

Committee on Standards and Privileges

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

**Together with the Minutes of Proceedings, Minutes of Evidence, Issues Paper
and Written Submissions and Other Evidence relating to the Report**

Ordered by the Committee on Standards and Privileges to be printed 10 June 2015

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UNTIL COMMENCEMENT OF THE DEBATE IN PLENARY**

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 Jimmy Spratt¹ (Chairperson)
 Ms Anna Lo² (Deputy Chairperson)
 Mr Steven Agnew
 Mr Cathal Boylan
 Mr Tom Buchanan^{3 4 5}
 Mr Colum Eastwood⁶
 Mr David Hilditch^{7 8}
 Mr Declan McAleer^{9 10 11 12}
 Mr Fra McCann
 Mrs Sandra Overend¹³
 Mr Robin Newton^{14 15 16}

- 1 With effect from 10 December 2014 Mr Jimmy Spratt replaced Mr Alastair Ross as Chairperson
- 2 With effect from 1 October 2013 Ms Anna Lo replaced Mr Kieran McCarthy
- 3 With effect from 3 December 2012 Mr Ian McCrea replaced Ms Paula Bradley
- 4 With effect from 8 December 2014 Mr Sammy Douglas replaced Mr Ian McCrea
- 5 With effect from 18 May 2015 Mr Tom Buchanan replaced Mr Sammy Douglas
- 6 With effect from 23 April 2012 Mr Colum Eastwood replaced Mr Patsy McGlone
- 7 With effect from 15 April 2013 Ms Paula Bradley replaced Mr Jonathan Craig
- 8 With effect from 6 October 2014 Mr David Hilditch replaced Ms Paula Bradley
- 9 With effect from 3 July 2012 Mr Alex Maskey replaced Mr Pat Doherty
- 10 With effect from 7 September 2012 Mr Francie Molloy replaced Mr Alex Maskey
- 11 With effect from 7 April 2013 Mr Francie Malloy resigned as a Member
- 12 With effect from 15 April 2013 Mr Declan McAleer replaced Mr Francie Malloy
- 13 With effect from 26 September 2011 Mrs Sandra Overend replaced Mr Michael Copeland
- 14 With effect from 7 May 2013 Mr Sydney Anderson replaced Mr David McIlveen
- 15 With effect from 16 September 2013 Mr Mervyn Storey replaced Mr Sydney Anderson
- 16 With effect from 6 October 2014 Mr Robin Newton replaced Mr Mervyn Storey

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.)
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.

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Executive Summary

1. The Committee on Standards and Privileges has carried out a review of the Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members.
2. As a result of this review the Committee has prepared a new Code of Conduct and Guide to the Rules. The new Code and Guide includes:
 - a redefined purpose;
 - a clarified scope;
 - eleven aspirational principles of conduct;
 - twenty-one enforceable rules of conduct; and
 - a clearer Guide to the Rules, which sets out more detailed requirements, provisions and guidance in relation to certain rules of conduct.
3. The Committee believes that the new Code of Conduct and Guide to the Rules:
 - is relevant, appropriate, comprehensive, well-structured, clear and enforceable;
 - will increase 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.
4. The Committee has recommended that the Assembly agrees to the new Code of Conduct and Guide to the Rules which is set out in Annex 1 of this report.
5. The Committee has recommended that Standing Order 69 should be reviewed in order to determine whether it should be amended to reflect the provisions of the new Code and Guide and that the new Code and Guide should not come into effect until after a review of Standing Order 69 is complete.
6. The Committee has made a number of further recommendations.

Recommendations

Recommendation 1

7. The Committee recommends that the Assembly approves the new Code of Conduct and Guide to the Rules set out in Annex 1. The new Code and Guide includes:
- A redefined purpose;
 - A clarified scope;
 - Eleven aspirational principles of conduct
 - Twenty-one enforceable rules of conduct, including express rules in relation to:
 - Managing conflicts of interests
 - Upholding the law
 - Registering and declaring interests
 - The prohibition of the receipt of certain gifts
 - Paid advocacy
 - The misuse of payments, allowances or resources
 - Assembly policies, guidance and instructions
 - The treatment of confidential information
 - The interference with the performance by the Assembly of its functions
 - The abuse of the position as a Member
 - Not subjecting others to unreasonable and excessive personal attack
 - Investigations into complaints
 - Responsibility for staff
 - Reporting details of approaches to breach the Code
 - Not urging other Members to contravene the Code; and
 - A clearer Guide to the Rules, which sets out more detailed requirements, provisions and guidance in relation to certain rules of conduct.

Recommendation 2

8. The Committee recommends that Standing Order 69 should be reviewed in order to determine whether it should be amended to reflect the provisions of the new Code and Guide.

Recommendation 3

9. The Committee recommends that the new Code and Guide should not come into effect until after a review of Standing Order 69 is complete.

Recommendation 4

10. The Committee recommends that the Assembly welcomes the Independent Financial Review Panel's intention to include in its determination for the fifth Assembly provision for reducing the salary of a Member by 90% for any period during which the Member is imprisoned.

Recommendation 5

11. The Committee recommends that the Executive should publish the guidance contained within the Ministerial Code published in 2000 to which there remains an expectation that, should particular circumstances arise, Ministers would have due regard.

Recommendation 6

12. The Committee recommends that the Committee on Procedures should review whether Standing Order 70 is still necessary.

Recommendation 7

13. The Committee recommends that the Assembly Commission should review the current Secretariat Staff/Member protocol to take account of Rule 15 in the new Code of Conduct and that, following this, consideration shall be given to the Commissioner only investigating complaints that have first been considered under the protocol but which remain unresolved.

Recommendation 8

14. The Committee recommends that it should liaise with the Assembly Commission and others to ensure that, if possible, a code of conduct for Members' staff is agreed and introduced to have effect from the start of the next mandate.

Recommendation 9

15. The Committee recommends that it should be able to make such minor amendments to the Guide to the Rules as appear to it to be justified by experience or necessarily reflect decisions of the Assembly, and to report such amended versions of the Guide to the Rules to the Assembly.

Recommendation 10

16. The Committee recommends that the Assembly agrees in principle that dual reporting requirements for Members should end and that it should work with the Electoral Commission to establish proposals for a single point of registration for those details which are required to be registered under the Political Parties, Elections and Referendums Act 2000.

Recommendation 11

17. The Committee recommends that the Assembly should note the 'Guidance for Members on dealing with lobbyists'.

Recommendation 12

18. The Committee recommends that OFMdfM should give consideration to whether a Register of Lobbyists in Northern Ireland would be appropriate or beneficial.

Recommendation 13

19. The Committee recommends that it should approach Politics Plus to seek to put in place appropriate arrangements for training in relation to a range of standards issues.
20. In addition to these recommendations the Committee invites Executive departments to routinely publish details of gifts, benefits and hospitality etc. or overseas visits accepted by Ministers.

Background to the Review

21. On 12 March 2014 the Committee on Standards and Privileges announced that it had agreed to carry out a review of the Assembly's Code of Conduct and Guide to the Rules relating to the Conduct of Members ("the Code of Conduct").
22. The Code of Conduct 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.
23. All Members of the Assembly are required to comply with the requirements of the Code of Conduct. The existing Code of Conduct was approved by the Assembly during the previous mandate and came into effect on 12 October 2009. Alleged breaches of the Code of Conduct are investigated by the 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.
24. 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. Both the Committee and the Commissioner were aware that a number of aspects of the existing Code of Conduct could either be clarified or rewritten. The Committee and the Commissioner had therefore expressed their desire to improve certain aspects of the Code in its existing form.
25. The Committee was also aware of the publication of two reports in light of which the Committee should reconsider aspects of the Code of Conduct. First, the Council of Europe's Group of States against Corruption (GRECO) had published its fourth round evaluation report on the United Kingdom¹. This report focussed on the prevention of corruption of elected members of legislatures, judges and prosecutors. A number of its recommendations apply to the Northern Ireland Assembly (as well as to the other legislatures in the UK). Second, the Committee on Standards in Public Life had published "Standards Matter", a review of best practice in promoting good behaviour in public life².
26. The Committee therefore believed it was timely and appropriate that a review of the Code of Conduct should be carried out.

1 https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4%282012%292_UnitedKingdom_EN.pdf

2 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf

Terms of Reference of the Review

27. The Committee on Standards and Privileges accordingly agreed to carry out a wholesale review of the existing Code of Conduct and to bring forward to the Assembly for its approval a new Code of Conduct.
28. In doing so, the Committee aimed 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.
29. In carrying out the review the Committee agreed that it would 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.

Work undertaken by the Committee

30. In order to facilitate its review the Committee produced an issues paper (which is included at Appendix 3). The issues paper provided the necessary background to the various issues coming up for consideration during the review. It also indicated areas in which the Committee has already reached a provisional consensus—provisional because any agreed positions were without prejudice to the outcome of the review. The Committee hoped that the paper would provoke and inform a wide ranging public debate on the standards that should apply to Members of the Assembly.
31. Amongst other things, the issues paper set out:
- a proposed new definition for the purpose of the Code;
 - how the Committee aimed to both define clearly the scope of the Code and set out those circumstances where the Code does not apply, including in those circumstances in relation to when Members are acting as Ministers; or acting in their private lives; or expressing comments lawfully;
 - the Committee's position that the Code imposes no minimum standard of service on Members;
 - the Committee's position 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;
 - the Committee's position on the inclusion of certain enforceable rules, including a new 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;
 - the arguments for and against a rule prohibiting Members from bringing the Assembly into disrepute;
 - the Committee's intention to 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;
 - various issues to be considered in relation to the conduct of Members' staff;
 - the Committee's intention to consider whether the wording of the rules in relation to the registration and declaration of interests could be improved;
 - the Committee's intention to 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 (in particular those highlighted in the GRECO report);
 - the Committee's intention to 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 the Political Parties, Elections and Referendums Act 2000 without necessarily raising our thresholds for registering these interests;
 - the Committee's intention to consider whether the section of the Guide to the Rules on declaration of interests might be clarified or simplified while ensuring that transparency is not compromised;
 - the Committee's intention to consider whether the Advocacy Rule as elaborated in the Code and Guide remains appropriate;

- the Committee's intention to 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;
 - why consideration would need to be given to whether the wording of Standing Order 69 remains appropriate;
 - the Committee's intention to consider the categories of registrable interest in light of their application, where relevant, to the Attorney General; and
 - the Committee's position on sanctions.
32. The Committee wrote to key stakeholders, enclosing a copy of the issues paper and seeking views in relation to the review of the Code. Key stakeholders included all 108 Assembly Members, the political parties at the Assembly, the Attorney General NI, the Speaker, the Chairpersons' Liaison Group, the Electoral Commission, the Equality Commission, the Committee on Standards in Public Life, the Northern Ireland Human Rights Commission, and the Northern Ireland Ombudsman.
33. The Committee also called for evidence more widely by publishing the issues paper on the Assembly's website, placing a signpost advertisement in the three main local newspapers, issuing a press release and having a platform piece published in the Belfast Telegraph. (Appendix 7) In doing so the Committee made clear that it was eager to secure the widest possible participation during the consultation stage of its review.
34. The Committee received a total of 22 written submissions. These submissions, which are included in full at Appendix 3, were received from:
- The Assembly Commissioner for Standards
 - The Northern Ireland Ombudsman
 - Dr Tom Walker, Centre for Ethics, Queen's University Belfast
 - The Attorney General for Northern Ireland
 - The Northern Ireland Government Affairs Group (NIGAG)
 - The Electoral Commission
 - The House of Commons Parliamentary Commissioner for Standards
 - The House of Commons Committee on Standards
 - The House of Lords Commissioner for Standards
 - The Northern Ireland Local Government Association (NILGA)
 - The Chartered Institute of Public Finance and Accountancy (CIPFA)
 - The Standards Commissioner at the National Assembly for Wales
 - The Ulster Unionist Party (UUP)
 - The (then) Speaker of the Northern Ireland Assembly
 - The Committee on Standards in Public Life
 - The Equality Commission for Northern Ireland
 - The Community Relations Council (CRC)
 - Dr John Glenn
 - The Association of Professional Political Consultants (APPC)
 - The Northern Ireland Assembly Commission
 - Sinn Féin
 - The Independent Financial Review Panel (IFRP)

The Committee wishes to thank all those who submitted written evidence to the Committee.

35. The Committee also heard oral evidence directly from Dr Tom Walker; the Northern Ireland Ombudsman; Lord Bew, Chair of the Committee on Standards in Public Life; the Equality Commission; the Northern Ireland Assembly Commission and the Independent Financial Review Panel. The official reports of these evidence sessions are included at Appendix 2. Again the Committee wishes to thank those who took the time to present evidence to it and answer its questions.
36. The Committee undertook a number of visits as part of this inquiry. The Committee visited the United States to meet with those with responsibility for parliamentary ethics at the US Congress and the General Assembly of Maryland. The Committee has published an account of the various meetings held during the visit which is included in Appendix 5. The Committee undertook a visit to the Scottish Parliament on 1st May 2014 and published a blog setting out the issues it had discussed. This is also included in Appendix 5. In addition, in October 2014 the then Chair of the Committee met the Chair of the Standards of Conduct Committee and the Standards Commissioner at the National Assembly for Wales. In February 2015 a delegation from the Committee met Dáil Éireann's Committee on Members' Interests and the Standards in Public Office Commission.
37. In support of its review the Committee commissioned research papers on the following issues: Developments related to lobbying in the UK and Ireland; Accountability systems for legislators' staff and guidance on sanctions for misconduct; Codes of Conduct, contempt and developments in relation to the rules on Members' Interests in UK legislatures; Rules on the receipt of gifts and hospitality, and connected persons and elected representatives. These research papers are included in this report at Appendix 6.
38. The Committee also received correspondence from, amongst others, the First and deputy First Minister, the Minister of the Environment and the Independent Financial Review Panel. This correspondence is included in this report at Appendix 7.
39. The Committee gave consideration to a number of relevant reports on standards issues including the recently published report of the Commonwealth Parliamentary Association on Recommended Benchmarks for Codes of Conduct applying to Members of Parliament³; the Northern Ireland local government code of conduct for councillors⁴; and the corresponding guidance for councillors from the Northern Ireland Commissioner for Complaints⁵.
40. Throughout the review the Committee was supported by the Assembly Commissioner. As the Commissioner has responsibility for considering complaints that allege a breach of the Code of Conduct it is important that he should be satisfied that its provisions are well-structured, clear and enforceable.
41. The Committee shared all evidence it received with the Commissioner and is very grateful to him for the input, analysis and advice that he has provided during this review. The Commissioner is content with the proposed new Code and Guide.
42. The Committee also was provided with legal advice in relation to a number of matters which were considered during this review.

3 http://www.cpahq.org/cpahq/Main/Document_Library/Codes_of_Conduct/Codes_of_Conduct.aspx

4 http://www.doeni.gov.uk/index/local_government/code_of_conduct.htm

5 <http://www.ni-ombudsman.org.uk/niombudsmanSite/files/46/4697be5e-5688-4159-94c7-fb4083d78cae.pdf>

Purpose of the Code of Conduct

43. The Committee was concerned that the current purpose of the Code of Conduct did not accurately reflect the binding nature of the obligations which it imposes. The Code of Conduct does more than “assist” Members, and it goes further than providing “guidance”. The Committee’s issues paper therefore proposed a new purpose. This proposal was addressed by both the Ombudsman and the Commissioner. The Ombudsman accepted that a code of conduct should have a purpose which extends beyond ‘assistance’ or ‘guidance’ to Members. He welcomed the proposed revised definition of the purpose of the Code but suggested that the term ‘expected’ used in the Committee’s proposal should be replaced with the term ‘required’. The Commissioner also welcomed a tightening of the Code purpose but said there was merit in making clear that the standards set out in the Code are the minimum expected of Members. He proposed text to reflect his points.

44. The Committee accepted the points made by the Ombudsman and the Commissioner and has agreed that the purpose section of the Code should read as follows:

The purpose of the Code of Conduct is to set out for both Members of the Northern Ireland Assembly (“Members”) and the public the minimum ethical standards required of Members when discharging 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

The Private and Family Lives of Members

45. In its issues paper the Committee considered the scope of the Code of Conduct and the circumstances when it should apply to a Member's conduct. The Committee is clear that, except when in the Assembly Chamber (when Standing Order 65 applies), the Code should apply to all conduct by Members when acting in their capacity as a Member of the Assembly. However, the Committee also needed to consider whether the scope of the Code should extend in any way beyond this, e.g. into Members' wider public lives or even into their private lives.
46. The current Code of Conduct does not cover the activities of Members in their private and family life. However, the Committee on Standards in Public Life has commented 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."*⁶
47. 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.
48. The law already 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 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.
49. Given that the law provides for the disqualification of Members when convicted of serious criminal offences, or in the case of some other irregularities in their private life, the Committee had taken the position that it would be neither reasonable nor proportionate to seek to extend the scope of the Code to Members' private behaviour.
50. This view was shared by some who responded to the Committee and is largely consistent with the position taken in other (but not all) codes of conduct for elected representatives. Dr Tom Walker, Director of the Centre of Ethics at QUB was clear, through his written and oral evidence, that the scope of the Code should not extend to Members' private lives and that clarity of when rules apply and when they do not is key in creating an effective Code of Conduct.
51. The Ulster Unionist Party were also explicit on this issue, stating:
- "All Members of the Legislative Assembly have a life outside their role and the Ulster Unionist Party would seek to ensure that this is respected. We would not support extending the scope of the Code to Members' private lives."*⁷
52. Nonetheless there were others whose views were consistent with the position of the Committee on Standards in Public Life that intrusion into a Member's private life should be allowed in circumstances where it was proportionate and there was a clear public interest to justify it. Whilst acknowledging the right of Members to a private life, they expressed the

6 Standards Matters

7 Appendix 3 – Written Submissions

importance of taking a less definitive approach. Several respondents made reference to private conduct that is likely to bring the Assembly into disrepute and that such conduct should be amenable to sanction, in order to maintain public trust in the integrity of the institution. Others suggested that elected representatives must anticipate some degree of public scrutiny in areas of their private life.

53. The view of the Committee on Standards in Public Life that any intrusion into a Member's private life should be 'proportionate and in the public interest' was supported by the Northern Ireland Ombudsman. This view was also addressed by the Equality Commission for Northern Ireland in its suggestion:

"...that the Committee assures itself that the final agreed approach is compliant with the requirements set under human rights legislation ... any intrusion into the personal or private life of Members should always be proportionate and where there is a clear public interest to justify it..."⁸

54. The Committee, having given careful consideration to this issue, has not been persuaded that intrusion into a Member's private life, even in limited circumstances, would be justifiable or in the public interest. There is little doubt that a Member's actions in their private life could affect public confidence in their ability to carry out their role. This fact does not, however, provide a rationale for extending the scope of the Code, and the ethical standards and enforceable rules therein, to Members' private lives. It is the Committee's opinion that it would be a disproportionate interference into a Member's private life if the scope of the Code was extended into this area, even in limited circumstances.
55. In considering this issue, the Committee's attention was drawn to a case in Scotland where a Member of the Scottish Parliament (MSP) was convicted on a number of charges of assault. The MSP received a sentence of 12 months imprisonment (which was the maximum sentence available to the court). As is the position at the Assembly, an MSP would have to be jailed for more than one year to be disqualified from membership of the Scottish Parliament. As the conviction on that occasion related to the MSP's private and family life, it was not a matter which fell within the scope of the Code of Conduct for MSPs. The Scottish Parliament therefore responded to this MSP's imprisonment by amending the Scottish Parliament Salaries Scheme to provide that for any period during which an MSP was imprisoned, the salary payable to that Member would be reduced by 90%.
56. The Committee has noted that if an MLA was convicted of an offence and received a sentence of imprisonment that did not exceed one year that Member would not be disqualified and, as things currently stand, would continue to receive his or her salary during the period of imprisonment. The Committee takes the view that this is unacceptable.
57. It is the Independent Financial Review Panel, rather than this Committee or the Assembly, which has responsibility for determining the salaries payable to Members. The Committee has therefore written to the Panel drawing this matter to their attention. The Panel has responded by saying that it will include in its determination for the fifth Assembly provision for reducing the salary of a Member by 90% for any period during which the Member is imprisoned. The Committee recommends that the Assembly should welcome this proposal.
58. The Committee takes the view the legislative provisions for disqualification, together with the proposed reductions to a Member's salary during a period of imprisonment, are appropriate and sufficient tools for dealing with the most serious misconduct that might occur in a Member's private life.

When is a Member acting as a Member?

