the Committee agrees with the Committee on Standards in Public Life that:

“The democratic right to make representations to government and to have access to the policymaking process is fundamental to the proper conduct of public life and the development of sound policy.”¹⁸

102. The challenge for the Assembly, as for any other legislature, is to ensure that such representations are both properly made and do not give rise to impropriety. It should be pointed out that there is no evidence of problems (systemic or otherwise) at the Assembly in relation to the lobbying of Members.

103. It is already the case that there are strict rules in place at the Assembly in relation to Members’ interests. These apply equally to Members’ interactions with lobbyists. Members must therefore register or declare any interests that they have arisen out of their interactions with lobbyists. Paid advocacy is not permitted. Members are prohibited from advocating or initiating any cause or matter on behalf of any outside body or individual, or from urging any other Member of the Assembly to do so, in return for payment or benefit¹⁹.

104. However, the GRECO 4th Round Evaluation Report recommends going further, and calls on the Northern Ireland Assembly, along with the Houses of Parliament and the Welsh Assembly, to review its Code and guidance::

“in order to ensure that ...Members... (and their staff) have appropriate standards/guidance for dealing with lobbyists and others whose intent is to sway public policy on behalf of specific interests.”

105. In light of this recommendation the Committee has informed itself of how the issue of lobbying is dealt with elsewhere. The Committee is clear that, as is the case in Scotland and Wales, Members should not offer or accord

¹⁸ The Committee on Standards in Public Life, *Reinforcing Standards, Review of the First Report of the Committee on Standards in Public Life*, p.86.

¹⁹ See section on Members’ Interests (paragraphs 113-116).

preferential access or treatment to professional lobbyists or their employers. The public must be assured that no person or organisation will gain enhanced access to, or favourable treatment from, any Member thanks to the services of a commercial lobbyist, acting either as a representative or an adviser. The Committee also agrees with the conclusion of the House of Lords' Committee for Privileges and Conduct that Members should take particular care not to give the impression of according greater weight to representations because they come from paid lobbyists; representations should be given such weight as their merit deserves.

106. The Committee accepts the GRECO recommendation and shall bring forward proposals for appropriate standards/guidance for Members and their staff when dealing with lobbyists and others whose intent is to sway public policy on behalf of specific interests. In doing so, the Committee shall give careful consideration to whether guidance for Members is sufficient or whether it is necessary or practicable to introduce additional enforceable rules. The Committee shall also give careful consideration to how a "lobbyist" might be defined.

Staff Conduct

107. The GRECO 4th Round Evaluation Report recommended that:

*"pending any introduction of an accountability system for staff conduct, it should be made clear that Members of the House of Commons and Members of the House of Lords can be responsible for the conduct of their staff when carrying out official duties on behalf of the Member and that, unless otherwise specified, the conduct of the staff should be judged against the standards expected of the Members. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation"*²⁰

108. The Committee will explore the extent to which there may be scope for Members' staff to act in a manner that places private interest before public interest when carrying out official duties on behalf of the Member for whom they work. Clearly any such action would be unacceptable and the Assembly should take whatever steps are reasonable, practicable and proportionate to prevent this from occurring.
109. The Committee believes that there are certain steps that it could take to address this risk. Firstly, the Code of Conduct could specifically prohibit Members from allowing their staff to place private interest before public

²⁰ Group of States against Corruption (GRECO), Fourth Evaluation Round, Evaluation Report United Kingdom, p.45.

interest when carrying out official duties on behalf of Members. The standards expected of Members in this regard should also apply to their staff. Any Member found to have breached such a rule could be sanctioned by the Assembly. The Committee shall give this possibility careful consideration.

110. Secondly, Members could be required to register as an interest any gifts and benefits received by their staff which relate to their role as employees of the Member. The Committee will explore to what extent it might be reasonable in particular circumstances to require Members to declare the interests of their staff and whether there are other further requirements in relation to Members' interests and their staff that might be introduced.
111. The Committee acknowledges that Members, as employers, have a particular responsibility to ensure the proper conduct of their staff and to take action where misconduct occurs. The Committee shall explore with the Assembly Commission what support might be given to Members to assist them in this role. The Committee shall also establish the extent to which the Bribery Act applies to the conduct of Members' staff and what implications, if any, this has for Members.
112. The Committee has concerns as to whether it would be fair to hold a Member responsible for the conduct of his or her staff in circumstances where he or she was unaware of what had occurred. The Committee notes that at the Scottish Parliament it is clear that Members are responsible for the behaviour of their staff within the Parliamentary estate. Other rules exist covering staff use of social media on a Member's behalf and engagement with constituents. The Committee looks forward to discussing with the Scottish Parliament how this works in practice.