59. A question that occasionally arises is whether, in particular circumstances where misconduct is alleged, a Member is acting either in their capacity as Member of the Assembly or in some other capacity (e.g. in their private or family life, wider public life or even in the capacity of any other political or public office). This question previously arose in relation to a complaint about a Member's use of social media and separately in relation to a complaint about a Member's speech given following a parade.
60. The Committee said in its issues paper that it would give consideration to whether the scope of the Code should be extended to apply to Members when it could reasonably be presumed that a Member was acting in that capacity. However, in doing so, the Committee acknowledged that it had aimed to define clearly the scope of the Code and set out those circumstances where it does not apply. The Committee therefore recognised the arguments against introducing a more subjective test of reasonable presumption when determining admissibility. But, nonetheless, it said it would give careful consideration to all the evidence it received as part of this review before taking its final decision.
61. Dr Tom Walker said in his evidence that the scope should not be extended to cover actions which might reasonably be presumed to have been carried out in a Member's capacity as an MLA. He said that "fairness requires that if enforceable rules are to be applied then the people to whom they apply need to know what is required of them". He also pointed out that "what someone could reasonably think is necessarily a matter of judgement". He suggested that guidance should be provided as to the meaning of 'acting in the capacity of a Member' rather than broadening the scope of the Code.⁹
62. At the oral evidence session with the Committee he went on to point out that
- "there will be disagreement as to what counts as 'reasonable presumption', whether Members can be reasonably presumed to be acting in that role, additional confusion will be added to the code." He also said that there could be a "difference between an MLA's opinion about when they are acting as a Member and that of some members of the public".¹⁰*
63. The Ombudsman acknowledged that delineation between public and private conduct can be difficult. He therefore suggested the test of a 'reasonable bystander'. He said this would involve:
- "...asking the hypothetical question 'what would the perception of a member of the public be of this behaviour' and would the behaviour be consistent with the behaviour that would be expected of someone elected to a position of trust."¹¹*
64. The Ombudsman recognised that this would need careful judgement and accepted that these fine judgements could be very challenging.
65. The Commissioner said there was a sound argument for extending the Code to include acts or omissions of Members in which it could be reasonably presumed they were acting in their capacity as a Member. He said that the rejection of such complaints could undermine public confidence in the standards regime and even in the Assembly itself. He also said that it was reasonable to expect Members to make clear the capacity in which they are acting and that some Members already do so. He pointed out that the decision as to whether or not the presumption is reasonable would be based on all the available evidence including any clarification that had, or had not, been given by the Member.
66. The House of Commons Parliamentary Commissioner for Standards agreed that it is important to clarify the scope of the Code and the Rules for Members and to remove

9 Appendix 3 – Written Submissions

10 Appendix 2 – Minutes of Evidence

11 Appendix 3 – Written Submissions

ambiguities. The Ulster Unionist Party said that guidance would be necessary in relation to 'reasonable presumption' of personal/professional capacity. Citing the example of attendance by a Member at a function, they asked if this attendance should be viewed as being in the capacity as an MLA or as member of a party, or if the two were inter-twined.

67. The Committee has given careful consideration to this issue, including by raising it consistently with the various standards committees at the legislatures it has visited. The Committee accepts that there are occasions when it is difficult to be definitive about the capacity in which a Member is acting – perhaps either because the Member has not given prior consideration to that question or because being a Member only partly accounts for the Member's actions (e.g. when participating in a media interview, attending a public event or using social media). The Committee has therefore taken the view that the Code should continue to apply in these circumstances except when it is clear that a Member is acting exclusively in another capacity (i.e. when acting exclusively in the capacity of any other political or public office; or when acting exclusively in their private, family or wider public life).
68. Of course it shall not be enough for a Member simply to assert that they were not acting as a Member. The Committee would expect the Commissioner to take into consideration all relevant evidence etc. before concluding that a Member was acting exclusively in another capacity.

Application of the Code to Ministers

69. A further question arises about the overlap between the role of a Member and that of a Minister. Of course, 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.
70. 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 Committee has made clear in its issues paper that 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.
71. When Ministers are acting exclusively as Ministers their conduct should be judged against the standards set out in the Ministerial Code of Conduct, not the Assembly's Code of Conduct.
72. However, there are circumstances where the role of a Minister and a Member overlap. Ministers are required under both the Ministerial Code of Conduct and the Assembly's Code of Conduct to register in the Assembly's Register of Members' Interests certain pecuniary/ financial interests. When they do this they do so as Members. And when a Minister participates in proceedings of the Assembly, or makes use of Parliament Buildings or Assembly resources, or interacts with the staff of the Assembly, they are doing so as both a Minister and a Member simultaneously. In such circumstances the relevant provisions of the Code of Conduct continue to apply to Ministers.
73. The Committee has clarified the wording of the scope of the Code of Conduct to make clear that the Assembly's Code of Conduct does not apply to Ministers when they are acting exclusively in the capacity of a Minister. However, it applies to Ministers when they are acting simultaneously as a Member.
74. In its evidence to the Committee on this issue CIPFA said that:
- "There should be no compartmentalisation or overlap of the Code which could lead to misinterpretation or confusion; particularly in relation to applicability of the code to Ministers, in Chamber/Committee and to Members' staff*
- "CIPFA considers that there is a case for evaluating the two codes in tandem to ensure consistency and clear lines of separation and recommend:*
- *The Committee consult the Ministerial Code and ensure there is no room for confusion or overlap between this and the Code for Members.*
 - *The Committee recommend that the Executive revisit the Ministerial Code to ensure that there is consistency of the underlying principles between the two Codes."*¹²
75. The Committee is satisfied that, despite the overlap between the role of Members and Ministers, the provisions of the Assembly Code of Conduct sit clearly and separately from the provisions of the Ministerial Code of Conduct. Unfortunately, despite this distinction, the Commissioner and the Committee continue to receive complaints which relate to the conduct of Ministers acting exclusively in that capacity.
76. The Committee, having taken legal advice on the issue, is clear that neither it nor the Commissioner can investigate such complaints. The Committee is content that such complaints should be sent to the First and deputy First Minister. However, the Committee is aware that there is not yet in place an independent process to investigate a complaint which

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alleges that a Minister has failed to observe the Pledge of Office in respect of duties set out in the Ministerial Code of Conduct.

77. The Committee wrote to the First and deputy First Minister and referred to the possibility of a recommendation that the Executive should agree to introduce an independent process to investigate complaints which allege that a Minister has failed to observe the Pledge of Office in respect of duties set out in the Ministerial Code of Conduct. In their response (which is included in Appendix 7), the First and deputy First Minister said, amongst other things, that:
- In considering such a recommendation the Committee should take full account of the provisions of the Northern Ireland Act 1998;
 - No authority has been conferred on them by the Ministerial Code to determine that a Minister has failed to observe the Pledge of Office; and
 - Any recommendation from the Committee should take full account of the determining role the Assembly itself currently plays in these matters and is mindful of the need to avoid any diminution of the Assembly's own authority.
78. The Committee believes that, in the first instance, it is for the Executive to decide whether it wishes to amend the Ministerial Code to provide for both an independent process to investigate such a complaint and for a report on such an investigation to be made to the First Minister and deputy First Minister. In light of the Assembly's power to impose a sanction upon a Minister for failing to observe the Pledge of Office, the Ministerial Code could also be amended to provide that a report on such an investigation should be laid before the Assembly by the First and deputy First Minister.
79. Of course, any such draft amendments to the Ministerial Code agreed by the Executive would have to be laid (by the First and deputy First Minister acting jointly) before the Assembly for approval.
80. If the Ministerial Code was amended in such a way that (a) reduced the overlap between the provisions of the Ministerial Code of Conduct and those of the Assembly's Code of Conduct and (b) provided for an independent process for the investigation of complaints, the Committee could look again at the circumstances in which the Assembly's Code should apply, if at all, to Ministers.

Freedom of Expression

81. In its issues paper the Committee proposed that the scope of the new Code should be clarified to provide that it does not extend in any circumstances to the expression of lawful comments by Members. The Committee felt the need to clarify this position because of the number of complaints it has received over the years about comments made by Members.
82. As a point of principle the Committee believes, and has consistently stated, that it would be entirely inappropriate for the Assembly to seek to prevent or limit the lawful expression by a Member of any political opinion (including opinions on social or moral issues), even when such opinions could be regarded as offensive or inappropriate.
83. The legal position in relation to Members' right to freedom of expression supports this principle. The Committee has given careful consideration to a number of judgements which have considered the enhanced protection given to political expression under Article 10 of the European Convention on Human Rights. The most recent of these was the judgement (of 15 May 2014) of Mr. Justice Hickinbottom in the case of Cllr Patrick Heesom vs. the Public Service Ombudsman for Wales¹³. The Committee noted Mr Justice Hickinbottom's judgement and, in particular, the following points which appeared to be relevant to the matters being considered as part of the review of the Code.
- While freedom of expression is important for everyone, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of expression of an opposition Member of Parliament ... call for the closest scrutiny on the part of the Court.
 - Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Therefore, in the political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.
 - The protection goes to "political expression"; but that is a broad concept in this context. It is not limited to expressions of or critiques of political views (but rather extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others. The cases are careful not unduly to restrict the concept; although gratuitous personal comments do not fall within it.
84. The Committee has taken full account of this judgement and others during this review of the Code. The Committee has also given consideration to the various comments that stakeholders made on the issue.
85. Dr Tom Walker said the scope of the Code should not extend to lawful comments. The Ombudsman also endorsed this position. The House of Commons Committee on Standards said:
- "We share the Committee's view that "it would not be appropriate ... to seek to prevent or limit the expression of any political opinionwithin the law."*¹⁴
86. Sinn Féin supported the Committee's position as did the Ulster Unionist Party who said:
- "...whilst not all comments may be agreeable, the Ulster Unionist Party would not support extending the scope of the Code to lawful comments by Members."*¹⁵
87. Lord Bew told the Committee that he had:

13 [2014] EWHC 1504 (Admin) <http://www.bailii.org/ew/cases/EWHC/Admin/2014/1504.html>

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“...defended people's right to say things in the Chamber, which I am sure that I would ferociously disagree with, with no legal penalty. However, outside the Chamber, they are in the same position as everybody else under the law.”¹⁶

88. The Equality Commission offered qualified support for the Committee's position. They said:

“...whilst Members should be free to legally express any political opinion ... they should not do so in a way that offends the underlying principles relating to equality or good relations.”

They also said they

“...agree that the wording of the clause must be compliant with the requirements set out in human rights legislation. We recommend (taking) a proportionate approach to striking the appropriate balance between permitting Members to express lawful political opinion, yet expressing it in such a way that it does not offend the underlying principles.”¹⁷

89. The Committee remains satisfied that it would be entirely inappropriate for the Assembly to seek to prevent or limit the lawful expression by a Member of any political opinion. The scope therefore clarifies that the Code upholds Members' right to freedom of expression.
90. It should be pointed out, however, that the right to freedom of expression by politicians is not absolute. The Committee and the Assembly could restrict this freedom provided that the restriction was both prescribed by law and was, for example, necessary in a democratic society for the protection of the reputation or rights of others. The Committee has also noted that gratuitous personal comments made by a politician do not fall within the definition of 'political expression' which attracts greater protection under Article 10. The fact, therefore, that the new Code clarifies that it upholds Members' right to freedom of expression is in no way inconsistent with Rule 15 (referred to in further detail below) which provides that Members shall not subject anyone to unreasonable and excessive personal attack.
91. The scope of the Code also makes that clear that it upholds Members' privilege as provided for by Section 50 of the Northern Ireland Act 1998. This privilege relates to the law of defamation. It ensures that Members are free to debate and the Assembly is free to report on matters of public interest without fear of an action for defamation being raised. The rule providing that Members may not subject anyone to unreasonable and excessive personal attack should not be seen as placing a restriction on the proper application of this statutory privilege.

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Members conduct in the Chamber and in Committee

92. The Committee had previously 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 previous Committee report on a complaint about a Member's behaviour during a committee meeting. CLG drew attention to the fact that the Commissioner for Standards is precluded from investigating complaints about Members in plenary and suggested that committee members may become less willing to pursue forceful lines of questioning if they were concerned that a complaint may be made to the Commissioner. CLG 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.
93. The Code of Conduct does not extend to the conduct of Members in the Chamber, as in this domain the Speaker has responsibility. 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 committee member refuses to comply with or wilfully disregards the rulings of the chairperson, the chairperson can suspend or adjourn the meeting, but cannot exclude any individual member from proceedings or impose any sort of sanction.
94. The Committee has 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 a previous report on a complaint about a member's conduct in committee 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."*¹⁸
95. It should be clear, therefore, that Members are not inhibited from subjecting witnesses to challenging and robust questioning.
96. During the review stakeholders recognised and accepted that robust questioning may be necessary as part of the democratic process. However some pointed out that in carrying out this role committee members should have due regard to the need for respect and good working relations.
97. The Commissioner stated in his written evidence that:
- "...Members should not be required to modify their behaviour in Committee in a way that undermines the democratic process ... (however)... The need for challenging and robust questioning should never be an excuse for gratuitously offensive conduct or deliberately untruthful statements"*¹⁹
98. The Ombudsman said:
- "Members should not feel inhibited in questioning witnesses in a robust manner ...this should be balanced against the need to respect ...and promote good relations"*²⁰

18 NIA 114/11-15 <http://www.niassembly.gov.uk/assembly-business/committees/2011-2016/standards-and-privileges/reports-2011-2016/report-on-a-complaint-against-mr-pat-ramsey-mla-from-mr-bertie-faulkner-obe/>

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99. Subsequently, during oral evidence, when discussing the questioning of witnesses and other behaviour in Committee meetings, the Ombudsman made, amongst others, the following remarks:
- “...one of the key areas is the chairmanship of a Committee and how that is managed.”*
- “There is a training issue and a development issue, and there is a briefing of witnesses as well.”²¹*
100. The Committee remains satisfied that the difference between the powers of the Speaker and the powers of committee chairpersons provide a sound rationale for the Code excluding from its scope conduct in the Chamber but not conduct in committees. The Assembly needs to have a mechanism for dealing with instances of serious and unacceptable behaviour by members in committee.
101. Despite the scope of the Code extending to committees, the fact that it upholds Members' right to freedom of expression (and to privilege) means 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 in a way that undermined the democratic process.
102. Of course this position does not mean that members are free to subject witnesses, or others, to bullying behaviour. The provisions of Rule 15, which is considered in further detail below, continues to apply to Members when they are in committee.
103. The application of the Code of Conduct to committees does not mean that it should be invoked to deal with the disputes and disagreements that occur in the normal course of committee business. Maintaining good order in committee continues to be the responsibility of the Chairperson and committee members should accept the Chairperson's authority in this regard.
104. Rule 13, which is considered in further detail at paragraphs 196 to 208, also continues to apply to Members when they are in committee. Rule 13 provides that Members shall not act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member, officer or staff of the Assembly of their duties. Therefore, if a Member's behaviour in committee was so improper, unreasonable and persistent that a Committee was unable to exercise its functions, that Member could be in breach of Rule 13.
105. The Committee is also clear, however, that Rule 13 cannot be used as means of challenging how committee chairpersons choose to use their discretion in carrying out their functions. This issue arose during a recent inadmissible complaint. The Committee accepted that perhaps where a decision by a chairperson is irrational and without any conceivable justification his or her actions might constitute a breach of the new Rule 13. However, unless that very high threshold was reached, neither the Commissioner nor the Committee on Standards and Privileges would accept as admissible complaints under Rule 13 about allegedly improper decisions by a committee chair.
106. In its report on the Review of the Committee System, the Committee Review Group (CRG) recommended that:
- “...each committee agrees protocols relating to conduct during committee meetings which, in particular, discourage members from leaving, other than in exceptional circumstances, after an evidence session or briefing has commenced.”²²*

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22 NIA 135/11-15 <http://www.niassembly.gov.uk/assembly-business/committees/report-of-the-committee-review-group-review-of-the-committee-system-of-the-northern-ireland-assembly-october-2013/>

107. Following this, the Chairpersons' Liaison Group agreed a broad outline of what may be included in the protocol which committees may use as a template or guide. Therefore, in addition to the scope of the Code applying to committees, committees are free to agree their own additional complementary standards of conduct.

Quality of Service provided by Members

108. 108. 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”.²³*
109. 109. 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.
110. The Committee therefore proposed through its issues paper maintaining this position but acknowledged 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.
111. All three respondents on this issue were very clearly in agreement with the Committee’s position. The House of Commons Committee on Standards quoted its previous Commissioner, with whom it agreed:
- “...ultimately it is for the electorate, and not the House, to decide on the promises and performances of their various candidates, including any sitting Member.”*
- “...I do not consider that the way the Member handles constituency business ...should be ad judicable by the Commissioner.....the wholly exceptional case (is) where there is clear evidence that the Member’s conduct has been so serious and blatant as to cause significant damage to the reputation of the House.”²⁴*
112. The House of Commons Parliamentary Commissioner for Standards stated that she regularly receives complaints that often come as a last resort from often distressed complainants. She said:
- “...it is important to be as clear as possible about Members’ discretion in the way in which they undertake their responsibilities and the corresponding expectation that constituents may have of the complaints system.”²⁵*
113. The National Assembly for Wales Commissioner for Standards estimated that around half of the complaints he receives relate to inadmissible ‘performance’ issues. He is of the opinion that Members are essentially answerable to the electorate and stated:
- “Members must conduct themselves in whatever way they feel appropriate to the pursuit of the democratic process.”²⁶*
114. 114. The scope of the new Code makes clear that it imposes ethical standards upon Members rather than service or performance standards.

23 NIA 115/11-15 <http://www.niassembly.gov.uk/assembly-business/committees/2011-2016/standards-and-privileges/reports-2011-2016/report-on-a-complaint-against-mr-dominic-bradley-mla/>

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The Principles of Conduct

115. 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."*²⁷

116. The Standards Matter 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; and
- 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.

117. The Committee proposed through its issues paper 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 stated that it would consider amending the descriptors of each to reflect specifically the role of a Member.

118. The Community Relations Council (CRC) stated in written evidence that it agreed that the seven principles of public life should be included, and believed that this would bring complementarity between this code and the code for local councillors.

119. In written and oral evidence, the CSPL stated that, while encouraged by the extent to which the Committee's emphasis on the Seven Principles of Public Life, it had reservations regarding the Committee's suggestion that it might amend the descriptors. It also encouraged the Committee to ensure a clear separation between the seven widely recognised principles and any that the Committee may wish to add.

120. The Committee was content to accept the CSPL's advice and has therefore included the seven principles of public life in the Code of Conduct and has faithfully reproduced the revised descriptors of each. The section on the seven principles therefore reads as follows:

1. *Selflessness*: Members should act solely in terms of the public interest.
2. *Integrity*: Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They

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should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

3. *Objectivity*: Members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
4. *Accountability*: Members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. *Openness*: Members should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. *Honesty*: Members should be truthful.
7. *Leadership*: Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Additional Principles of Conduct

121. The current Code of Conduct includes the principles of Equality, Promoting Good Relations, Respect and Good Working Relationships. As part of this review the Committee considered whether these principles remained appropriate.
122. In particular, the Committee considered whether the principles of Respect and Good Working Relationships should be recast as a single principle. The Committee stated that it would also give consideration to what sort of enforceable rule should be derived from any new principle.
123. In relation to the principles of Equality and Promoting Good Relations, the Ombudsman urged caution in taking any approach which restates the basic tenet that a Member must be expected to uphold the law. He said that from a point of public trust:

*“...there is a need to demand more by way of standards than simply upholding the law...”*²⁸
124. The Equality Commission recommended that the Code retains clear principles on both Equality and Promoting Good Relations. They recommended a number of key changes to the current wording of these principles.
125. The CRC drew attention in its written evidence to the provisions of Section 75 of the Northern Ireland Act 1998 and recommended linking this to the Good Relations principle. In addition it said that it would be useful for the Committee to review the Promoting Good Relations principle in the context of legislation which defines good relations.
126. The Equality Commission was not in favour of the Committee's proposal to amalgamate the Respect and Good Working Relationships principles as it considered the two to be quite separate, the first being wide ranging, the second more specific to the Assembly.
127. The Ombudsman cautioned that any newly drafted rule arising from the amalgamation of Respect and Good Working Relationships should properly reflect the need to treat all persons with respect and courtesy. He said that Members should not engage in rude or offensive behaviour that could have the potential to undermine good working relationships. He said that context was important and he drew a comparison between robust political exchange and offensive or personal remarks that are made to members of staff.

128. Having considered all the comments made the Committee has accepted the recommendations made by the Equality Commission. The Committee has therefore updated the wording of the principles of Equality and Promoting Good Relations to reflect the Commission's comments. The Committee has also retained the Good Working Relationships and Respect as two separate principles. The Committee has taken the opportunity to clarify the wording of these principles.

129. The additional Assembly Principles of Conduct are therefore as follows:

Equality: Members should promote equality of opportunity and not discriminate against any person, 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 should act in a way that is conducive to promoting good relations by tackling prejudice, promoting understanding and respect and encouraging participation between people on the grounds of different religion, political opinion, race, gender, age, sexual orientation and disability.

Respect: Members should show respect and consideration for others at all time.

Good Working Relationships: Members should work responsibly with other Members of the Assembly for the benefit of the whole community. Members' working relationship with Assembly staff should at all times be professional, courteous and based on mutual respect.

Aspirational Principles and Enforceable Rules

130. On the relationship between Principles and Codes of Conduct Standards Matter makes the following points:

*"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 and expand 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. Those holding them to account can also be clear."*²⁹

131. 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.

132. 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, others read more like rules. Likewise, some of the current rules of conduct read more like principles.

133. The Committee therefore proposed in its issues paper that the new Code of Conduct should provide for both aspirational principles and enforceable rules. The principles should, as has always been the case, 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.

134. Stakeholders expressed a range of opinions on this issue. The Ombudsman advocated an approach whereby behaviour which complies with the basic rules may still breach the

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underlying principles and that any complaint based solely on principles must be supported by evidence. In written and oral evidence he emphasised the importance of ethical codes having an aspirational element, based on standards and values that ‘raise the bar’. During the oral evidence session the Ombudsman stated:

“...a revised code should provide for clear and unambiguous rules, but also standards of conduct that must be honoured. If the MPs’ expenses scandal has taught us anything, it is that rules alone are not enough to regulate behaviour.”

“...you get rules and people will follow rules, but actually there is an expectation that the context and emphasis taken in relation to a rule also needs to be understood. So there is an aspirational side to this ...”³⁰

135. The Ombudsman also said that flexibility in the code is essential if it is to remain current and relevant for a reasonable period. He advised the Committee that:

“If you set a code of ethics that is rule-based only, you will never be able to end that list of rules, because in its context, as society moves, standards change and public expectations change, you will always be either adding to those rules or changing them. There needs to be some underpinning of the rules.”

“I think that a rules only-based approach is an impossible set of rules that would need to be updated and that would actually miss an opportunity to raise standards.”³¹

136. Dr Tom Walker of QUB offered an interesting, contrasting view in relation to aspirational principles and enforceable rules:

“If you have principles and complaints can be brought if you do not comply with a principle, I think that just muddies the waters and makes it much less clear what is included, what is not included, what is required and what is an aspiration. Codes work better when it is clear which category different things fall into. I would resist having principles to do that kind of catch-all.”

“...rules should be phrased in a way to say that you shall do this or that or not do this or that, whereas the aspirations . . . should not be written in a way that allows them to be confused with the rules They can set the bar very high because they will not be imposed or enforced on people.”³²

137. In its written evidence the CSPL clarified its position. It said:

“The Committee is encouraged by the extent to which you draw from the recommendations of our report Standards Matters, particularly your emphasis on providing both aspirational principles and enforceable rules which will mutually complement each other, an approach the Committee promotes across the landscape.”³³

138. The CSPL offered the following approach during oral evidence as regards the relationship between principles and rules.

“The fundamental thing is to look at any rule that you might adopt and ask, “Is it physically in discordance with the principles?” The job is to ask, “Have we suggested a rule that means that we are not defending honesty, accountability or integrity?”

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“I think that, from your point of view, the way to go is to aim for a clear set of rules and just have the principles there as a backdrop. I can well understand why the drive is on from your end to modernise and clarify.”³⁴

139. Another issue that emerged during written and oral evidence in relation to the separation of principles and rules was the action that could or should be taken even where a breach of the rules was not found. The Ombudsman suggested that, without making a finding of a definitive breach of the code, one could certainly indicate that the behaviour in question was not behaviour that could be condoned or accepted. In fact, the Equality Commission, in its oral evidence session, recognised that the Committee has already done this in the past:

“You have not just said that it is not a breach but have gone further. That has been really helpful, as have your views on a particular complaint.”³⁵

140. The Committee has agreed that Members should 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 should never undertake any action which would bring the Assembly into disrepute.
141. Members are influential leaders, to whom the public often look to provide an example. In fact, the ethical behaviour of elected representatives can have an impact upon the ethical standards and norms displayed across society more generally. The Assembly should therefore encourage and expect Members to observe the aspirational principles of conduct. But whilst these principles will be taken into account when both the Committee and the Commissioner consider the investigation and determination of any potential breaches of the rules of conduct, the Committee has agreed that the principles are not themselves enforceable.
142. Members will only be found to have breached the Code of Conduct when they have breached one of the rules of conduct. However, as the guardian of the principles of conduct at the Assembly, the Committee will consider how best to promote them and will draw attention to practices and conduct that are incompatible with them. In such instances the Committee may look at whether rules need to be updated or amended in order to ensure that such conduct does not persist.

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The Rules of Conduct

143. The Committee has agreed that the new Code of Conduct should include twenty-one enforceable rules of conduct. These rules spell out exactly things that Members must do and must avoid doing in order to act in a manner consistent with the principles of conduct. Some of these rules are entirely new; others are either the same or variations of existing rules.
144. The twenty-one rules are as follows:
1. You shall base your 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.
 2. You shall uphold the criminal law. You fail to uphold the law only if you are convicted of, or admit formally, an offence committed when acting in your capacity as a Member.
 3. You shall uphold the law in relation to equality. You fail to uphold the law in relation to equality only if a court or tribunal makes a finding against you, or you accept formally that you have breached the law, when acting in your capacity as a Member.
 4. You shall register in the Assembly's Register of Members' Interests details of all relevant interests. A relevant interest is any interest which might reasonably be thought to influence the way in which you act as a Member. [The categories of registrable interest are set out in Schedule 1]
 5. You shall declare, whether in Assembly proceedings or in any approach to a Minister, public representative, public body or public official, any relevant interest which might reasonably be thought to influence your approach to the matter under consideration.
 6. You shall not accept any gift, benefit or hospitality that might reasonably be thought to influence your actions as a Member.
 7. You shall not, in return for payment or benefit, advocate or initiate any cause or matter on behalf of any outside body or individual. Nor shall you, in return for benefit or payment, urge any other Member to do so.
 8. You shall not seek to confer benefit exclusively upon a body (or individual), from which you have received, are receiving, or expect to receive a financial or material benefit, or upon any client of such a body (or individual).
 9. You shall not misuse any payment, allowance or resources available to you for public purposes. You shall strictly observe the requirements of any determination made by the Independent Financial Review Panel and any rules made by the Assembly Commission applying to these or any other payments, allowances and resources.
 10. You shall observe and comply with the Rules on All-Party Groups and any policy, guidance or instructions of any kind approved by the Assembly, or issued by the Assembly Commission or Assembly secretariat staff on its behalf or with its authority.
 11. You shall use information which you receive in confidence only in your capacity as a Member. You shall never use, nor attempt to use, such information for the purpose of financial gain.
 12. You shall disclose confidential or protectively marked information only when you are authorised to do so.
 13. You shall not act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member, officer or staff of the Assembly of their duties.

14. You shall not use, or attempt to use, your position as a Member to improperly confer an advantage or preferential treatment for either yourself or any other person; or to avoid disadvantage or create disadvantage for someone else.
15. You shall not subject anyone to unreasonable and excessive personal attack.
16. You shall co-operate at all times with any investigation by or under the authority of either the Northern Ireland Assembly Commissioner for Standards or the Assembly.
17. You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority.
18. You shall not lobby a member of the Committee on Standards and Privileges, or the Commissioner in a manner calculated or intended to improperly influence their consideration of whether a breach of the Code of Conduct has occurred.
19. You shall take reasonable care to ensure that your staff, when acting on your behalf, upholds these rules of conduct.
20. You shall, if approached by anyone to act in a way that would breach the Code of Conduct, report without delay details of the approach to the Committee on Standards and Privileges, and to any other appropriate authority.
21. You shall not urge another Member to contravene any rule of conduct.

Managing conflicts of interests

145. 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”.
146. This rule replicates 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.
147. The Committee had 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 had recognised that the rule may call for difficult and subjective judgements on whether a personal interest has been preferred over a public interest but expressed its belief through its issues paper that it is crucial that such a rule should be retained within the Code.
148. No stakeholder commented on the Committee’s proposal in relation to this rule. The Committee is satisfied that this rule should be retained within the new Code. It therefore becomes Rule 1.

Upholding the Law

149. During the review the Committee considered the existing 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.

150. 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.
151. The duty to uphold the law has been interpreted in the past by complainants in different ways. Some have interpreted it as limiting Members’ ability to express their opinions. However, this interpretation could be inconsistent with the right to freedom of expression provided for by Article 10. The Committee has already made clear that it would be entirely inappropriate for the Assembly to seek to prevent or limit the lawful expression by a Member of any political opinion (including opinions on social or moral issues), even when such opinions could be regarded as offensive or inappropriate.
152. The Committee proposed in its issues paper 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.
153. The Commissioner agreed with the Committee’s proposal and made suggestions for the Committee to consider around the technical aspects of this rule.
154. The National Assembly for Wales Commissioner for Standards said:

“To those who say the courts deal with criminal matters, I agree. In my view however, even if it is only to say “We disapprove but (e.g. because the court has imposed xyz penalty) impose no further sanction” the public rightly expects an institution to act, and be seen to act, where its reputation is sullied by the conduct of an Assembly Member.”³⁶
155. The new Code is clear that Members must uphold the criminal law. Rule 2 provides that Members fail to uphold the law only if they are convicted of, or admit formally, an offence committed when acting in their capacity as a Member.
156. However, in addition to the criminal law, the Committee also gave consideration to the law in relation to equality. The Committee had considered what enforceable rules there should be relating to the principles of Equality and Promoting Good Relations. The Equality Commission recommended that there should be an enforceable rule making clear that Members must not discriminate on any equality grounds or act in a manner that is in breach of hate crime legislation.
157. The Committee agreed. Of course as far as hate crime legislation is concerned, this would be covered by Rule 2. As far as the law on equality is concerned the Committee has previously noted that there are a number of legal duties imposed upon Members as a result of legislation prohibiting discrimination. The Committee has urged Members to perform these duties scrupulously, as they would do for any other legal duties. The Committee has also said that, in respect of equality and promoting good relations, the Code of Conduct should not impose additional enforceable duties upon Members over and above those laid down in statute.
158. The Committee has therefore agreed that the Code of Conduct should include an enforceable rule – Rule 3 – requiring Members to uphold the law in relation to equality. Rule 3 makes clear that Members fail to uphold the law in relation to equality only if a court or tribunal makes a finding against them, or if they accept formally that they have breached the law, when acting in their capacity as a Member.

Members' Interests

159. 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.
160. In addition to the provision in the Northern Ireland Act and Standing Orders, provision has also been made in relation to Members' interests in the rules in the Code of Conduct. Given their statutory basis these rules are arguably the most important rules within the Code.
161. The Committee's issues paper explained how, as part of the review, the Committee would consider whether the wording of these rules in the existing Code could be improved, noting that the wording of certain parts was not very strong.
162. The Committee did not receive comments in relation to the specific wording of these rules. Nonetheless the Committee has redrafted them so that they are clearer and more easily understood. The new Rule 4 relates to the registration of interests; Rule 5 relates to the declaration of interests; Rule 7 relates to the prohibition on paid advocacy and Rule 8 relates to not conferring exclusive benefit upon a person from whom a benefit has been received.
163. The nature of these rules calls for more detailed requirements, provisions and guidance. This is set out in the revised Guide to the Rules which is considered at further detail from paragraph 268– 296.

Gifts to Members

164. The evaluation team who produced the GRECO report:
- “found very little by way of advice or counselling to Members [of Parliament] as to their expected conduct when receiving gifts. In this connection, the GET notes that there is no general ban on Members accepting gifts similar to that applicable to UK Ministers, civil servants or judges where it is acknowledged that the receipt of a gift might be seen to compromise personal judgment or integrity. In the GET's view, it would be helpful if a clearer line would be drawn and explained to Members and the general public on such issues as, for example, what can be considered an acceptable gift, including hospitality.”³⁷*
165. They went on to recommend:
- “(i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts. The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation.”³⁸*
166. The Committee acknowledged this recommendation in its issues paper on the review of the Code, stating:
- “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*

37 GRECO: Fourth Evaluation Round Report

38 GRECO: Fourth Evaluation Round Report

threshold of 0.5% of the current salary of an Assembly Member (currently £240) remains appropriate.”

167. During the course of the review the Committee raised the issue of rules in relation to the receipt of gifts with the other legislatures that it visited. It also commissioned a research paper on this issue which is included at Appendix 6. The Committee noted that in contrast to the position for Members of the Assembly, for many public office holders in many different places there are restrictions on the type of gifts that can be received. The strictest restrictions are in the USA. At the US Congress, for example, a House Member or staff person may not accept anything of value from anyone – whether in one’s personal life or one’s official life – unless acceptance is allowed under one of the rule’s provisions. There are also restrictions on the receipt of gifts by UK Ministers, Lords, MSPs and MEPs.
168. The Committee accepts that Members will occasionally be offered gifts, benefits and hospitality, and that very often the receipt of these would not reasonably be thought to influence Members’ actions. Members currently are required to register all such gifts, benefits and hospitality received (subject to certain exemptions) and, generally speaking, no difficulty nor any perception of difficulty arises when they do so. Of course, the provisions of the Advocacy Rule apply to Members who receive registrable gifts. Members cannot receive a gift, benefit or hospitality in return for advocating or initiating any cause or matter. Nor can a Member who has received a registrable gift, benefit or hospitality seek to confer benefit exclusively upon a body (or individual), from which they received it.
169. However, having considered the position elsewhere, the Committee has agreed that, in certain circumstances, the receipt of a gift, benefit or hospitality by a Member or a related third party might reasonably be thought to influence the Member’s actions even when the Member registers the gift, benefit or hospitality and complies with the requirements of the Advocacy Rule. The Committee agrees that the receipt of such gifts etc. in these circumstances would be unacceptable. The Committee has therefore agreed a new rule – Rule 6 – which provides that:

You must not accept any gift, benefit or hospitality that might reasonably be thought to influence your actions when acting as a Member.
170. The Committee has clarified in the Guide to the Rules that Members must therefore consider carefully the proportionality and appropriateness of any gifts, benefits or hospitality that they, or any related third parties, are offered. The value of any benefit, its connection to membership of the Assembly or a Member’s political activities, its source, and the frequency of receipt of similar offers may all be factors which could be relevant to this judgment. Having undertaken this consideration a Member must not accept any gift, benefit or hospitality that might reasonably be thought to influence his or her actions when acting as a Member.
171. The Guide also clarifies that Members should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist. This recognises the public perception and concern that lobbyists may seek to influence Members’ actions through the provision of such benefits. The issue of lobbyists is considered further at 297 - 320.
172. As part of the review the Committee also considered whether the threshold below which gifts do not need to be registered needed to be amended. The Committee has noted the various thresholds that apply in other places and to other offices – these are set out in the research paper. Having done so, the Committee is satisfied that retaining the threshold at 0.5% of a Member’s salary (i.e. £240) is appropriate. This threshold strikes the right balance between ensuring transparency and placing proportionate requirements upon Members.
173. When considering this issue the Committee noted the references in the research paper to the issue of Northern Ireland Executive Ministers. Although the Ministerial Code of Conduct provides that Ministers must at all times ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered, the research could not find any evidence of publicly available rules that apply to Ministers. The Committee therefore

- wrote to the First and deputy First Ministers on 15 June 2014. This correspondence and the subsequent exchange of letters are included at Appendix 7. The Committee said that it wanted to establish what rules apply to Executive Ministers on the acceptance of gifts and hospitality. The Committee also said that in reviewing the Code of Conduct it wanted to take into consideration any other rules in relation to registering and declaring interests that apply to Ministers or any views that the Executive might have on what the Assembly's rules should be.
174. The First Minister and deputy Minister responded on 29 September. In their response they say that Ministers are expected to “have regard to the principles underpinning the guidance on gifts and hospitality contained in the Northern Ireland Assembly Executive Committee Ministerial Code published in 2000”. They include a copy of this excerpt.
175. The excerpt provides, inter alia, that Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation. Each Minister's private office should keep a register of gifts and hospitality and gifts of a small value (up to £140) may be retained.
176. The Committee sought further clarification in relation to the information provided. It wrote to the First and deputy First Minister on 23 October 2014 and asked:
- Are there any provisions, or other underpinning principles, of the Northern Ireland Assembly Executive Committee Ministerial Code published in 2000 to which Ministers should continue to, or are expected to, have regard?
 - How is the public made aware of these requirements or expectations upon Ministers (in relation to gifts and hospitality and any other relevant provisions)?
 - What transparency is there in relation to Registers of Ministerial Gifts and Hospitality?
177. The First and deputy First Minister responded on 13 January 2015. In their response they said that in all cases, except where explicitly superseded by the statutory Ministerial Code of 2007, there is an expectation that, should particular circumstances arise, Ministers would have due regard to the guidance contained within the Ministerial Code published in 2000 as it applies to a range of matters.
178. The response explained that the public are made aware of the requirements upon Ministers (in relation to gifts and hospitality and any other relevant provisions) through the Ministerial Code which is published on the Executive's website (http://www.northernireland.gov.uk/pc1952_ni_exec_min_code.pdf).
179. The Committee noted, however, that the relevant provisions of the Ministerial Code published in 2000 do not appear to currently be published. The Committee therefore recommends that the Executive should publish the guidance contained within the Ministerial Code published in 2000 to which there remains an expectation that, should particular circumstances arise, Ministers would have due regard.
180. On the issue of transparency in relation to ministerial gifts, the First and deputy First Minister advised the Committee that “while there is an expectation that all departments will keep records of Ministers' acceptance of gifts and hospitality and of Ministerial visits, this information is not required to be published, although Ministers are free to do so if they wish”.
181. The Committee has noted how it is normal practice elsewhere for Ministers to publish such records. The Committee has also agreed that Members who are Ministers do not need to register in the Assembly's Register of Members' Interests those gifts or benefits which are not retained personally but which are handed over to the relevant Executive department for recording and for either retention or disposal. In light of this the Committee has agreed that Executive departments should be invited to routinely publish details of gifts, benefits and hospitality etc. or overseas visits accepted by Ministers.

Misuse of any payment, allowance or resources

182. The Committee set out in its issues paper how 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.
183. The Committee, having consulted with the Assembly Commission, has reworded the existing rule in relation to the misuse of any payment, allowance or resources to take account of the legislative arrangements for allowances payable to Members and the new provisions of the Financial Support for Members Handbook. The new Rule 9 therefore provides that:

You shall not misuse any payment, allowance or resources available to you for public purposes. You shall strictly observe the requirements of any determination made by the Independent Financial Review Panel and any rules made by the Assembly Commission applying to these or any other payments, allowances and resources.

Compliance with Assembly Commission Rules

184. Rule 10 of the new Code is broadly reflective of a rule in the existing Code but has been clarified so that it now provides that:
- You shall observe and comply with the Rules on All-Party Groups and any policy, guidance or instructions of any kind approved by the Assembly, or issued by the Assembly Commission or Assembly secretariat staff on its behalf or with its authority.
185. The Committee had consulted the Assembly Commission to identify the guidance and instructions falling under the existing rule to determine in which cases noncompliance should amount to a breach of the Code. The Committee was advised that guidance or instructions falling under this rule could relate to, for example, events in and the use of Parliament Buildings, the security policy in Parliament Buildings, the use of ICT resources, health and safety, the visitor behaviour policy and the media policy.
186. The Clerk/Director General explained the preference for a broad all-encompassing rule in the Code which covers any Assembly Commission policy but which would only be investigated in cases where an alleged breach was not of a minor or technical nature. The Commissioner had also suggested this as an option.
187. The Committee agreed that there was merit in this approach. The Committee has therefore decided that Rule 10 should continue to apply to all policies, guidance and instructions. However, when the Committee reviews the General Procedure Direction (following the review of the Code of Conduct) it will ensure that the Commissioner does not have to investigate any breach of such rules which are of a minor or technical nature.