Members' Interests

113. Further to section 43 of the Northern Ireland Act 1998 and Standing Order 69, Members are required to register and declare interests. Paid advocacy is not permitted. Members are therefore prohibited from advocating or initiating any cause or matter on behalf of any outside body or individual, or from urging any other Member of the Assembly to do so, in return for payment or benefit.

114. The Code of Conduct includes the following rules which relate to and go beyond the obligations imposed by section 43 and Standing Order 69:

Members shall fulfil conscientiously the requirements of the Assembly in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the Assembly or its Committees, or in any communications with Ministers, Government Departments or Executive Agencies.

In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

No Member shall, in return for payment or benefit, advocate or initiate any cause or matter on behalf of any outside body or individual in any proceeding of the Assembly. Furthermore, Members shall not, in return for benefit or payment, urge any other Member to do so.

115. Rules covering the registration and declaration of interests and paid advocacy are necessitated by statute and Standing Orders. However, as part of the review, the Committee shall consider whether the wording of these rules could be improved. In particular the Committee notes that the injunction 'to bear in mind' is not very strong. It suggests that this part of the rule is advisory rather than prescriptive.

116. The Guide to the Rules Relating to the Conduct of Members is a separate document whose purpose is to assist Members in discharging the duties placed upon them by the Code of Conduct. It is divided into three sections dealing with the registration of interests, the declaration of interests and the Advocacy Rule.

The Register of Interests

117. The Guide clarifies that the Register is designed to hold information of any financial interests or other material benefit a Member receives which might reasonably be thought by others to influence his or her actions, speeches or votes in the Assembly, or actions taken in his or her capacity as a Member of the Assembly. Provision is also made for the registration of non-financial interests and other such information as the Assembly may from time to time require. There are twelve categories of registrable interests. These are:

- (1) Directorships
- (2) Remunerated Employment
- (3) Elected/Public Office
- (4) Electoral Support and Political Donations
- (5) Gifts, Benefits and Hospitality (UK)
- (6) Overseas visits
- (7) Overseas benefits and gifts
- (8) Shareholdings
- (9) Land Property
- (10) Miscellaneous
- (11) Unremunerated interests
- (12) Family members who benefit from Office Cost Expenditure.

118. For each category there are different exemptions and thresholds which need to be taken into account when establishing whether an interest should be registered. The range and detail of information elicited by the twelve categories is broadly comparable to that registered at other legislatures.

119. As part of its review the Committee shall consider each of the current categories of registrable interest and assess the extent to which they might be streamlined and simplified without compromising transparency, and whether the thresholds below which no registration is required remain appropriate.

120. In doing so the Committee shall take into consideration a number of issues which are discussed further below.

The GRECO recommendations

121. The GRECO report made recommendations touching both the registration of gifts and of shareholdings. In respect of gifts, the report recommended (i) providing clearer guidance concerning the acceptance of gifts, and (ii) considering a reduction in the current thresholds for registration.

122. The Code of Conduct currently deals with potential conflicts of interest arising from gifts by ensuring transparency, rather than creating restrictions on what kinds of gift can be accepted. As part of the review the Committee shall consider whether there are any circumstances in which, or categories of person from whom (e.g. lobbyists), the receipt of a gift might be perceived as compromising the integrity of the Member. The Committee shall provide advice to Members based on the outcome of these deliberations. The Committee therefore accepts the GRECO recommendation and shall also consider whether the threshold of 0.5% of the current salary of an Assembly Member (currently £240) remains appropriate.
123. GRECO also recommended that consideration be given to lowering the thresholds for reporting financial holdings (such as stocks and shares). Currently at the Assembly Members must register shareholdings held either personally, or with or on behalf of their partner or dependent children, in any public or private company or other body where either a) the nominal value of the shares at the relevant date is, or was, greater than 1% of the total nominal value of the issued share capital of the company or other body; or b) the market value of the shares at the relevant date exceeds, or exceeded, 50% of the current salary of an Assembly Member (currently £24,000). The threshold for registering shareholdings is lower at the Assembly than any of the other UK legislatures. Nonetheless, the Committee accepts the GRECO recommendation and as part of the review shall give consideration to lowering this threshold further.