Confidential Information

188. In its issues paper the Committee referred to information received in confidence by Members. The Committee said that Members who have access to confidential material in the course of their Assembly duties should not use this information for their own purposes or for financial gain and referred to the existing rule which prevents this.
189. No-one disputed this position. However, the Committee has decided to clarify the wording of this rule. The new Rule 11 therefore now provides that:

“You shall use information which you receive in confidence only in your capacity as a Member. You shall never use, nor attempt to use, such information for the purpose of financial gain”.

190. The Committee has removed the previous references in this rule to the Data Protection Act and Members' duty of confidentiality in respect of information provided by constituents. This is because the previous references did not supplement what is already imposed by statute.
191. The Committee's issues paper also recognised that the unauthorised disclosure of information – leaking – has been an occasional problem at the Assembly. The Committee has previously said 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."*
192. The former interim Commissioner, however, had suggested that the Committee should consider reviewing the Code of Conduct to reflect more specifically that the unauthorised disclosure of Assembly information constitutes a breach of the provisions of that Code. The Committee had accepted this recommendation and had said in the issues paper that it believed that an explicit rule prohibiting the unauthorised disclosure of Assembly information should be included in the new Code.
193. Given that the Ombudsman was the former interim Commissioner who had made this recommendation it was no surprise that he welcomed the Committee's position. He said:
- "I wish to commend the Committee's firm stance [on this issue]...leaked information can cause (damage) to working relationships in the Assembly between Members and staff ..."*³⁹
194. The then Assembly Speaker also welcomed the Committee's position. He said:
- "...I would very much agree with the Committee that where there is a prima facie case that a Member has disclosed a confidential document without authorisation, this should be investigated as an alleged breach of the Code of Conduct..."*⁴⁰
195. No-one objected to the suggestion that the Code of Conduct should have an explicit rule prohibiting the unauthorised disclosure of Assembly information. The Committee has therefore agreed the new Rule 12 which provides:
- You shall disclose confidential or protectively marked information only when you are authorised to do so.*

Privilege and 'Contempt'

196. The leaking of confidential information has previously been referred to the Committee as an alleged breach of privilege, under Standing Order 70. Standing Order 70 provides for Members to raise matters of privilege in the Chamber. In such cases, if in the opinion of the Speaker a prima facie case of breach of privilege has been made out, then the Speaker shall so inform the Assembly and refer the matter to the Committee on Standards and Privileges. The Committee may refer (under Standing Order 69A(5)(a)(ii)) matters relating to Members and Assembly privilege, including alleged breach of privilege by a Member, to the Assembly Commissioner for Standards for investigation.
197. The Committee has expressed its preference for investigating leaks as an alleged breach of the Code of Conduct rather than as alleged breach of privilege.

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198. However, 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.”⁴¹

199. In its issues paper the Committee considered the issue of privilege and contempt elsewhere, noting that at the Houses of Parliament contempt had been defined 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.”

200. The issues paper detailed a number of examples of contempt including:

- 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)

201. The issues paper explained how Parliamentary privilege was 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. It also explained how Parliament has penal jurisdiction and how contempts are part of the control exercised by Parliament over parliamentary affairs.

202. The Northern Ireland Assembly, as a creature of statute, finds itself in a very different position from the Houses of Parliament. It neither has the same type of parliamentary privilege, nor penal jurisdiction. However, many of those matters which would constitute contempt at the House of Parliament would also amount to an improper interference in the exercise of the Assembly’s functions.

203. Given that 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, the Committee had agreed to consider the inclusion in the Code of Conduct 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.

204. In his submission the then Speaker said:

‘...the direction of the Committee as outlined in the issues paper would seem to be in accordance with my view that there are some matters which, although sometimes described as matters of privilege, are more properly matters of conduct and therefore should be directly incorporated in the revised code’.⁴²

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205. There were no objections to the proposal such a rule should be included in the new Code. The Committee is satisfied that the inclusion of such a rule in the new Code of Conduct is appropriate.
206. The new Code therefore provides at the new Rule 13 that:
- You shall not act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member or staff of the Assembly of their duties.*
207. The Committee's issues paper noted that neither the current Code nor the current Guide to the Rules restricts Members' participation in proceedings of the Assembly where they have non-financial interests. However, the Committee also noted that there are circumstances where Members refrain from participation in proceedings because, for example, to do so would be contrary to principles of natural justice. For example, members of the Committee on Standards and Privileges would recuse themselves from proceedings in relation to a complaint when they are either the complainant or respondent. The Committee is clear that Members should not participate in proceedings where to do so would be contrary to principles of natural justice. A Member that participated in proceedings in these circumstances could be found to be in breach of Rule 13.
208. As noted above, previously allegations in relation to alleged breaches of privilege by Members would have to be raised on the floor of the Chamber under the provisions of Standing Order 70. In light of the introduction of Rule 13 in the new Code of Conduct, the Committee recommends that the Committee on Procedures should review whether Standing Order 70 is still necessary.

Improper use of the position as a Member

209. During the course of the review the Ombudsman drew the Committee's attention to the work that was then being undertaken by the Department of the Environment in relation to a new code of conduct for councillors. At that stage the draft code of conduct which had been prepared by the Department was significantly based on the Assembly's existing Code of Conduct. The Ombudsman asked the Committee to take account of this 'parallel' code so as to ensure as far as possible a consistent approach between both codes.
210. On 27 May 2015 the Assembly approved the draft Northern Ireland local government code of conduct for councillors. During this debate the then Chairperson of the Committee noted that this code of conduct cited the Assembly's current principles of conduct and pointed out the Committee's concerns with the appropriateness of these principles. He went on to explain that the Committee was still considering what should go into the Assembly's new Code and that, in doing so, it was open to representations from the Department on any particular point that it wished to make.
211. The Minister subsequently wrote to the Committee on 28 June 2014. His correspondence is included at Appendix 7. In it he clarified his position and explained that his department considered it helpful to adopt a uniform approach, so that the principles within the code for councillors would mirror those for MLAs. He said his department would monitor developments regarding the Assembly's Code of Conduct so that any relevant impact on the code for councillors could be addressed effectively.
212. The Committee has considered both the Northern Ireland local government code of conduct for councillors and the corresponding guidance for councillors from the Northern Ireland Commissioner for Complaints. The Committee noted that the code provides (at paragraphs 4.16 and 4.17) rules in relation to the improper use of a councillor's position. The Committee considered that these are important provisions and that similar provision could usefully be included in the Assembly's Code of Conduct.

213. The Committee has therefore agreed the new Rule 14 which provides:

You shall not use, or attempt to use, your position as a Member to improperly confer an advantage or preferential treatment for either yourself or any other person; or to avoid disadvantage or create disadvantage for someone else.

Respect

214. In its issues paper the Committee said 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. The Committee noted that currently there are no explicit rules of conduct in the current Code which are directly linked to the principles of 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).

215. The Committee considers that Rule 3 is directly linked to the redefined principles of Equality and Promoting Good Relations.

216. The Committee has given consideration to the issue of what enforceable rule(s) should arise from the redefined principles of Respect (Members should show respect and consideration for others at all time) and Good Working Relationships (Members should work responsibly with other Members of the Assembly for the benefit of the whole community. Members' working relationship with Assembly staff should at all times be professional, courteous and based on mutual respect).

217. The comments that the Committee received in relation to the issue of freedom of expression and conduct in committee (referred to above) were also relevant in relation to this issue.

218. In addition, the Ombudsman told the Committee that:

- *Any newly drafted rule arising from the amalgamation of 'Respect' and 'Good Working Relationships' needs to properly reflect the need to treat all persons with respect and courtesy.*
- *Members should not engage in rude or offensive behaviour that can have the potential to undermine good working relationships with other Members and staff.*
- *Context is important is robust political exchange versus offensive or personal remarks to members of staff.*⁴³

219. The Commissioner told the Committee that:

*"The need for challenging and robust questioning should never be an excuse for gratuitously offensive conduct or deliberately untruthful statements."*⁴⁴

220. Dr Tom Walker told the Committee that:

*"I do not think that someone who is bullying or harassing an individual necessarily gets into the freedom of expression arena. Those are two different things."*⁴⁵

221. The Committee accepts that Members must not be able to bully or harass others. This would be entirely at odds with the principles of Respect and Good Working Relationships. This applies not only to Members' interactions with other Members but to anyone else including staff at the Assembly, witnesses and constituents. The Committee also accepts, however, that in a political environment robust and heated views are often exchanged. Although Members should always show respect and consideration for others, the Committee does

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not think it would be desirable or practical to have to subject any and every discourteous utterance by Members to scrutiny under the Code.

222. The new Code of Conduct therefore provides (at Rule 15) that:

You shall not subject anyone to unreasonable and excessive personal attack.

223. The Committee believes that this rule strikes the right balance. It prohibits unacceptable behaviour and protects those who interact with Members while ensuring that less serious complaints about perceived disrespectful behaviour do not need to be investigated.

224. In agreeing this rule the Committee discussed with the Clerk/DG the Assembly's existing Secretariat Staff/Member protocol which references the current Code of Conduct. The Committee heard how linking the new Rule 15 in the Code with the protocol is worth considering. The Committee also noted how, at the House of Commons, a similar protocol is in place and there the Commissioner would only investigate a complaint under the Code in relation to a Member's conduct towards secretariat staff after the procedures in the protocol had been followed. The Committee therefore recommends that the Assembly Commission should review the current Secretariat Staff/Member protocol to take account of Rule 15 in the new Code of Conduct and that, following this, consideration shall be given to the Commissioner only investigating complaints that had first been considered under the protocol but remain unresolved.

225. The Committee also discussed the application of this rule to Members and the treatment of their own staff. This is more complicated because should a Member subject their own staff to unreasonable and excessive personal attack then this could become the subject of an employment tribunal. At the session with the Clerk/DG the Committee was briefed on the extension of the Carecall welfare service to Members and their staff, and to the potential for grievance procedures and employment tribunals. Having given this matter careful consideration the Committee has agreed that it will amend the General Procedure Direction so that under the new Code the Commissioner will not investigate those complaints which should properly be resolved in another statutory or official forum.

Investigations into Members' Conduct

226. The existing Code of Conduct provides 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.

227. 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

228. These provisions establish the responsibilities of Members towards the Commissioner and the Committee on Standards and Privileges. However, since the Code was last 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.

229. The Committee therefore said that it would consider whether this statutory provision rendered any existing provision in the Code of Conduct obsolete.
230. The Committee also noted that on more than one occasion Members who had been involved in a complaint – whether as complainants, witnesses or respondents – had 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 set out in the issues paper its belief that the duty to cooperate with investigations should be supplemented with a rule requiring Members to maintain the confidentiality of the Commissioner’s investigation.
231. The Ombudsman welcomed the Committee’s position on the need for Members to maintain the confidentiality of the Assembly Commissioner’s investigations. And the Commissioner for Standards at the National Assembly for Wales strongly endorsed the Committee’s proposals. He said:

“Confidentiality benefits everyone, particularly in the initial stages of investigations – including the Member against whom an unsubstantiated complaint is made”⁴⁶

232. The Commissioner told the Committee that he considered that the existing provisions remain necessary. He welcomed the additional provision in relation to disclosure of information. He also pointed out that the current Code provides a sanction should Members fail to attend or provide documents for an investigation. He said that it was important to retain this as the offence provisions in the 2011 Act only apply in certain circumstances.
233. Having considered these comments the Committee has agreed that the following rules (Rules 16, 17 and 18) should apply in relation to investigations into Members’ conduct:
- 16. *You shall co-operate at all times with any investigation by or under the authority of either the Northern Ireland Assembly Commissioner for Standards or the Assembly.*
 - 17. *You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority.*
 - 18. *You shall not lobby a member of the Committee on Standards and Privileges, or the Commissioner in a manner calculated or intended to improperly influence their consideration of whether a breach of the Code of Conduct has occurred.*

Staff Conduct

234. The GRECO 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”⁴⁷

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235. The Committee noted in its issues paper that it would be unacceptable if Members' staff acted in a manner that placed private interest before public interest when carrying out official duties on behalf of the Member for whom they work. The Committee said that the Assembly should take whatever steps are reasonable, practicable and proportionate to prevent this from occurring. The Committee acknowledged that Members, as employers, have a particular responsibility to ensure the proper conduct of their staff and to take action where misconduct occurs. However, the Committee also raised 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.
236. During the course of the review the Committee noted the arrangements in place at other legislatures. The Code of Conduct for Members of the Scottish Parliament provides that Members should ensure that staff working for them are aware of, and apply, the standards in the Code when acting on a Member's behalf or in any Parliamentary connection. Members are responsible for ensuring that their staff are fully aware of and understand the policies, rules and requirements that apply to the conduct of personnel within the Scottish Parliament. That Code makes clear (at paragraph 7.6.1) that Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members' staff, and Parliamentary staff.
237. At the House of Commons Members can also be held to account for the actions of their staff. The former Committee on Standards and Privileges clarified this position when it said that it "will continue to hold MPs responsible for the actions of their staff, when it is appropriate to do so".⁴⁸
238. At the House of Lords, a Code of Conduct for Members' Staff was agreed on 13 May 2014. It requires, inter alia, members' staff to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the House of Lords and prohibits members' staff from taking any action which would risk undermining any member's compliance with the Code of Conduct for Members. It requires members' staff to register in the Register of Members' Staff Interests financial interests in businesses or organisations involved in parliamentary lobbying as well as gifts or benefits which relate to or arise from the individual's work in Parliament. It also contains requirements for members' staff to register employment outside the House. Complaints about failure to comply with the new Code may be made to the Commissioner for Standards. In the event of breach, the Commissioner's reports will be made to the Sub-Committee on Lords' Conduct, which then reports to the Committee for Privileges and Conduct in the same way as reports on Members' conduct. Members' staff found to have breached the Code may have their parliamentary pass suspended or withdrawn.
239. The National Assembly for Wales has in place a Code of Conduct for Assembly Members' Support Staff to be signed by staff which forms part of their conditions of employment by the member, and is based on the Nolan Principles of Standards in Public Life. This Code came into effect in 2007 and covers key areas, such as propriety, confidentiality, outside occupations and working with others. Breaches of the Code may result in disciplinary action up to and including dismissal.
240. In his written evidence to the Committee Dr Tom Walker said that a code that doesn't extend past a person's capacity as MLA couldn't then regulate staff conduct (without then making it a Code for staff members). He suggested, however, that the Code could include rules that prohibit Members allowing staff to put private interest above public interest and rules about what members should do when they discover staff putting personal above public interest. He pointed out that this would mean that Members were not responsible for actions of staff about which they were unaware.

48 Third Report of Session 2012-2013 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstnprv/636/63602.htm>

241. In his oral evidence Dr Walker said:

“...if there is a role for Members to be responsible for their staff, I do not think that the code is the right place to introduce it.”

and

“Because it is an employment relationship, I think that is the way to deal with it, rather than having it in a code of conduct for Members.”⁴⁹

242. The Ombudsman referred to Members’ staff and said:

“...when they speak, take an action or a decision, or write a letter or a response, they are doing it on your [i.e. the employing Members’] behalf. Other than that, they have no authority. That, therefore, makes you party to whatever failure or failing that they have allegedly been involved in.”

“...it seems to me that, for staff working in this Building and staff working for Assembly Members, there needs to be guidance, training and induction...”⁵⁰

243. The Committee on Standards in Public Life said in its written evidence:

“...the principle of leadership ... requires Members to demonstrate ethical leadership and to challenge poor behaviour, including the behaviour of their staff”

and

“It is important as a matter of principle and good practice that there should be broad parity of treatment of staff. A code of practice backed up by appropriate training and HR support for members is one way to achieve that.”⁵¹

244. CIPFA said in its written evidence that there should be no compartmentalisation or overlap of the Code which could lead to misinterpretation or confusion, including in relation to Members’ staff. They agreed with GRECO that the conduct of staff should be judged against the standards expected of the Members and referred to the position in the Scottish Parliament.

245. The Ulster Unionist Party said that Members’ staff should remain outside the scope of the Code of Conduct. They said that staffing should be a matter for an Employer/Employee agreement and that separate guidance and staff training could be provided by the Assembly. Sinn Féin agreed that Members’ staff should uphold the same principles in their conduct as Members but did not believe that a register of interests should be applied to staff.

246. The Assembly Commission referred to the financial provisions made to Members by the IFRP through Office Costs Expenditure (OCE) and noted that OCE could be used to provide Members with advice or guidance on all aspects of managing employees. The Commission suggested that this appeared to be the most appropriate mechanism for the provision of support to Members.

247. The Committee accepts that Members’ staff can play an important role in assisting Members to decide what action to take. The interests of Members’ staff may therefore be a relevant consideration in the actions a Member chooses to take. In these cases a member of staff’s interests should be considered to be the same as a Member’s interests. The Committee has therefore decided to update the requirements in relation to Members’ interests so that Members will have to register as an interest any relevant gift benefit, or hospitality, or visit, received by staff (or other third parties).

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248. The Committee has also agreed that Members should have to declare the financial interests of members of their staff when the nature of their contribution relates so directly to the interests of their staff that it might reasonably be thought by others to have influenced their approach to the matter under consideration.
249. The Committee also recognises that the staff of Members hold privileged positions. When acting on behalf of Members there is the potential that they could abuse their position for personal gain. However, the Committee has decided that it would not be appropriate to make Members' fully responsible and accountable for the actions of their staff (regardless of circumstance). Although Members have a responsibility to ensure their staff behave appropriately it would not be fair if a Member was held to account under the Code for actions they were unaware of and could not have prevented.
250. The Committee has also decided against establishing a new separate standards regime for Members' staff, similar to that which exists for Members. The Committee believes this would be unnecessary and disproportionate.
251. Instead the Committee has agreed the new Rule 19 which states:
- You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these rules of conduct.*
252. This rule respects the primacy of the Member as the employer in ensuring that their staff behave appropriately. Member should ensure that staff working for them are aware of and adhere to the provisions of the Code of Conduct when acting on their behalf. It is the Committee's position that Members should be expected to take reasonable care in this regard through appropriate induction, training, management oversight and through requiring staff to adhere to a code of conduct. It would be for the Member alone to manage how their staff adheres to a code of conduct and to take appropriate action when breaches occur. However, where appropriate, the Commissioner could investigate matters in relation to a member of staff's alleged improper actions (where the member of staff was acting on behalf of the Member) in order to establish if the Member had taken reasonable care to ensure their staff uphold the rules of conduct.
253. Following representations from this Committee, the IFRP has said that it will consider whether its determination should provide that Members can only pay for staff through OCE if the member of staff is required to adhere to a code of conduct. Such a code of conduct for staff has not yet been agreed. The Committee is aware of the arrangements in place in both Wales and the House of Lords in relation to codes of conduct for staff. While such a code for the staff of Members at the Assembly would need to address those matters which concern the Committee, it may also be helpful for Members if such a code also addressed other routine matters. The Committee is not best placed to determine what other provisions might be included. The Committee therefore recommends that it should liaise with the Assembly Commission and others to ensure that, if possible, a code of conduct for Members' staff is agreed and introduced to have effect from the start of the next mandate.
254. Both the Committee on Standards in Public Life and the Ombudsman have told the Committee that the Assembly should provide training on ethics for members' staff. The Committee raised this issue with the Clerk/Director General. He pointed out that Members may use their Office Cost Expenditure to pay for such training. He also considered whether anything could be provided centrally in terms of training and professional development, referring to the Politics Plus programme. The Clerk/Director General suggested that it was worth considering whether a module could be developed that covers that aspect of managing an office and staff.
255. The Committee agrees that such training would be worthwhile. The Committee addresses the issue of standards training which could be provided by Politics Plus at paragraphs 332 to

337 and believes that training in relation to ethical issues and members' staff should also be considered as part of this.

Reporting approaches to act in a way that would breach the Code

256. 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.

257. The Committee's issues paper said that it was 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. This remains the Committee's position. However, the Committee also considered that there was no reason why this provision should be limited to the issue of bribery.

258. Rule 20 therefore provides that Members shall, if approached by anyone to act in a way that would breach the Code of Conduct, report without delay details of the approach to the Committee on Standards and Privileges, and to any other appropriate authority.

Urging other Members to contravene the Code

259. The Commissioner had pointed out to the Committee that while it was to be hoped that instances of Members urging other Members to breach the rules would be rare, it has been hinted at in one investigation with which he had dealt. He pointed out that there was nothing in the existing rules in relation to this but said that there was a compelling case for a rule outlawing it. The Committee has therefore agreed that the new Rule 21 should provide that Members shall not urge another Member to contravene any rule of conduct.

Bringing the Assembly into disrepute

260. The current Code of Conduct provides that Members shall never undertake any action which would bring the Assembly into disrepute. In its issues paper the Committee said that it would consider whether this provision should be included in the new Code as an enforceable rule. The Committee recognised that such a provision is subjective and said that it would therefore consider whether its inclusion was fair. It also said that it would 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 caused damage to the integrity of the Assembly but had not been explicitly prohibited in the Code of Conduct.

261. Dr Tom Walker advised the Committee:

"The problem with a general rule is that you are likely to get complaints under it that are outwith the scope of the code. For example, people's behaviour in private life might be claimed to bring the Assembly into disrepute..... So, a general rule is going to lead to disagreements... One way to avoid that is to do what happens in the House of Commons, where it is specifically ruled that those kinds of behaviour, even if they bring Parliament into disrepute, will not be investigated under that clause of the code."⁵²

262. He also said:

“..a better option is to have specific rules or, alternatively, to make very clear that that general catch-all only covers behaviour in specific areas; it only covers them when they are acting in their role as a Member but does not cover lawful speech. That very much narrows the kind of thing that would be included in it. As I said, that is an option that has been taken in some other places. Other places have just got rid of general rules altogether.”

263. The Commissioner made a number of points in his written evidence. He said:

- *A ‘catch all’ provision would introduce the very uncertainty that the revision of the Code is intended to remove.*
- *Conduct may be seen as disreputable by some but be applauded by others (particularly in NI) and the difficulty this places on decision makers could bring the standards regime and even the Assembly into disrepute.*
- *A catch all would most likely be used to purportedly found spurious complaints that breached no specific provision.*
- *I recommend that ...the Committee attempts to identify the conduct not covered by other proposed rules, that would be caught by the ‘catch all’ provision (and that) it should be covered by a specific rule. If no such conduct can be identified then the justification for a ‘catch all’ provision is greatly diminished.⁵³*

264. The House of Lords Commissioner for Standards said that the Committee’s issues paper captured the debate well. He said that concepts such as “bringing the House into disrepute” are hard to define and are liable to open up a political and moral Pandora’s Box. He also said that the provision removing members for serious criminal offences appears a useful backdrop. The Parliamentary Commissioner for Standards pointed out, however, that while there are difficult issues here, some actions by Members may affect the reputation and integrity of the wider institution.

265. The Equality Commission said during its oral evidence session:

“You cannot say for all time forensically, “This is what brings it into disrepute”. It is possible, through training, guidance and working with us and others, that, together, we could help you to look at that so that it would not be just so grey.”⁵⁴

266. The Committee has decided that the provision requiring Members not to undertake any action which would bring the Assembly into disrepute should not be included as an enforceable rule. The Committee wants there to be clarity in relation to the conduct of Members that is prohibited. The Committee’s experience is that this provision can mean very different things to different people. Given how subjective it is, neither Members nor the public are served well by its inclusion as an enforceable rule.

267. Of course, just because this provision has not been included as an enforceable rule does not mean that Members should feel that it is acceptable to act in a manner which, while not prohibited by the rules, would nonetheless bring the Assembly into disrepute. The Committee has therefore agreed that the section on the aspirational principles should include the following statement at paragraph 3.1:

Members should 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 should never undertake any action which would bring the Assembly into disrepute.

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54 Appendix 2 – Minutes of Evidence

The Guide to the Rules

268. The Committee has agreed that a number of the rules of conduct should be supported by more detailed requirements, provisions and guidance.
269. The Guide to the Rules Relating to the Conduct of Members (“the Guide to the Rules”) therefore sets out more detailed requirements, provisions and guidance in relation to Rules 4 – 8 of the Code of Conduct. Should it appear to the Committee in the future that any of the other rules in the Code of Conduct would benefit from more detailed requirements, provisions and guidance the Committee will bring forward amendments to the Guide to the Rules for the Assembly’s approval.
270. The Guide to the Rules is structured as follows:
- Chapter 1 explains how to comply with Rule 4 (registration of interests) and Rule 6 (receipt of gifts). This is in addition to schedule 1 of the Code of Conduct setting out the categories of registrable interests.
 - Chapter 2 explains how to comply with Rule 5 (declaration of interests).
 - Chapter 3 explains how to comply with Rules 7 and 8 (paid advocacy).

Registration of Interests

271. The Committee said that as part of the review it would consider each of the current categories of registrable interest and assess the extent to which they might be streamlined and simplified without compromising transparency. It also said it would consider whether the thresholds below which no registration is required remain appropriate. The Committee has done this. Schedule 1 of the Code of Conduct and Chapter 1 of the Guide to the Rules therefore consolidate and simplify the existing categories of registrable interest. The number of categories has been reduced from twelve to nine.
272. The Committee gave careful consideration to the issue of the thresholds below which interests do not need to be registered. The Committee gave particular consideration to the thresholds that apply in relation to (a) the registration of gifts, benefits and hospitality and (b) the registration of shareholdings, as these were the categories that the GRECO report had recommended should be reviewed. In doing so the Committee has benchmarked its thresholds against those which apply in relation to the registration of interests at other legislatures (further detail is set out in the research papers at Appendix 6). Broadly speaking, the thresholds that apply at the Assembly (which are calculated as a percentage of the salary payable to Members) are amongst the lowest that apply at other legislatures. The Committee is therefore satisfied that the existing thresholds remain appropriate.
273. In addition the following key changes have been made to the requirements to register interests:
- Members must register their interests within twenty eight days of taking their seat (rather than the current period of three months).
 - Members can register remuneration with reference either to (a) the amount they have received or (b) the amount they expect to receive. Remuneration can be registered as either falling within the defined bands or as a more specific figure.
 - There is no longer a requirement to deposit relevant employment agreements.
 - There is no longer a requirement to register details in relation to any salary payable under Section 47 of the Northern Ireland Act 1998.

- Members must register any gift, benefit or hospitality received by any third party (e.g. partner, child, friend, member of staff etc.) which is provided because of their membership of the Assembly or their political activities.
- There is clarification that Members do not need to register gifts or benefits which are not retained personally but which are handed over to either the Assembly or to the relevant Executive department for recording and for either retention or disposal.
- Members must register any visit received by any third party (e.g. partner, child, friend, member of staff etc.) which is provided because of their membership of the Assembly or their political activities.
- There is no longer a requirement for Members to register membership of occupational pension schemes.

274. The Independent Financial Review Panel asked the Committee to consider whether the existing requirement to register family members who benefit from Office Cost Expenditure should be extended to also include “associated parties” (e.g. the Member’s political party; a person connected to the Member as per definitions in the Companies Act 2006; and any person from whom the Member, his family member or his political party derives a benefit). The Committee was not persuaded, however, that such an extension was necessary. The Committee has noted, however, the IFRP’s Exceptional Determinations, which took effect from the 1 April 2015 and which provide for Members to make prior disclosure to the Assembly Finance Office in relation to a range of “associated parties”.

The Political Parties, Elections and Referendums Act 2000

275. 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 and has meant that since then, in certain circumstances, Member are obliged to report certain donations to both the Electoral Commission and the Assembly.
276. The Electoral Administration Act 2006 contains provisions to end dual reporting requirements for the holders of elective office. This was implemented at the House of Commons in 2009 and since then MPs have registered with the Registrar of Members’ Financial Interests all donations and loans previously reported to the Electoral Commission. The Commission obtains the information it requires from the Registrar, which it then publishes.
277. The Scottish Parliament is currently considering a Bill which would provide the required changes to enable the Electoral Commission to draw all the information it needs from the Scottish Parliament register, thus facilitating the ending of dual reporting for MSPs who are members of registered political parties.
278. In order for dual reporting to be ended for MLAs, Assembly reporting rules would have to align completely with the legal reporting requirements under PERA and an order would then have to be made by the Secretary of State for Northern Ireland.
279. The Committee said that as part of this review it would explore with the Electoral Commission the extent to which the Assembly’s 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 PERA without necessarily raising our thresholds for registering these interests.
280. The Electoral Commission submitted written evidence to the Committee. In it they said, inter alia, that:

- It would welcome the opportunity to explore with the Committee the prospect of aligning the Assembly's reporting rules with the reporting requirements in PPERA to bring about the end of dual reporting.
 - In order to satisfy the requirements in PPERA it would need to ensure that:
 - the Assembly's rules, such as initial reporting requirements on the date of taking up elective office and on-going registration timetables and thresholds, are compatible with PPERA;
 - the categories of registrable interests in the code cover Members' obligations under PPERA as both holders of elective office and party members;
 - the Commission is able to obtain all necessary information from the Register of Members' Interests and the Clerk of Standards to comply with its PPERA obligations; and
 - there is a robust approach to dealing with breaches of the rules.
 - It was pleased that the current Code of Conduct and Guide already sets out clearly that Members have reporting obligations under PPERA as well as the Assembly's rules. If the Committee decide to take forward work to end dual reporting it will take time to ensure that the necessary rules are fully aligned. It is therefore important that references to Members' PPERA reporting requirements continue to be included in future versions of the Code of Conduct and Guide until these issues have been dealt with.
281. In follow up correspondence, the Commission confirmed its view that ending dual reporting to provide for a single point of registration would reduce the reporting burdens on MLAs and avoid the potential for unintentional breaches of the rules. It pointed out, however, that it is for the Assembly to decide whether it wishes to do this. The Electoral Commission would be happy to work with the Assembly to end dual reporting if that is what it decides.
282. The Commission confirmed that the Assembly could set its own lower financial thresholds as long as the Commission can obtain all the necessary information directly from the Register of Members' Interests to fulfil any publication requirements of PPERA.
283. The Committee recognises that there are a number of matters which would need to be resolved before dual reporting for Members could be ended. However, the Committee believes that, in principle, a single point of registration is desirable. The Committee therefore recommends that the Assembly agrees in principle that dual reporting requirements for Members should end and that it should work with the Electoral Commission to establish proposals for a single point of registration for those details which are required to be registered under PPERA.
284. In the meantime the Committee has sought to align as closely as possible the registration requirements for Categories 2, 3 and 4 (Donations and other support; Gifts, benefits and hospitality; and Visits) with the reporting requirements under PPERA. However, the Committee has retained the lower thresholds for registration (under PPERA the threshold is £1500) and has not yet introduced requirements for Members to register certain details of donors, including their addresses.
285. The Committee has also agreed to include, as an appendix to the Guide, further information in relation to the rules on donations arising from the PPERA. This further information is to assist Members in their dual reporting requirement and does not impose any additional duties under the Code and Guide.

Declaration of Interests.

286. Rule 5 provides for Members to declare, whether in Assembly proceedings or in any approach to a Minister, public representative, public body or public official, any relevant interest which

might reasonably be thought to influence their approach to the matter under consideration. Chapter 2 of the new Guide to the Rules sets out more detailed requirements, provisions and guidance in relation to Rule 5. It explains that the requirement to declare an interest complements the registration requirements and applies to almost every aspect of Members' Assembly duties. It covers a broader range of interests than registration.

287. The new Chapter 2 is broadly similar to paragraphs 81 to 94 of the current Guide to the Rules Relating to the Conduct of Members. However, as part of the review, the Committee has clarified and simplified some of its provisions while ensuring that transparency is not compromised.
288. Chapter 2 now also provides, however, that the requirement to declare interests (which might reasonably be thought to influence the Member's approach to the matter under consideration) should be extended from immediate relatives to any third party. The requirement to declare the financial interests of a third party only applies when Members have a relationship or connection with the third party in question (e.g. a family member, close friend, business associate or a member of their staff); and the nature of the Member's contribution relates so directly to the interests of the third party that it might reasonably be thought by others to have influenced the Member's approach to the matter under consideration.
289. Chapter 2 goes on to clarify that the more distant a Member's relationship or connection with the third party in question the less likely it is that their interests might reasonably be thought by others to have influenced the Member's approach to the matter under consideration.
290. There is no need to declare the interests of a constituent unless the Member also has another relationship or connection with them. Nor is there any need to declare the interests of third parties where their interests are either held widely or relate only generally to the matter under consideration and could not therefore reasonably be thought by others to influence the Member's approach to the matter under consideration.

The Advocacy Rules

291. Rules 7 and 8 provide that:

You shall not, in return for payment or benefit, advocate or initiate any cause or matter on behalf of any outside body or individual. Nor shall you, in return for benefit or payment, urge any other Member to do so.

and

You shall not seek to confer benefit exclusively upon a body (or individual), from which you have received, are receiving, or expect to receive a financial or material benefit, or upon any client of such a body (or individual).

292. Chapter 3 of the new Guide to the Rules sets out more detailed requirements, provisions and guidance in relation to Rules 7 and 8. Chapter 3 is broadly similar to paragraphs 96 to 102 of the current Guide to the Rules Relating to the Conduct of Members. Again, however, the Committee has clarified and simplified some of its provisions while ensuring that transparency is not compromised.
293. As part of the review the Committee gave consideration to tightening Rule 8. Rule 8 allows a Member 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 provided they (a) register and declare the interest as appropriate and (b) do not seek to confer benefit exclusively upon such a body or individual. The Committee considered prohibiting 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 (i.e. not just exclusive benefit).

294. The Committee did not receive any comments in relation to this matter. Nonetheless, the Committee gave the matter careful consideration and decided that it was unnecessary to extend the breadth of this provision. The Committee was concerned that doing so could have the effect of preventing Members from bringing forward legitimate proposals which are informed by their outside interests. This scenario would not benefit the Assembly. The knowledge and experience that Members derive from their outside interests can assist the Assembly in its consideration of wider matters.
295. The existing Guide to the Rules included a blanket exemption in relation to the application of the Advocacy Rule to Ministers. The Committee was concerned that this exemption gave the impression that the rule did not apply at all when a Member was acting as a Minister (i.e. that a Minister was entitled to confer exclusive benefit upon a person who had provided them with a financial benefit). Chapter 3 of the new Guide explains that receipt of a Minister's salary (or any other salary payable under s47 of the NI Act 1998) is not a benefit for the purposes of the rules and the introduction to the Guide states that salaried Ministers may still speak on Executive policies without breaching the restrictions on paid advocacy.

Minor amendments

296. It should be noted that from time to time minor amendments may need to be made to the Guide to the Rules. Examples include changes to reflect updated thresholds for registration arising out of changes to the salary payable to Members or changes relating to the registration of donations with the Electoral Commission. The Committee has said that where necessary it will bring forward suggested amendments to the Guide to the Rules for the Assembly's agreement. The Committee does not believe, however, that it would be a sensible use of the Assembly's time for it to have to approve minor amendments to the Guide to the Rules. The Committee therefore recommends that it should be able to make such minor amendments to the Guide to the Rules as appear to it to be justified by experience or necessarily reflect decisions of the Assembly, and to report such amended versions of the Guide to Rules to the Assembly.

Lobbying

297. As part of its review the Committee gave 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.
298. 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.”⁵⁵*
299. 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.
300. 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 arising 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 benefit.
301. 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.”⁵⁶*
302. In light of this recommendation and in advance of publishing its issues paper, the Committee informed itself of how the issue of lobbying is dealt with elsewhere. The Committee was clear that, as is the case in Scotland and Wales, Members should not offer or accord 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 agreed 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.
303. The Committee stated in its issues paper that it accepted the GRECO recommendation and that it intended to 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 said that it would give careful consideration to whether guidance for Members is sufficient or whether it is necessary or practicable to introduce additional enforceable rules. The Committee also stated that it would give careful consideration to how a “lobbyist” might be defined.

55 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407530/2901376_LobbyingStandards_WEB.pdf

56 GRECO: Fourth Evaluation Round Report

304. A number of stakeholders responded on this issue and it was widely discussed during the Committee's visits to other legislatures. The Committee also gave due consideration to the Committee on Standards in Public Life Report: Strengthening Transparency around Lobbying and the ten principles contained within the OECD report: Principles of Transparency and Integrity in Lobbying.
305. It is clear that the scale of lobbying of Members at the Northern Ireland Assembly is of a much lesser magnitude to that which occurs elsewhere. In the United States, for example, lobbying is a highly regulated billion dollar industry. The US generally requires a systematic disclosure of lobbying and it has an extensive system of rules and regulations in place aimed at regulating the activity of lobbyists. The worth of the UK public affairs industry has been estimated at around £1.9 billion with 14,000 people directly involved in those activities of government relations, brand management, reputation management, and stakeholder engagement which fall under the term public affairs.⁵⁷ Placed in this context, the lobbying of Members which occurs at the Northern Ireland Assembly is an entirely different industry.
306. Broadly speaking, there was a consensus that lobbying is a legitimate practice, which is important for democracy and policy making but which should be managed well in terms of ensuring transparency to the public who need to be assured that undue weight is not given to the power of money behind the scenes.
307. The House of Commons Committee on Standards stated:
- "In March 2013 we too looked at GRECO's recommendations ... We considered that concerns went wider than lobbying alone' ... 'Transparency and openness have to be the principles which guide Members when taking on external interests, engaging with those who have an agenda, and when registering and declaring interests.'"⁵⁸*
308. The CSPL drew the Committee's attention to the fact that the House of Lords has agreed changes to its Code of Conduct and its Guide by providing a statement of principles on how to deal with lobbyists quoting:
- "...dealings with lobbyists should always be governed by the principles of integrity and openness' and that 'members should take particular care not to give the impression of giving greater weight to representations because they come from paid lobbyists; representations should be given such weight as they deserve based on their intrinsic merit ... members should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist.'"⁵⁹*
309. In oral evidence the Lord Bew of the CSPL made the following comments:
- "...there is a case for people to publish, every three months, their meetings with lobbyists. That is my personal position, and it is based on my experience in London. It is not based on any realistic understanding or insight into the situation in this Parliament. However, I think that there is a case for doing that. Again, I do not think — as I have said before — that these greater measures of transparency remove public disenchantment."*
- "...the more I reflect upon that here, and even the tone of this discussion, I do not think that professional lobbyists are a significant part of your lives..."⁶⁰*
310. NILGA stated in its written submission that it is supportive of a policy to protect Members against the perception that they are gaining financially or otherwise as a result of taking a

57 <http://www.hansardsociety.org.uk/wp-content/uploads/2012/10/Friend-or-Foe-Lobbying-in-British-Democracy-2007.pdf> p10.

58 Appendix 3 – Written Submissions

59 Appendix 3 – Written Submissions

60 Appendix 2 – Minutes of Evidence

particular position at the behest of a professional lobbyist or lobbying activity from a well-resourced source however:

“...members need to be well informed, and to communicate well with the wider policy community and with the public, to ensure that the actions of the Assembly are of benefit to wider society. Lobbying activity is a critically important part of this process and the Committee will need to find balance in its policy, to ensure that policy development does not suffer unnecessarily due to fears surrounding access to members.”⁶¹

311. The Association of Professional Political Consultants (APPC) stated in its written submission that it would have no difficulties with measures in relation to the regulation of lobbying similar to Wales, Scotland and the House of Lords being introduced here.
312. On the subject of how to define a lobbyist, the CSPL suggested that that was a matter for the Northern Ireland Assembly whilst APPC suggested that it would be more helpful to define lobbying activity rather than the lobbyist. They included their definition of lobbying activity as an annexe to their submission.
313. The Committee is satisfied that the Assembly (with its 108 Members) is open and accessible to all. No-one should be under the impression that it is necessary to employ the services of a lobbyist in order to make their views known or gain access to Members. Nonetheless, for a variety of reasons, some organisations and bodies decide to use lobbyists when making approaches to Members.
314. The Committee has not been presented with evidence of any problem, either actual or perceived, arising as a result of Members of the Assembly being lobbied by lobbyists. Given this, and the scale of lobbying that occurs, the Committee believes that any further regulation or guidance in relation to Members dealing with lobbyists must be proportionate.
315. The Committee is satisfied that the provisions of the new Code of Conduct and Guide to the Rules are sufficient to ensure that misconduct in relation to lobbying does not occur. The new Code and Guide continues to provide that Members must register or declare any interests that they have arising 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 benefit.
316. The new Code also provides that Members must not accept any gift, benefit or hospitality that might reasonably be thought to influence their actions when acting as a Member. This means that Members should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist.
317. However, in addition to the mandatory requirements of the Code and Guide, the Committee recognises the argument for additional good practice guidance for Members and their staff when dealing with lobbyists. The Committee has therefore agreed ‘Guidance for Members on dealing with lobbyists’ which is included at Appendix 8. This guidance sets out a definition of a lobbyist based on the definition developed by the UK Public Affairs Council. It draws on the recommendation contained within Strengthening Transparency around Lobbying and includes provisions which have been made in guidance for Members at the Scottish Parliament and the National Assembly for Wales as well as, to a lesser extent, the House of Lords.
318. A separate issue which arose during the review was the question of the regulation of lobbyists and whether there should be a statutory register of lobbyists in Northern Ireland. The APPC said it would welcome a statutory register of all who lobby or provide advice on how to lobby in a professional capacity. The APPC also provided details of its Code of Conduct which applies to all of its members. The Committee commends the APPC for this Code and

61 Appendix 3 – Written Submissions

for the provision it makes in seeking to ensure its members act at all times with the highest standards of integrity.