Dual reporting and the Electoral Commission

124. Under the Political Parties, Elections and Referendums Act 2000 (PPERA), regulated donees (among whom are MLAs) are subject to controls on the acceptance and reporting of donations. This came into effect for regulated donees in Northern Ireland on 1st November 2007
125. An unintended consequence of PERA is to create a dual reporting requirement: in some circumstances a Member is obliged to report interests to both the Electoral Commission and the legislature. In the case of the Assembly this requirement is even more anomalous as the Electoral Commission keeps the registered details confidential²¹ whereas the Assembly publishes them in the Register of Members' Interests.
126. The Electoral Administration Act 2006 contains provisions to end dual reporting requirements for the holders of elective office. This was

²¹ There is provision in the Northern Ireland Miscellaneous Bill to allow the Secretary of State via secondary legislation to increase the transparency of donations and loans to political parties and regulated donees in NI. This is currently the subject of a public consultation

implemented at the House of Commons in 2009 and since then MPs have registered with the Registrar of Members' Financial Interests (RMFI) all donations and loans previously reported to the Electoral Commission²². The Commission obtains the information it requires from the RMFI, which it then publishes.

127. In order for dual reporting to be ended for MLAs, Assembly reporting rules would have to align completely with the legal reporting requirements under PPERA and an order would then have to be made by the Secretary of State for Northern Ireland.
128. The Committee agreed in the last mandate that consideration should be given to facilitating the introduction of a single point of registration for those details that are collated by both the Assembly and the Electoral Commission. As part of this review the Committee shall explore with the Electoral Commission the extent to which our reporting requirements in respect of electoral support and political donations; gifts, benefits and hospitality; overseas visits; and overseas benefits and gifts might be aligned with the requirements under PPERA without necessarily raising our thresholds for registering these interests.

Declaration of Interests

129. The Guide to the Rules Relating to the Conduct of Members explains that Members should declare any relevant interest, financial or otherwise, or benefit of whatever nature, whether direct or indirect, in debate, or in other proceedings. They should also disclose interests to Ministers and to public officials. The basic test of relevance is the same for declaration as it is for registration; namely, that a financial interest be declared if it might reasonably be thought by others to influence the speech, representation or communication in question. Paragraphs 81 to 94 of the current Guide provide further detail. The Committee shall consider as part of the review whether the advice in paragraphs 81 to 94 might be clarified or simplified while ensuring that transparency is not compromised.

The Advocacy Rule

130. The Guide reinforces the ban on paid advocacy. It provides that:

“Paid advocacy is not permitted. No Member shall, in any proceeding of the Assembly, in return for payment or benefit:

- *advocate or initiate any cause or matter on behalf of any outside body or individual;*

²² Impermissible donations /loans still have to be reported to the Electoral Commission

- *urge any other Member of the Assembly to do so.*

If a financial interest or material benefit is required to be registered in the Register of Members' Interests, or declared in debate, it falls within the scope of the rule.

131. Paragraphs 96 to 102 of the Guide comprise guidelines to assist Members in the application of the rules. These guidelines set certain parameters. Paragraph 96 is particularly significant. It provides that:

When a Member is taking part in any Assembly proceeding or making any approach to a Minister or servant of the Crown, advocacy is prohibited which seeks to confer benefit exclusively upon a body (or individual) outside the Assembly, from which the Member has received, is receiving, or expects to receive a financial or material benefit, or upon any registrable client of such a body (or individual). Otherwise a Member may speak freely on matters which relate to the affairs and interests of a body (or individual) from which he or she receives a financial or material benefit, provided the benefit is properly registered and declared.

132. As part of the review the Committee shall consider whether the Advocacy Rule as elaborated in the Code and Guide remains appropriate. In particular the Committee shall give consideration to amending the Advocacy Rule in line with the proposals from the former Committee on Standards and Privileges at the House of Commons. Its proposal would have the effect of limiting Members' ability to initiate proceedings in relation to bodies or individuals outside the Assembly, from which the Member has received, is receiving, or expects to receive a financial or material benefit. At the Assembly a Member can currently initiate such proceedings provided they do not seek to confer benefit exclusively upon such a body or individual. But if the above proposal was adopted, a Member could not engage in lobbying by initiating a proceeding or approach which seeks to confer, or would have the effect of conferring, any financial or material benefit upon such a body or individual.

Non-financial interests

133. Neither the Code nor the Guide to the Rules restricts Members' participation in proceedings of the Assembly where they have non-financial interests. However, there are circumstances where Members refrain from participation because, for example, to do so would be contrary to principles of natural justice. Thus members of the Committee on Standards and Privileges routinely absent themselves from proceedings in relation to a complaint when they are the complainant or respondent. The Committee shall consider whether either the Code or Guide should

provide formally for Members to be excluded from proceedings of the Assembly when they have certain non-financial interests.