319. The Committee has been briefed on the various attempts that have been made, are being made and are expected to be made in relation to the regulation of lobbyists in other jurisdictions. Typically these arrangements have been led by respective governments and executives rather than legislatures. This reflects the fact that the majority of lobbying is directed towards Ministers and their departments rather than legislators.
320. The Committee has not yet seen any evidence to suggest that the absence of a register of lobbyists in Northern Ireland has created any problems. It is still too soon to assess the impact of the introduction of measures elsewhere. The Committee is also mindful of the need to avoid excessive administrative burden and unnecessary bureaucracy. However, given the evidence that lobbying is primarily directed at an Executive and its departments the Committee recommends that OFMdFM should give consideration to whether such a Register of Lobbyists in Northern Ireland would be appropriate or beneficial.

Other Issues

Standing Order 69

321. Having received legal advice, it is the Committee's position that Standing Order 69 should be reviewed in order to determine whether it should be amended to reflect the provisions of the new Code and Guide. The Committee believes that the new Code and Guide should not come into effect until after a review of Standing Order 69 is complete. The Committee therefore recommend that the Committee on Procedures should review Standing Order 69 at the earliest opportunity. In doing the Committee on Standards and Privileges advises that the Committee on Procedures should consider:
- Whether Standing Order 69(5) should make reference to the means of advocating or initiating any cause or matter on behalf of any person (which are now specified in the Guide);
 - Whether Standing Order 69 (5) should specify the types of payments or benefits in kind;
 - How the definition of "financial interest" in Standing Order 69(6) should be updated and whether the definitions of "registrable interests" and any other interests needs to be reconsidered;
 - Whether the categories of registrable interest included in the Code and Guide agreed by the Assembly should be set out in standing orders;
 - Whether there should be provision in Standing Orders for the rule in the Guide that Members must complete a Members' registration form within 28 days of taking their seat;
 - Whether there should be provision in Standing Orders for the rule in the Guide that ceased interests can be removed and deleted from the Register after 12 months of notification;
 - Whether there should be provision in Standing Orders for the rule that Members should declare an interest when approaching a Minister, public representative, public body or public official (albeit that this rule could be seen as being as outside the remit of Standing Orders because it does not strictly relate to Assembly proceedings).
322. Once the review of this Standing Order has concluded and whatever necessary amendments have been made, the Committee will bring forward a motion seeking the Assembly's approval to bring the new Code and Guide into effect.

The Attorney General

323. Section 43 of the Northern Ireland Act 1998 applies to the Attorney General for Northern Ireland as if he were a Member. The Committee has previously agreed, and the Assembly has accepted, that a new Standing Order should provide for the Attorney General to have the same duties as Members in respect of registering interests, declaring interests and paid advocacy.
324. The Attorney General has agreed with the Committee that some of the categories of registrable interest cannot apply to his office. Having amended the categories of registrable interest, the Committee considers that the new categories 2 (Donations and other support) and 9 (Family members who benefit from Office Cost Expenditure) could not apply to the Attorney General, as the Attorney is neither a regulated donee nor is in receipt of Office Cost Expenditure. There may be other aspects of the Guide to the Rules which cannot apply to the Attorney because he is not a Member. Naturally, the Committee accepts that where a provision of the Guide to the Rules cannot apply to the Attorney General because he is not a Member then no difficulty should arise. However, the Committee believes that other provisions of the Guide to the Rules should inform the Attorney General's duties in respect of registration of interests, declaration of interests and paid advocacy. The Committee shall

draw this position to the attention of the Committee on Procedures who have the task of bring forward the new Standing Order for the Attorney General.

325. The Committee has previously agreed that the Commissioner should be able to investigate an alleged breach by the Attorney General 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 Attorney General and, where it did uphold a complaint, it could recommend to the Assembly the imposition of a sanction.

Sanctions

326. 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.

327. The Committee believes that these sanctions are effective, proportionate and dissuasive and is satisfied that all four categories should remain. 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.
328. The Committee welcomes the IFRP's assurance that it will consider taking steps to ensure that its determinations do not provide an obstacle to the Assembly's power to withdraw a Member's salary and allowances.
329. 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.
330. 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).
331. 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.

Induction/Training

332. A number of witnesses suggested to the Committee that specific training and education should be made available to Members in a range of areas. The Committee on Standards in Public Life published a report on 14 July 2014 (Ethics in Practice: Promoting Ethical Conduct in Public Life), a key message of which was that it is essential that more is done to inculcate high ethical standards through guidance, education, and training, particularly induction training⁶². The CSPL also said in their evidence to the Committee that any new Code should:
- “...be supported by education which promotes and supports ethical decision making and builds a culture of high ethical standards.”⁶³*
333. In addition, the CSPL said that there should be appropriate training and HR support for Members in relation to the employment of staff and ethical issues.
334. The Equality Commission said in their oral evidence that they were willing to develop guidance on equality and good relations in relation to Members but that this would need to involve training or induction at least and continuing professional development (CPD). The Community Relations Council said it would be helpful if the Committee considered including a recommendation for compulsory professional training on good relations.
335. The Ombudsman suggested that there could be training for how meetings are chaired and training for members in relation to prevent bullying and harassment.
336. The Committee accepts the recommendations made by the Committee on Standards in Public Life in relation to addressing ethical standards in induction and subsequent education and training. It is right that Members should undertake regular ethics and standards training. The Committee and the Commissioner will play their role in building on existing arrangements and developing appropriate induction and training. However, the Committee believes that this work would be complemented and enhanced by the expertise of Politics Plus. The Committee therefore recommends that it should approach Politics Plus to seek to put in place appropriate arrangements for training in relation to this range of standards issues.
337. The Committee shall also invite Politics Plus to consider whether it should put in place training in relation to the additional matters which were raised with the Committee.

Governance Issues

338. In its submission CIPFA raised a number of points which focussed more on governance at the Assembly as opposed to ethical conduct by Members. In particular CIPFA recommended that the Committee “should consider developing a framework of good governance within the Assembly, and publically reporting on performance and achievements”.
339. An overview of the corporate governance processes and responsibilities within the Secretariat of the Northern Ireland Assembly is provided for in the Corporate Governance Framework. It recognises that there are three key organisational structures which support the delivery of corporate governance in the Assembly Secretariat. These are:
- The Assembly Commission
 - The Secretariat Management Group; and
 - The Secretariat Audit and Risk Committee.
340. The Committee shall draw the governance points made by CIPFA to the attention of the Clerk/Director General so that they can be considered further by those structures which support the delivery of corporate governance.

62 <https://www.gov.uk/government/publications/ethics-in-practice-promoting-ethical-standards-in-public-life>

63 Appendix 2 – Minutes of Evidence

Conclusion

341. Standards Matters says that:

“High standards of behaviour need to be understood as a matter of personal responsibility, embedded in organisational processes and actively and consistently demonstrated”.⁶⁴

342. The Committee agrees. While a code of conduct is not the only factor which influences Members’ standards of behaviour it is nonetheless vital in establishing the principles of conduct expected of all Members, setting the rules of conduct which flow from these standards and providing openness and accountability to ensure public confidence in the standards regime at the Assembly.

343. The Committee has undertaken a careful and detailed consideration to a wide range of issues which have arisen during its review. Having done so, the Committee is satisfied it has agreed a new Code of Conduct and Guide to the Rules which, in line with the terms of reference of the review:

- Clarifies what the purpose of the new Code of Conduct is;
- Defines clearly the scope of the Code and set out those circumstances where it does not apply;
- Ensures the structure of the Code makes clear the difference between any aspirational sections and those sections which are mandatory and enforceable; and
- Identifies all areas of Members’ conduct which should be governed by enforceable rules within the Code of Conduct.

344. The Committee believes that the new Code of Conduct and Guide to the Rules:

- is relevant, appropriate, comprehensive, well-structured, clear and enforceable;
- will increase 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.

345. The Committee commends to the Assembly the new Code of Conduct and Guide to the Rules.

⁶⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf



Northern Ireland
Assembly

Annex 1

Code of Conduct and Guide

The Code of Conduct:

Purpose of the Code

Scope of the Code

The Principles of Conduct

The Rules of Conduct

Schedule 1: The Categories of Registrable Interests

The Guide to the Rules:

Introduction

Chapter 1: Registration of Interests

Chapter 2: Declaration of Interests

Chapter 3: Paid Advocacy

Appendix 1: (PPERA)

1. Purpose of the Code

- 1.1 The purpose of the Code of Conduct is to set out for both Members of the Northern Ireland Assembly (“Members”) and the public the minimum ethical standards required of Members when discharging 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.

2. Scope of the Code

- 2.1 The Code applies to all conduct by Members when acting in their capacity as a Member of the Assembly. The requirements of the Code are complementary to those which apply to all Members by virtue of the procedural and other rules of the Assembly including Standing Orders and the rulings of the Speaker.
- 2.2 The Code does not apply to the conduct of a Member either:
- (a) in the Assembly Chamber when Standing Order 65 applies;
 - (b) when acting exclusively in the capacity of a Minister;
 - (c) when acting exclusively in the capacity of any other political or public office; or
 - (d) when acting exclusively in their private, family or wider public life.
- 2.3 The Code upholds Members’ right to freedom of expression and their privilege provided for by section 50 of the Northern Ireland Act 1998. It imposes ethical standards upon Members rather than service or performance standards.

3. The Principles of Conduct

- 3.1 Members should 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 should never undertake any action which would bring the Assembly into disrepute. The Assembly encourages and expects Members to observe the following principles of conduct.
- 3.2 Whilst these principles will be taken into account when considering the investigation and determination of any potential breaches of the rules of conduct, the principles are not themselves enforceable.

The Seven Principles of Public Life

1. *Selflessness*: Members should act solely in terms of the public interest.
2. *Integrity*: Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
3. *Objectivity*: Members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

4. *Accountability*: Members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
5. *Openness*: Members should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
6. *Honesty*: Members should be truthful.
7. *Leadership*: Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The Additional Assembly Principles of Conduct

8. *Equality*: Members should promote equality of opportunity and not discriminate against any person, 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.
9. *Promoting Good Relations*: Members should act in a way that is conducive to promoting good relations by tackling prejudice, promoting understanding and respect and encouraging participation between people on the grounds of different religion, political opinion, race, gender, age, sexual orientation and disability.
10. *Respect*: Members should show respect and consideration for others at all time.
11. *Good Working Relationships*: Members should work responsibly with other Members of the Assembly for the benefit of the whole community. Members' working relationship with Assembly staff should at all times be professional, courteous and based on mutual respect.

4. The Rules of Conduct

4.1 Members must abide by the following rules of conduct:

1. You shall base your 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.
2. You shall uphold the criminal law. You fail to uphold the law only if you are convicted of, or admit formally, an offence committed when acting in your capacity as a Member.
3. You shall uphold the law in relation to equality. You fail to uphold the law in relation to equality only if a court or tribunal makes a finding against you, or you accept formally that you have breached the law, when acting in your capacity as a Member.
4. You shall register in the Assembly's Register of Members' Interests details of all relevant interests. A relevant interest is any interest which might reasonably be thought to influence the way in which you act as a Member. [The categories of registrable interest are set out in Schedule 1]
5. You shall declare, whether in Assembly proceedings or in any approach to a Minister, public representative, public body or public official, any relevant interest which might reasonably be thought to influence your approach to the matter under consideration.
6. You shall not accept any gift, benefit or hospitality that might reasonably be thought to influence your actions as a Member.

7. You shall not, in return for payment or benefit, advocate or initiate any cause or matter on behalf of any outside body or individual. Nor shall you, in return for benefit or payment, urge any other Member to do so.
8. You shall not seek to confer benefit exclusively upon a body (or individual), from which you have received, are receiving, or expect to receive a financial or material benefit, or upon any client of such a body (or individual).
9. You shall not misuse any payment, allowance or resources available to you for public purposes. You shall strictly observe the requirements of any determination made by the Independent Financial Review Panel and any rules made by the Assembly Commission applying to these or any other payments, allowances and resources.
10. You shall observe and comply with the Rules on All-Party Groups and any policy, guidance or instructions of any kind approved by the Assembly, or issued by the Assembly Commission or Assembly secretariat staff on its behalf or with its authority.
11. You shall use information which you receive in confidence only in your capacity as a Member. You shall never use, nor attempt to use, such information for the purpose of financial gain.
12. You shall disclose confidential or protectively marked information only when you are authorised to do so.
13. You shall not act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member, officer or staff of the Assembly of their duties.
14. You shall not use, or attempt to use, your position as a Member to improperly confer an advantage or preferential treatment for either yourself or any other person; or to avoid disadvantage or create disadvantage for someone else.
15. You shall not subject anyone to unreasonable and excessive personal attack.
16. You shall co-operate at all times with any investigation by or under the authority of either the Northern Ireland Assembly Commissioner for Standards or the Assembly.
17. You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority.
18. You shall not lobby a member of the Committee on Standards and Privileges, or the Commissioner in a manner calculated or intended to improperly influence their consideration of whether a breach of the Code of Conduct has occurred.
19. You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these rules of conduct.
20. You shall, if approached by anyone to act in a way that would breach the Code of Conduct, report without delay details of the approach to the Committee on Standards and Privileges, and to any other appropriate authority.
21. You shall not urge another Member to contravene any rule of conduct.

Schedule 1

The Categories of Registrable Interest

Category 1: Employment and Earnings

Category 2: Donations and other support

Category 3: Gifts, benefits and hospitality

Category 4: Visits

Category 5: Land and property

Category 6: Shareholdings

Category 7: Miscellaneous

Category 8: Unremunerated interests

Category 9: Family members who benefit from Office Cost Expenditure

The Guide to the Rules

Introduction

1. The Code of Conduct provides a set of rules by which Members must abide. Some of these rules are supported by more detailed requirements, provisions and guidance.
2. The Guide to the Rules Relating to the Conduct of Members (“the Guide to the Rules”) sets out more detailed requirements, provisions and guidance in relation to Rules 4 – 8 of the Code of Conduct. The Guide to the Rules is structured as follows:
 - Chapter 1 explains how to comply with Rule 4 (registration of interests) and Rule 6 (receipt of gifts).
 - Chapter 2 explains how to comply with Rule 5 (declaration of interests).
 - Chapter 3 explains how to comply with Rules 7 and 8 (paid advocacy).
3. The Guide to the Rules and amendments to it are approved by means of resolutions of the Assembly.
4. The Assembly has agreed that the Committee on Standards and Privileges may make such minor amendments to the Guide to the Rules as appear to it to be justified by experience or necessarily reflect decisions of the Assembly, and to report such amended versions of the Guide to Rules to the Assembly.
5. Northern Ireland Ministers and junior Ministers are subject to the rules of registration, declaration and paid advocacy in the same way as other Members (although Ministerial office is not registrable and salaried Ministers may still speak on Executive policies without breaching the restrictions on paid advocacy). But Ministers are also subject to the Ministerial Code of Conduct. The Ministerial Code of Conduct is entirely separate to the Assembly’s Code of Conduct and Guide to the Rules. 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 on Standards and Privileges and the Assembly Commissioner for Standards.
6. No written guidance can provide for all circumstances, and the references in this Guide to the Rules should not be regarded as exhaustive. The Clerk of Standards is available to give advice on the matters addressed in this Guide. The Electoral Commission is available to give advice on the permissibility of donations, and the requirements of the Political Parties, Elections and Referendums Act 2000 (PPERA).

Chapter 1: Registration of Interests

1. **Rule 4** of the Assembly's Code of Conduct provides that you shall register in the Assembly's Register of Members' Interests details of all relevant interests. A relevant interest is any interest which might reasonably be thought to influence the way in which you act as a Member.
2. The main purpose of the Register of Members' Interests is therefore to give public notification on a continuous basis of those financial interests held by Members which might reasonably be thought to influence the way in which they act. Provision is also made for the registration of non-financial interests and other such information as the Assembly may from time to time require to be included. There are nine categories of registrable interests which are described below.
3. Apart from the specific rules, there is a more general obligation upon Members to keep the overall definition of the Register's purpose in mind when registering their interests. If you have a financial interest which does not fall clearly into one of the defined categories, you are nonetheless required to register it, normally under the Miscellaneous category.
4. You are required to complete a Members' Interests Registration form and submit it to the Clerk of Standards within twenty eight days of taking your seat in accordance with Standing Orders.
5. You are required to notify the Clerk of Standards of any changes to your registrable interests within twenty eight days of each change occurring. You must provide all relevant details in relation to the interest and the date on which the interest was acquired.
6. Where necessary or appropriate you may request in writing that your entry in the Register of Interests is amended. The Clerk of Standards will amend your entry as requested and will record the date on which the amendment was made in the Register.
7. If you wish to have a ceased interest removed from the Register you should notify the Clerk of Standards identifying the ceased interest and giving the date that it became a ceased interest. The Clerk of Standards will amend your entry to record the relevant interest as a ceased interest, the date it became a ceased interest and the date on which the amendment was made in the Register. Not less than 12 months after the notice is lodged the Clerk of Standards will further amend the Register by deleting the interest.
8. The sole responsibility for complying with the duties placed upon them by this Guide rests with Members. You are responsible for making a full disclosure of your interests, and if you have relevant interests which do not fall clearly into one or other of the specified categories, you are nonetheless required to register them. You may at any time seek the advice and guidance from the Clerk of Standards on the registration and declaration of interests.
9. Failure to register an interest may be an offence under section 43 of the Northern Ireland Act 1998. The Assembly Commissioner for Standards or the Committee on Standards and Privileges may refer to the relevant authorities complaints received in respect of such an alleged failure.
10. Chapter 1 of the Guide sets out the various categories in which details of such interests must be registered and the requirements and exemptions in relation to each category are set out below.

Category 1: Employment and Earnings

11. You must register, subject to the paragraphs below, details of any remuneration you earn including any:
- (a) directorship,
 - (b) employment (including self-employment),
 - (c) office held;
 - (d) partnership; or
 - (e) trade, profession, or vocation;
- which is remunerated or in which you have any financial interest.
12. You must register the hours you work and the remuneration you receive in respect of each entry.
13. Remuneration includes not only salaries, fees and payments in kind; but also gifts received in recognition of services performed, taxable expenses, allowances and benefits such as company cars, and ex gratia payments.

Directorships

14. It is necessary to register the name of the company in which the directorship is held and to give a broad indication of the company's business, where that is not self-evident from its name. In addition to any remunerated directorships, you are also required to register any directorships you hold which are themselves unremunerated but where the companies in question are associated with, or subsidiaries of, a company in which you hold a remunerated directorship.
15. Companies which have not begun to trade or which have ceased trading need not be registered, either under this Category or under Category 5 (shareholdings). "Not trading" should, however, be interpreted in a strict sense; if a company is engaged in any transaction additional to those required by law to keep it in being, then a remunerated directorship in that company should be registered. If you wish to register a directorship in a company which is not trading you should make the position clear by adding the words "not trading" after the name of the company.

Employment, office held, etc.

16. When registering employment, you must state the employer and the nature of its business, as well as the nature of the post which you hold or the service(s) for which the employer remunerates you. Members who have paid posts as consultants or advisers must indicate the nature of the consultancy, for example "management consultant", "legal adviser", "public affairs consultant".
17. If you are self-employed or are a partner you must register the nature of the business as well as any trading name that is used.
18. If you have previously practised a profession you may wish to register that profession under this Category with a bracketed remark such as "[non-practising]" after the entry. This is particularly desirable in cases of sleeping partnerships and where it is likely that you will resume the profession at a later stage.

Registration of time

19. You are required to register how many hours you either worked or you work on average per week/month in respect of each entry.

Registration of remuneration

20. You are required to register the amount of remuneration (including any taxable benefits and payments in kind etc) that you earn in respect of each entry.
21. Remuneration for each entry must be registered with reference either to (a) the amount you have received or (b) the amount you expect to receive. It is the gross amount that should be registered, although in the case of self-employed sole traders etc. it is acceptable to register with reference to the end year net profit.
22. You may register remuneration as either falling within the following bands—
 up to £500;
 between £501 - £1,000;
 between £1,001 - £2,000;
 between £2,001 - £3,000;
 between £3,001 - £5,000;
 and thereafter in intervals of £5,000;
 or as a more specific figure.
23. Where you know that remuneration will be received but you do not know the exact amount, you must register the remuneration on the basis of what you expect to receive. If this later proves to be inaccurate, you must amend your entry, within 28 days, so that details in relation to remuneration are accurately updated.
24. If you receive payment for your work and then donate it to another person, or to a charitable or community organisation, you must make your registration in the usual way but may note the donation in your Register entry.
25. If you do not receive payment for your work in a recognisable form or at all, because it is made to another person or organisation, you must nevertheless register the payment within 28 days of its receipt by that other person or organisation. This applies only to payments which, if made direct to you, would have required registration under this category.

Clients

26. Any provision to clients of services for remuneration which depend essentially upon, or arise out of, your position as a Member of the Assembly must be included in this category.
27. All clients to whom services or advice are provided by you in this regard must be listed together with the nature of the client's business in each case. Where you receive remuneration from a company or partnership engaged in consultancy business which itself has clients, you must list any of those clients to whom you provide services or advice, either directly or indirectly.
28. The types of services which are intended to be covered here include those connected with any Assembly proceeding, or other services relating to membership. If you have clients in a non-Assembly professional capacity (for example as a doctor, solicitor or accountant) you are not required to register those clients, provided it is clear beyond doubt that the services which are being provided do not arise out of or relate in any manner to membership of the Assembly.
29. If you have provided such registrable services to clients you must confirm in your entry on the Register that you have not engaged in paid advocacy.
30. You should not register under this category:
 - a) details in relation to remuneration from a single source which, in the course of a calendar year, does not exceed 0.5% of the current salary of an Assembly Member (currently £240).

- b) details in relation to any salary payable under section 47 of the Northern Ireland Act 1998 (i.e. details in relation to Members; Ministers or junior Ministers; the Speaker, Principal Deputy Speaker and Deputy Speakers, members of the Northern Ireland Assembly Commission; and those other offices specified in standing orders including Chairpersons and Deputy Chairpersons of Committees).
- c) details of income received by way of dividends (details in relation to relevant shareholdings are registered under category 5);
- d) details of income received by way of rental income (details in relation to land and property from which rental income is received is registered under category 6); or
- e) pension payments (which do not need to be registered in any category).

Category 2: Donations and other support

31. You must register, subject to the paragraphs below, support for your activities as a Member, or for candidacy at an election for Assembly or non-Assembly office, which has a value of more than £1,000, either as a single donation or in multiple donations of more than £200 from the same source in a calendar year.¹

Requirements for registration

32. This category has two parts:

Category 2(a): support received by a local party organisation or indirectly via a central party organisation.² You must register under this sub-category support received by your constituency party organisation or which you receive via a central party organisation if there was a clear link between the donation and you; for example, if it was given to a such an organisation with a wish that it be allocated to you, to your fighting fund or to a front bench office which you hold; if it was assigned to you in circumstances where you were aware, or could reasonably be expected to be aware, of the identity of the donor; or if you had invited or encouraged the donation;

Category 2(b): any other support received by a Member. This includes support received indirectly, for example via a political club.³ Under this category you must register:

- a) Financial support and sponsorship;
 - b) Loans and credit arrangements;
 - c) Support in kind, including any of the following, if provided either free or at concessionary rates: advice or information services; receptions and events; training or development for the Member or their staff; the services of staff or interns; the provision of office space or equipment; hospitality or travel benefits such as season tickets or parking;⁴
 - d) Bequests;
 - e) Gifts of property.
33. You should not register under this category:
- a) Direct support from your own party organisation;
 - b) Trade union support for a constituency party organisation, where this is linked to the constituency and would be provided irrespective of the identity of the Member;
 - c) Facilities, equipment or services provided by the Assembly, or for which you claimed under a scheme for Assembly expenses; and loans or credit arrangements taken out in order to fund activities for which you may claim expenses under a scheme for Assembly expenses;
 - d) The hours contributed by volunteers (unless funded by another body);
 - e) Any money or support provided out of public funds for your security;

1 The terms “donations” and “support”, as used in this chapter, include both financial support and support in kind.

2 Defined as a registered political party or an accounting unit of such a party

3 A political club is not a registered political party or an accounting unit of such a party. It is likely to be a Members' association under PPERA, defined as an organisation separate from, but which may be affiliated to, registered parties, but whose members come mainly from one party.

4 A concessionary rate should be valued by reference to the nearest equivalent commercial rate.

- f) Participation in developmental and secondment programmes, such as those operated by the Northern Ireland Assembly Legislative Strengthening Trust's Professional Development Programme for Members, which are approved by Assembly authorities;⁵
- g) Donations or gifts which are intended to provide personal benefit, which should be registered if necessary under Category 3: gift, benefits and hospitality;
- h) Visits, which should be registered if necessary under Category 4;

34. You are required to provide the following information:

- a) The name of the donor and (if the donation was received indirectly) the organisation acting as intermediary;
- b) The amount of the donation, or its nature and value if it is a donation in kind;⁶
- c) Category 2(b) only: the dates of receipt⁷ and acceptance;

Political Parties, Elections and Referendums Act 2000 (PPERA)

35. PPERA sets out rules about who you can accept donations and loans from and when you have to report these to the Electoral Commission, as well as registering them under this code. Further detail is set out in Appendix 1.

5 Incidental benefits such as gifts or visits do however require registration under categories 3, or 4 if they are received in the course of such a fellowship or secondment

6 When registering any income from fundraising, for example by local party organisations or political clubs, Members should give the net figure (i.e. the surplus generated by the fundraising after costs are deducted) along with details of any individual donation which exceeded the financial threshold, and the relevant donor. If the funds were raised for more than one Member, each should register as if he or she was the sole beneficiary.

7 Subscriptions, memberships and staff secondments are generally regarded as received on their start dates.

Category 3: Gifts, benefits and hospitality

36. You must register, subject to the paragraphs below, any gifts, benefits or hospitality with a value of over £240 which are provided either to you or any third party because of your membership of the Assembly (including those received in a ministerial capacity) or your political activities. You must also register multiple benefits from the same source if these have a value of more than £240 in a calendar year.

Requirements for registration

37. Under this category you must register:

Any gifts, benefits or hospitality which relate in any way to your membership of the Assembly or political activities, if provided either free or at concessionary rates, including:

- a) event or travel tickets;
- b) hospitality including receptions, meals and accommodation;
- c) gifts such as clothing or jewellery;
- d) club subscriptions and memberships;
- e) loans or credit arrangements;
- f) discount cards.

38. You are required to register the gift, benefit or hospitality received; the name of the Government, organisation, company or individual who provided it; and the date it was received.

39. You are required to register any gift, benefit or hospitality received by any third party (e.g. partner, child, friend, member of staff or company in which you have a controlling interest) which is provided because of your membership of the Assembly or your political activities. This includes gifts provided to staff in recognition of work carried out on your behalf. You are required to register your relationship to a third party who receives such a registrable gift, benefit or hospitality.

Electoral Commission issues

40. Further detail in relation to the requirements of PPERA and the acceptance of any gift, benefit or hospitality over £500 which would require registration in this category is set out in Appendix 1.

Gifts, benefits and hospitality which should not be accepted

41. As per rule 6 of the Code of Conduct, **you must not accept any gift, benefit or hospitality that might reasonably be thought to influence your actions when acting as a Member.**
42. You must therefore consider carefully the proportionality and appropriateness of any gifts, benefits or hospitality that you, or any related third parties, are offered. The value of any benefit, its connection to your membership of the Assembly or your political activities, its source, and the frequency of receipt of similar offers may all be factors which could be relevant to this judgment. You should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist. A lobbyist is anyone who, in a professional capacity, works to influence, or advises those who wish to influence, the institutions of government in Northern Ireland⁸.
43. You should not register under this category:

⁸ An elected representative or member of the House of Lords is not considered to be a lobbyist.

- a) Gifts, benefits and hospitality which could not reasonably be thought by others to be related to your membership of the Assembly or your political activities; for example, purely personal gifts or benefits from partners or family members. The extent to which this exemption applies in any particular case is necessarily a matter of judgement. Both the possible motive of the giver and the use to which the gift is put have to be considered: if it is clear on both counts that the gift or benefit is entirely unrelated to your membership of the Assembly or your political activities, or would not reasonably be thought by others to be so related, it need not be registered. If there is any doubt it should be registered;
- b) Hospitality from UK public bodies, including, for example, devolved administrations, government departments, the armed services or the police, or local or health authorities. Hospitality from the government of the Republic of Ireland is also not registrable⁹;
- c) Gifts, benefits or hospitality received in recognition of a service performed, e.g. after giving a speech. If these benefits would not have been received had this service not been performed, they should be registered under Category 1: Employment and earnings.
- d) Gifts or benefits which are not retained personally but which are handed over to either the Assembly or to the relevant Executive department for recording and for either retention or disposal.
- e) Donations or other assistance given to you to support your Assembly or political activities, or for candidacy at an election for Assembly or non-Assembly office, which should be registered under Category 2: Donations and other support.
- f) Visits, including travel, accommodation, and hospitality/subsistence which should be registered under Category 4: Visits.

Category 4: Visits

44. You must register, subject to the paragraphs below, details of any travel, accommodation and hospitality provided either to you or any third party, when the purpose of the visit relates to your membership of the Assembly (including those received in a ministerial capacity) or your political activities.

Requirements for registration

45. You are required to register the date, destination and purpose of the visit; whether travel, accommodation and hospitality was provided to you and/or a third party; and the name of the Government, organisation, company or individual which met the cost. You are also required to register your relationship to a third party whose visit is paid for because of your membership of the Assembly or your political activities.
46. When travel, accommodation or hospitality is provided to you (and/or a third party) because of your membership of the Assembly or your political activities, but the purpose of the visit does not relate to your role as a membership of the Assembly or your political activities (e.g. the purpose is recreational) then these details should be registered under Category 3: Gifts, benefits and hospitality.
47. Where the hospitality provided on a visit is significantly in excess of what reasonably could be considered subsistence then this hospitality should instead be registered under Category 3: Gifts, benefits and hospitality.
48. Further detail in relation to the requirements of PPERA and the acceptance of any visit costing over £500 which would require registration in this category is set out in Appendix 1.
49. You should not register under this category:
- (a) Visits, the costs of which are met from UK public funds (e.g. visits which are paid for by the Assembly or by an Executive department).
 - (b) Visits undertaken under the auspices of the Commonwealth Parliamentary Association, the Inter-Parliamentary Union, the British-Irish Parliamentary Assembly or the Westminster Foundation for Democracy; the Council of Europe, the Organization for Security and Co-operation in Europe Parliamentary Assembly, the British American Parliamentary Group, and the NATO Parliamentary Assembly;
 - (c) Visits arranged and paid for wholly by your own political party;
 - (d) Visits paid for wholly by an institution of the European Union or by a political group of the European Parliament;
 - (e) Visits as part of an Industry and Parliament Trust fellowship or the NI Assembly Business Trust.
 - (f) Visits undertaken as part of the Northern Ireland Assembly Legislative Strengthening Trust's Professional Development Programme for Members.
 - (g) Visits the cost of which does not exceed 0.5% of the current salary of an Assembly Member (currently £240); and
 - (h) Visits which are entirely unconnected with your membership of the Assembly or your political activities.

Category 5: Shareholdings

50. You must register, subject to the paragraphs below, any holdings which:
- i) amount to more than 1% of the issued share capital of that company, or more than 1% of a partnership; or
 - ii) are valued at more than 50% of the current salary of an Assembly Member (currently £24,000)

Requirements for registration

51. Under this category you must register:

- a) Shareholdings or share options which you hold, either by yourself or with or on behalf of a third party. This includes any shares which are managed by a trust (other than a blind trust or similar delegated management arrangement) and any holdings in sector-specific vehicles;
- b) Interests in any kind of partnerships.

52. You must register

- a) The name of the company or organisation;
- b) A brief description of the nature of its business, and of any relevant trust or delegated management arrangement;
- c) Whether the holding falls to be registered under (i) or (ii)

53. Holdings should be valued as at the previous 5 April. If this is not possible, you should make your best estimate of the value on that date and register the holding within 28 days of the 5 April valuation.

54. You should not register under this category:

- a) Holdings in collective investment vehicles such as unit trusts, investment companies with variable capital (ICVCs) and investment trusts;
- b) Assets held in blind trusts;
- c) Pensions

55. However, identifiable shareholdings of a registrable value which are held within a trust or personal pension plan must be registered.

Category 6: Land and Property

56. You must register, subject to the paragraphs below, any land or property in the UK or elsewhere which:
- a) has a value of more than £48,000; or forms part of a total property portfolio whose value exceeds £48,000; and/or
 - b) alone or together with other properties owned by you, provides rental income of more than £4,800 in a calendar year.

Requirements for registration

57. **Under this category you must register:**

Land or property which you own or hold, either by yourself or with or on behalf of a third party.

58. You must register the type of property (e.g. whether business or residential) or if land the type of use to which it is put; and its general location. A farm on which Member has a residence must be registered because it has a substantial value aside from the residential use. Acceptable examples are as follows:

- “Woodland in Fermanagh”
- “Dairy farm in Armagh”
- “3 residential properties in Bangor from which rental income is received”

59. You must register any property which you hold as a trustee only when you have a beneficial interest in the income or assets of the relevant trust.

60. If the rental income is paid to another person or organisation, this must be stated.

- 61. You should not register under this category:**

Any land or property which is used wholly for your own personal residential purposes, or those of your spouse, partner or dependent children (that is, your main and any other homes).

62. However, any such land or property does have to be registered if it provides rental income that contributes to the receipt of rental income of more than £4,800 in a calendar year. All other properties that contribute to this total income will also have to be registered.

Category 7: Miscellaneous

63. You must register any relevant financial interest not falling clearly within one of the above categories.

Requirements for Registration

64. You must register any relevant financial interests or material benefits which do not fall clearly into any of the above Categories but which might reasonably be thought by others to influence how you act in your capacity as a Member of the Assembly
65. It is a cardinal principle that you are responsible for making a full disclosure of your own interests in the Register; and if you have relevant interests which do not fall clearly into one or other of the specified Categories, you will nonetheless be expected to register them.

Category 8: Unremunerated interests

66. You must register, subject to the paragraphs below, any unremunerated interests which might reasonably be thought by others to influence how you act in the capacity as a Member of the Assembly.

Requirements for Registration

67. Certain non-financial interests may reasonably be thought to affect the way you discharge your public duties, and must therefore be registered in this category. The following non-financial interests are always relevant and therefore must be registered:
- (a) Unremunerated directorships;
 - (b) Unremunerated public office or membership of public bodies, e.g. boards of governors of schools;
 - (c) Membership of the Policing Board;
 - (d) Acting as an office-holder or trustee of cultural or sporting bodies;
 - (e) Acting as an office-holder or trustee in pressure groups or trade unions; and
 - (f) Acting as an office-holder or trustee in voluntary or not-for-profit organisations
68. Where you consider that any other unremunerated interest might reasonably be thought by others to influence your actions in a similar manner to a remunerated interest, such an interest must be registered here.
69. **You should not register under this category:**
- (a) any unremunerated position directly arising from membership of the Assembly (e.g. being an office holder in an All Party Group or an unremunerated Chairperson of a committee); or
 - (b) any unremunerated office held in a political party.

Category 9: Family Members who benefit from Office Cost Expenditure

70. You must register, subject to the paragraphs below, details of any family members who benefit in any way through your Office Cost Expenditure.
71. Under this category you must register:
- a) a spouse, civil partner or cohabitant (whether current or former); or
 - b) a parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew or niece whether
 - by blood (whether of the full or half blood);
 - by marriage, civil partnership or cohabitant relationship (whether current or former); or
 - by adoption.
72. You are required to provide the following information:
- a) the nature of your relationship to the person (but not that person's name); and
 - b) how that person's benefits (e.g. through employment). Where the benefit is through employment the job title must be given.
73. Where you use any of your Office Cost Expenditure in a way that benefits a family member of another MLA then this must also be registered. For example:
- "I employ the granddaughter of [MLA's name] as my Research Assistant".*
74. You should not register under this category any family member whose benefit does not exceed in a calendar year 0.5% of the current salary of a Member (currently £240).

Chapter 2: Declaration Of Interests

1. **Rule 5** of the Assembly's Code of Conduct provides that you shall declare, whether in Assembly proceedings or in any approach to a Minister, public representative, public body or public official, any relevant interest. A relevant interest is any interest which might reasonably be thought to influence your approach to the matter under consideration.
2. The declaration of interests ensures that Members, the public and others are made aware at the appropriate time, in proceedings of the Assembly and on other occasions, of any relevant interest. The requirement to declare an interest complements the registration requirements and applies to almost every aspect of your Assembly duties. It covers a broader range of interests than registration.

Requirements for declaration

3. You are required, subject to the paragraphs below, to declare any interests which might reasonably be thought by others to influence your approach to the matter under consideration, including:
 - a) past financial interests (normally limited to those active within the last twelve months);
 - b) indirect financial interests, such as the financial interests of a third party, if you are aware of that interest. It is not necessary to identify the person concerned: a formula such as "A member of my family has a financial interest in []" will usually suffice. Further detail is set out in paragraphs 4-6 below.
 - c) expected future interests, if your plans have moved beyond vague hopes and aspirations and reached the stage where you have a reasonable expectation that a financial benefit will accrue;
 - d) financial interests of a sort which do not require registration,
 - e) financial interests which require registration but have not yet appeared in the published Register;
 - f) any non-financial interests.
4. The requirement to declare the financial interests of a third party only applies when:
 - a) you have a relationship or connection with the third party in question (e.g. a family member, close friend, business associate or a member of your staff); and
 - b) the nature of your contribution relates so directly to the interests of the third party that it might reasonably be thought by others to have influenced your approach to the matter under consideration.
5. The more distant your relationship or connection with the third party in question the less likely it is that their interests might reasonably be thought by others to have influenced your approach to the matter under consideration. There is no need to declare the interests of a constituent unless you also have another relationship or connection with them.
6. There is no need to declare the interests of third parties where their interests are either held widely or relate only generally to the matter under consideration and could not therefore reasonably be thought by others to influence your approach to the matter under consideration.
7. You are not required to declare an interest:
 - a) when voting in plenary. But if you have a relevant registrable interest which has not yet been registered you should seek to register it before the vote; or if this is not possible, as soon as possible afterwards;

- b) if the interest is common to all Members, (e.g. an interest such as a Member's salary or being an employer);
 - c) if the interest is common to a very broad category of people to which you belong (e.g. ratepayers; parents; public transport users etc. This exemption does not extend to membership of a profession).
- 8. In a debate or other proceedings of the Assembly you should declare an interest at the beginning of your speech. A declaration should be brief but should make specific reference to the nature of your interest.
- 9. If the Assembly is dealing with a Committee stage of a Bill it will normally be sufficient for you to declare a relevant interest when speaking for the first time. It will not be necessary for a declaration to be repeated except when you speak on an Amendment to which the interest is particularly relevant.

Declaration of an interest in respect of written notices

- 10. Declaration of relevant interest is required on Forthcoming Business or the Order Paper when tabling any written notice, i.e.:
 - (a) Questions for oral or written answer. You must indicate any relevant interest on the question form. If the question is for oral answer there is no need for further declaration when called in the Chamber;
 - (b) Topical Questions. You must declare any relevant interest orally in the Chamber when asking the question;
 - (c) Questions for urgent oral answer. You must inform the Speaker of any relevant interest when tabling the question and must also declare the interest orally in the Chamber;
 - (d) A notice for the presentation of a Bill;
 - (e) Any other Motions, Amendments, or names added in support of them; or
 - (f) Amendment to Bills (whether to be considered in the Assembly or in a Committee) and any names added in support of them.
- 11. Whenever such an interest is declared, the symbol "[R]" is printed after the Member's name on the Forthcoming Business or Order Paper. The Office accepting the written notice (including any written notice of a Member adding his or her name to a Motion or Amendment) assumes that no interest is declarable unless the notice clearly indicates a declaration; this should be done by inserting "[R]" after the Member's name on the Motion or Amendment, or adjournment debate topic as the case may be, or filling in the appropriate box which appears on the form for Assembly Questions.
- 12. "Relevant interests" which should be declared include any interest which you are required to register in the Register of Members' Interests, or which you should declare in debate. It will therefore usually be the case that the interest to which you are drawing the attention of the Assembly will already be entered in the Register. Provided it is readily apparent which of your registered interests are applicable, you need take no further action. If this is not the case, or if the interest is a new interest which is not yet available for inspection in the Register, then when giving notice you should attach to that notice a brief written description of the interest which is being declared. This will then be available for inspection by Members in the office where the notice was given i.e. the Business Office or the Bill Office.
- 13. You must exercise particular care when invited to add your name to any Motions or Amendments and to ensure that you have considered whether you have a relevant declarable interest. Given the informal way in which support for Motions and Amendments is often sought, the need for declaration may not be foremost in your mind, but great care needs to be exercised in these circumstances.