Standing Order 69

134. Having considered all of these matters in relation to Members' Interests the Committee shall consider whether the wording of Standing Order 69 remains appropriate.

Attorney General for Northern Ireland

135. Section 43 of the Northern Ireland Act 1998 applies to the Attorney General for Northern Ireland (AGNI) as if he were a Member. The Committee has therefore written to the Committee on Procedures to request that the duties for Members set out in Standing Order 69 should be extended to the AGNI. As set out above, these are duties to register and declare interests; and a prohibition on advocating or initiating any cause or matter on behalf of any outside body or individual, or urging any other Member to do so, in return for any payment or benefit specified in this context in the Code of Conduct.
136. The Committee had previously agreed that the Northern Ireland Assembly Commissioner for Standards should be able to investigate an alleged breach by the AGNI of any duty in respect of members' interests. It agreed that it (the Committee) should be able to decide whether or not to uphold a complaint in respect of the AGNI and, where it did uphold a complaint, it could recommend to the Assembly the imposition of a sanction.
137. The Committee is aware, and is content, that some of the current categories of registrable interest for Members cannot apply to the AGNI (e.g. electoral support and political donations). As part of its review the Committee shall consider the categories of registrable interest in light of their application, where relevant, to the AGNI.
138. If it proves necessary to amend Standing Order 69 (see above) then it is likely that any such amendments would have to be taken into account when extending the duties therein to the AGNI.

Sanctions

139. Where it appears to the Committee on Standards and Privileges that a member has failed to comply with any provision of the Code of Conduct or Standing Orders 69 to 69C, the Committee may make a report to the Assembly. The report may include a recommendation that a sanction be imposed upon the Member. It is then a matter for the Assembly, having considered the report, to accept or reject the recommendation. .
140. Standing Order 69C (3) provides that sanctions may include, but are not limited to: –
- (a) a requirement that the member apologise to the Assembly;
 - (b) censure of the member by the Assembly;
 - (c) exclusion of the member from proceedings of the Assembly for a specified period;
 - (d) withdrawal of any of the member's rights and privileges as a member for that period;
- and for the avoidance of doubt, the rights and privileges withdrawn under sub paragraph (d) may include the rights to salary and allowances.
141. The Committee believes that these sanctions are effective, proportionate and dissuasive and therefore proposes retaining all four categories. The Committee will continue to recommend a particular sanction based on the circumstances of the breach. In some cases an apology by the Member to the Assembly, or the Member's censure by the Assembly, would be a sufficient penalty. However, for more serious breaches it is right that the Assembly should be able to exclude a Member from proceedings. And for the most serious breaches, particularly those where there has been a cost to the public purse, the Assembly must be able to withdraw rights and privileges, including the rights to salary and allowances. It may also be appropriate for the Assembly to withdraw a Member's rights and privileges during a period of exclusion when a Member has misused those rights and privileges.
142. Standing Order 69C allows for the rectification of errors in respect of a minor or inadvertent failure to register or declare an interest. The Committee believes that it is appropriate to retain a rectification procedure for such breaches.
143. The Assembly may also impose the sanctions referred to above on the AGNI, if the AGNI was found to have breached any his duties in respect of members' interests. However, the Committee has noted that the rights and privileges of the AGNI that may be withdrawn as a result could not include the rights to salary and allowances (as these are not paid to the AGNI by the Assembly).

144. The Committee has agreed that where a Member has sought advice from the Clerk of Standards within 28 days of acquiring an interest and has acted in accordance with that advice (having fully disclosed the circumstances of the interest) it would not generally expect to recommend imposing sanctions for such actions when found to be in breach of the Code by the Commissioner.

Your views

145. The Code, although it is the particular responsibility of the Commissioner and the Committee, is a document for every citizen of Northern Ireland. It can fulfil its purpose only if the standards it sets for Members are understood and endorsed across our different communities. The Committee is therefore eager to secure the widest possible participation during the consultation stage of its review.
146. The Committee has taken no final decisions in respect of what should be included in the revised Code of Conduct that it will ask the Assembly to approve. It will not do so until after it has considered evidence from everyone who wishes to express an opinion.
147. If you wish to submit evidence to the Committee on either the matters raised in this issues paper or on any other matter relevant to the Assembly's Code of Conduct and Guide to the Rules relating to the Conduct of Members, you should do so in writing either by email to committee.standards&privileges@niassembly.gov.uk or by sending your comments to Room 241, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX.
148. The deadline for responses is **Friday 16th May 2014**.