14. Declaration of relevant interest is required when sponsoring an event or function in Parliament Buildings.

Declaration of interest in Committees

15. As a Member of a Committees on any matter or Bill you must adhere to the following rules:
- a) When you have a financial or other interest which is directly affected by a particular inquiry or when you consider that a personal interest may reflect upon the work of the Committee or its subsequent Report, you should consider whether you should stand aside from the Committee proceeding relating to it. This is particularly important if you are the Chairperson of a Committee;
 - b) At your first meeting of a Committee you should ensure that any relevant financial interests (i.e. interests which relate to the terms of reference of that Committee, or which are likely to be relevant to a substantial part of the work which the Committee may be expected to undertake) are drawn to the attention of the Committee.
 - c) You should declare interests at the appropriate time during a committee meeting: this might be either at the start of the meeting or when a particular matter arises. In particular you should ensure you declare interests;
 - (i) when the Committee is deciding on the subject of an inquiry;
 - (ii) at the beginning of any inquiry to which your interest particularly relates; and
 - (iii) at sessions of evidence, and in any hearings involving witnesses to whom the interest is particularly relevant and before any questions which might reasonably be thought by others relevant to that interest.
16. Although the main purpose of declaration of interest is to inform colleagues, it is right that witnesses and the public, if the Committee is meeting in public, should also be informed. When a Committee meets in public, declaration of interest should be in public session. When a Committee meets in private and regularly takes oral evidence, declaration should be made when witnesses are present.
17. In making any declaration you should clearly identify the nature of the interest.
18. Any declarations will be recorded in the Committee's minutes of proceedings.
19. Where the subject matter of an inquiry of a Committee is of direct concern to an outside body in which you have a financial interest, you must consider whether on grounds of conflict of interest it is proper to take part in the inquiry. You must also consider whether the relationship of your interest to the subject of the inquiry is so close that it is not possible to participate effectively in the inquiry without crossing the borderline into paid advocacy.

Other occasions when declaration of interest should be considered

20. The requirement to declare a relevant interest at the appropriate time covers almost every aspect of your Assembly duties extending to correspondence and meetings with Ministers and public officials. Frankness with colleagues is also important. You must declare financial interests not only in debate in the Assembly and its Committees but also whenever you are attempting to influence your fellow Members.
21. Failure to declare an interest may be an offence under section 43 of the Northern Ireland Act 1998. The Assembly Commissioner for Standards or the Committee on Standards and Privileges may refer to the relevant authorities complaints received in respect of such an alleged failure.

Chapter 3: Paid Advocacy

1. You should be able to bring your outside experience to bear on matters of public policy, but you should not abuse your position to advantage those paying you. The rules on Advocacy are intended to provide the right balance between enabling Members to bring to bear their experience outside the Assembly on matters of public policy while avoiding any suggestion that an outside individual or organisation can gain preferential treatment in return for having a financial relationship with a Member.

The Rules

2. **Rule 7** of the Code of Conduct provides that you shall not, in return for payment or benefit, advocate or initiate any cause or matter on behalf of any outside body or individual. Nor shall you, in return for benefit or payment, urge any other Member to do so.
3. This rule means that paid advocacy is prohibited. You may not advocate or initiate any cause or matter, either in proceedings of the Assembly or in any other manner, in consideration of any payment or benefit in kind.
4. This rule also means that you may not enter into any contractual arrangement which fetters your complete independence in the Assembly in return for payment or benefit in kind.
5. **Rule 8** provides that you shall not seek to confer benefit exclusively upon a body (or individual), from which you have received, are receiving, or expect to receive a payment or benefit, or upon any client of such a body (or individual).
6. Otherwise, you may speak freely on matters which relate to the affairs and interests of a body (or individual) from which you receive a financial or material benefit, provided the benefit is properly registered and declared.
7. It would be regarded as a very serious breach of the rules if a Member failed to register or declare an interest which was relevant to a proceeding he or she had initiated. Similar considerations would apply in the case of approaches to Ministers and others. "Initiating an Assembly proceeding" includes:
 - presenting a Bill;
 - presenting a Petition;
 - tabling and asking an Assembly Question, including any supplementary questions to such a Question;
 - initiating, or seeking to initiate an adjournment (or other debate);
 - tabling or moving any Motion or Amendment;
 - tabling or moving an Amendment to a Bill;
 - proposing a draft Report, or moving an Amendment to a draft Report, in a Committee;
 - giving any written notice, or adding a name to such notice, or making an application for an emergency debate.
8. You must also consider, however, whether you have a conflict of interest. If so, you must resolve it, at once, in accordance with Rule 1 of the Code of Conduct.
9. Exceptionally, you may approach the responsible Minister or public official with evidence of a serious wrong or substantial injustice even if the resolution of any such wrong or injustice would have the incidental effect of conferring a financial or material benefit on an identifiable person from whom or an identifiable organisation from which you, or a member of your family, has received, is receiving or expects to receive, outside reward or consideration (or on a client of that person or organisation).

Interpretation

10. Under these rules, a payment or benefit includes:
 - a) past financial interests or material benefits, including
 - “one-off” registrable interests, such as donations; gifts, benefits and hospitality; and visits; and
 - continuing benefits such as directorships, employment and sponsorships;
 - b) all present financial interests or material benefits which must be either registered or declared;
 - c) future financial interests or material benefits, if you have a firm and specific expectation that such a financial benefit from an identifiable outside person or organisation will accrue in the next year; and
 - d) any relevant payment or benefits in kind to a third party in place of you (although any payment to a third party which arises out of that person’s own occupation is not regarded as a benefit for the purposes of the rule).
11. Under these rules a payment or benefit does not include:
 - a) any non-financial interest or benefit, even though this may be registered or declarable;
 - b) any salary or allowance payable under section 47 of the Northern Ireland Act 1998; or
 - c) any salary or allowance arising from membership of the House of Commons, the House of Lords or a district council.
12. The restrictions under Rule 8 apply for one year after the payment or benefit was received. You can free yourself immediately of any restrictions due to a benefit received during the past year by repaying its full value.

Trade Unions

13. The rules do not prohibit you from being sponsored by a trade union or any other organisation, subject to the rules on registration and declaration.

Private Member’s Bills

14. You are not prevented from seeking to introduce and proceed with a Private Members’ Bill by reason of the fact that you receive free or subsidised assistance from an organisation connected with the purpose of the Bill provided you had no pre-existing financial relationship with the organisation which is registered, or is required to be registered.

Visits

15. You are reminded that when accepting visits you should be mindful of the reputation of the Assembly. However, the knowledge obtained by Members on such visits can often be of value to the Assembly as a whole. While it is desirable that Members should be able to use that knowledge in debate in the Assembly there is a point at which promoting the interests, of e.g. a foreign Government from which hospitality has been received crosses the line between informed comment to lobbying for reward or consideration.
16. You may not therefore seek to confer an exclusive financial or material benefit on a foreign government, non-governmental organisation (NGO) or other agency which has, within the previous year, funded a registrable visit which you have undertaken.
17. You may, however (having registered and declared their interest), initiate or participate in proceedings or approaches to Ministers, other Members or public officials etc. which relate to a country, or the work of an NGO or agency etc., which has funded a registrable visit, provided

that your participation does not seek to confer benefit exclusively on that government or organisation.

Further advice

18. The financial interests of Members are extremely varied, as the Register demonstrates. Each Member will need to apply the rule on paid advocacy and the guidelines to their particular circumstances. When in doubt, you can seek advice from the Clerk of Standards, or the Committee on Standards and Privileges. However, some illustrative examples of the application of the guidelines may be of value:
- (a) A Member who is a director of a company may not seek particular preference for that company (e.g. tax relief, subsidies, restriction of competition) in any proceeding of the Assembly.
 - (b) In the case of trade associations, staff associations, professional bodies, charities (or any similar representative organisation):
 - (i) Membership alone of any representative organisation does not entail any restrictions under the rule.
 - (ii) A Member who is, for example, a remunerated adviser:
 - May not advocate measures for the exclusive benefit of that organisation; nor speak or act in support of a campaign exclusively for the benefit of the representative organisation or its membership (e.g. a campaign for special tax relief, or for enhanced pay and numbers);
 - May speak or act in support of a campaign which is of particular interest to the representative organisation (e.g. in the case of an animal welfare organisation, a campaign to prohibit the importation of animal fur, or prohibit blood sports; in the case of a charity for cancer research, a campaign for the prohibition of smoking).
19. Failure to adhere to the rules on paid advocacy may be an offence under section 43 of the Northern Ireland Act 1998. The Assembly Commissioner for Standards or the Committee on Standards and Privileges may refer to the relevant authorities complaints received in respect of such an alleged failure.

Appendix 1

Further information in relation to the rules on donations arising from the Political Parties, Elections and Referendums Act 2000 (PPERA)

1. PPERA sets out rules about who you can accept donations and loans from and when you have to report these to the Electoral Commission, as well as registering them under this code. You must not accept any donations, loans, security or other support valued at over £500 from impermissible donors/lenders. Within 30 days of receiving a donation, and before entering into a loan, you must check that the donor/lender is permissible. It is an offence to accept a donation or enter into a loan from an impermissible source. For Members a permissible donor/lender must be one of the following:
 - an individual registered in a UK electoral register (including bequests –donations only)
 - a UK registered company which is incorporated within the European Union and carries on business in the UK
 - a UK registered political party
 - a UK registered trade union
 - a UK registered building society
 - a UK registered limited liability partnership that carries on business in the UK
 - a UK registered friendly industrial or provident society
 - a UK based, unincorporated association that carries on business or other activities wholly or mainly in the UK and has its main office there
 - an Irish citizen (including bequests – donations only)
 - an Irish registered company which is incorporated within the European Union and carries on business in the island of Ireland
 - an Irish registered political party
 - an Irish registered trade union
 - an Irish registered building society
 - an Irish registered limited liability partnership that carries on business in the island of Ireland
 - an Irish registered friendly, industrial or provident society
 - an Irish based, unincorporated association that carries on business or other activities wholly or mainly in Ireland and has its main office there
 - certain kinds of trust (donations only)
2. You must report to the Electoral Commission all donations which you accept – whether in the form of money or goods or services provided without charge or on non-commercial terms – if they exceed £1,500 in value. Multiple donations from a single source, in the same calendar year, that aggregate to more than the threshold must also be reported. Reports must be made within 30 days of accepting the donation. If permissibility cannot be established within 30 days from date of receipt, the donation must be returned to the donor or surrendered to the Electoral Commission. You must also tell the Electoral Commission about all donations over £500 in value which were received from impermissible or unidentifiable sources even if they were returned to the donor. These reports must be made within 30 days of the donation having been returned or surrendered.
3. You must provide to the Electoral Commission the value of the donation and the name, address and other relevant details of the donor.

4. Loans and other credit arrangements, including credit facilities and the provision of security or a guarantee on your behalf, must also be reported. The same thresholds and rules about aggregation apply to reporting of loans as to donations. You must provide the name, address and other relevant details of the lender or guarantor. Details of the value, terms and conditions of the loan must also be reported.
5. Before accepting any gift, benefit or hospitality over £500 which would require registration in Category 3 (including a credit facility or a loan which exceeds £500 in value) you are required to satisfy yourself that it is from a permissible donor, and to notify the Electoral Commission where required under PPERA (e.g. where its value is over £1500).
6. Before accepting any travel, accommodation and hospitality over £500 which would require registration in this category, you are required to satisfy yourself that it is from a permissible donor, and to notify the Electoral Commission where required under PPERA (e.g. where its value is over £1500).
7. Adherence to the rules in relation to PPERA is a matter for the Electoral Commission rather than for the Committee on Standards and Privileges or the Assembly Commissioner for Standards.
8. For further advice on any matter in relation to the requirements of PPERA please contact the Electoral Commission on 02890 894020.



Northern Ireland
Assembly

Annex 2

Guidance for Members on dealing with lobbyists

Guidance for Members on dealing with lobbyists

A lobbyist is someone who, in a professional capacity, works to influence, or advise those who wish to influence, the institutions of government in Northern Ireland in respect to:

- (i) the formulation, modification or adoption of any legislative measure (including the development of proposals for legislation);
- (ii) the formulation, modification or adoption of a rule, regulation or any other programme, policy or position;
- (iii) the administration or execution of a governmental or other public programme or policy within Northern Ireland (including the negotiation, award or administration of a public contract, grant, loan, permit or licence).

Lobbyists include both consultant or third-party lobbyists and in-house lobbyists.

The Committee on Standards in Public Life has concluded that lobbying has an important part to play in securing “the democratic right to make representations to government and to have access to the policymaking process [which] is fundamental to the proper conduct of public life and the development of sound policy.” The Committee on Standards and Privileges agrees with this conclusion. Many organisations play an important role in informing members of the Assembly.

However, some lobbying can give rise to a suspicion of improper influence over the Assembly. Members of the Assembly, and their staff, must have regard to such public perceptions. Members’ dealings with lobbyists should always be governed by the Seven Principles of Public Life, including in particular the principles of integrity and openness.

Members’ dealings with lobbyists fall within the scope of the Assembly Code of Conduct and Guide to the Rules (“the Code and Guide”). Members must not, in relation to any dealing with a lobbyist, do anything which breaches the Code and Guide.

Members must therefore register or declare any interests that they have arising 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 benefit.

The Code also provides that Members must not accept any gift, benefit or hospitality that might reasonably be thought to influence their actions when acting as a Member. This means that Members should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist.

In addition to the provisions of the Code and Guide, however, Members are also encouraged to have regard to the following guidance which is based on recommendations contained within the Committee on Standards in Public Life’s Report:

- The public must be assured that no person or organisation will gain better access to, or treatment by, any Member as a result of employing a lobbyist either as a representative or to provide strategic advice. Members should not offer or accord preferential access or treatment to lobbyists or their employers. Nor should lobbyists or their employers be given to understand that preferential access or treatment might be forthcoming from another Member or group or person within, or connected with the Assembly.
- Members should proactively and as a matter of course, satisfy themselves as to the identity of the person or organisation lobbying them (and where appropriate their client or employer) and the reason for the approach.

- Members should consider:
 - keeping a record of all meetings with lobbyists;
 - requiring lobbyists to make a record of the meeting, and provide for the Member to have access to that record at any future time should it be called for, before agreeing to meet with them,
 - arranging for a member of their support staff to take notes at any meetings with lobbyists.
- Members should bear in mind the principle of equality of access and the need proactively to consider, after any meeting, whether a balance of views should be obtained.
- Members should take particular care not to give the impression of giving greater weight to representations because they come from lobbyists; representations should be given such weight as they deserve based on their intrinsic merit.
- Members should consider routinely publish information about all significant meetings and any hospitality received involving lobbyists. This should include significant contact (including private meetings) where a specific matter is raised which has a bearing on official business.
- Members may participate in events for which others are charged a fee to attend. In doing so, however, Members should ensure that should be no grounds for the perception that such an event is a means of “buying” access to them. Member should not offer preferential treatment to any person or organisation as a result of having made initial contact with a Member at such an event.
- Members should not participate in any event if they are aware, or become aware, that the organisers are promoting the event on the basis that those paying to attend the event are “buying” influence over Members or that they can expect to receive better subsequent access to, or treatment by Members, than would be accorded to any other person or organisation.
- Members should ensure that their staff are aware of this guidance.



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings of the Committee Relating to the Report

Wednesday, 15 January 2014

Room 21, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Ms Paula Bradley
Mr Declan McAleer
Mr Fra McCann
Mr Ian McCrea
Mrs Sandra Overend

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

Apologies: Mr Mervyn Storey

8. Review of Code of Conduct

Members noted the Clerk's Paper and the Report of the Committee on Standards in Public Life 'Standards Matter – A review of best practice in promoting good behaviour in public life'.

The Clerk briefed the Committee on the background to these issues.

Agreed: Following discussion the Committee agreed the draft Terms of Reference.

Agreed: The Committee agreed the provisional work programme and indicative timescales.

Agreed: The Committee agreed to seek the Commissioner's input on key issues throughout the review and that the Commissioner should be given an opportunity to comment on the draft position paper and the new draft Code of Conduct before they are signed off by the Committee.

Agreed: The Committee agreed that the Clerk should prepare an options paper on possible visits to other legislatures for consideration at a future meeting.

2.25pm Mr McCann left the meeting.

Agreed: The Committee agreed that the Clerk should request legal advice on a range of issues for consideration at a future meeting.

2.31pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday, 29 January 2014

Room 21, Parliament Buildings

Present:	Mr Alastair Ross (Chairperson) Mr Steven Agnew Mr Cathal Boylan Ms Paula Bradley Mr Fra McCann Mr Ian McCrea Mrs Sandra Overend
In Attendance:	Mr Paul Gill (Assembly Clerk) Mr Ray McCaffrey (Assembly Research) Ms Hilary Cleland-Bogle (Assistant Assembly Clerk) Mr Jonathan Watson (Clerical Supervisor)
Apologies:	Ms Anna Lo (Deputy Chairperson) Mr Declan McAleer

6. Review of the Code of Conduct

Mr Douglas Bain, Assembly Commissioner for Standards and Mr Ray McCaffrey, Assembly Researcher joined the meeting for this agenda item.

Members noted the Clerk's paper on principles and codes of conduct.

The Clerk briefed the Committee on this issue.

Agreed: The Committee agreed, subject to the outcome of its review, that the new Code of Conduct should provide for both aspirational principles and enforceable rules. The principles could be taken into consideration when any allegation of breaches of the rules was under investigation. However, the principles would not by themselves found a complaint.

1.56pm Mr Agnew left the meeting

2.00pm Mr McCrea left the meeting

Agreed: The Committee agreed, subject to the outcome of its review, that the revised seven principles of public life should be included amongst the aspirational principles in the Code. The Committee agreed it would consider amending the descriptors of each to reflect specifically the role of an Assembly Member.

Agreed: The Committee agreed to defer considering the remaining existing principles in the Code until after it had received legal advice.

Agreed: Members agreed that the consultation document should invite respondents to consider whether further additional principles should also be included in the Code.

Members noted the Clerk's Paper on Lobbying; the Assembly Research Paper on Developments relating to Lobbying in the UK and Ireland; and correspondence from the Standards, Procedures and Public Appointments Committee of the Scottish Parliament.

The Clerk briefed the Committee on this issue.

The Chairperson invited Mr Ray McCaffrey, Assembly Research to brief the Committee on the Research Paper.

Agreed: Following discussion the Committee agreed that no Member should offer or accord preferential access or treatment to professional lobbyists or their employers. However, members expressed concerns about how such a rule, if provided for in the Code of Conduct, might be enforced.

The Committee also noted the Committee on Standards in Public Life's recommendations in relation to elected representatives and lobbying and expressed concern that these may be impractical to implement.

The Committee agreed to address these issues in its consultation document.

The Chairperson thanked Mr Bain and Mr McCaffrey for attending the meeting.

The Committee noted correspondence from the Standards, Procedures and Public Appointments Committee who are carrying out an inquiry into lobbying.

Agreed: The Committee agreed that the Chairperson should respond to the correspondence setting out the Committee's current position.

Members noted the Clerk's Paper on Visits to other Legislatures as part of its Review of the Code of Conduct.

The Clerk briefed the Committee on this issue.

Agreed: The Committee agreed that it would like to meet the Standards, Procedures and Public Appointments Committee at the Scottish Parliament and that it would also like to meet the House Ethics Committee, the Senate Ethics Committee, and the Joint Committee on Legislative Ethics at the General Assembly of Maryland.

The Committee agreed that the Clerk should seek to make the necessary arrangements and prepare a business case. The Clerk should then return to the Committee with the business case and draft programme before numbers and dates are confirmed and any bookings are made.

2.56pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday, 5 February 2014

Room 21, Parliament Buildings

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

In Attendance: Mr Paul Gill (Assembly Clerk)
Mr Simon Kelly (Assembly Legal Services)
Mr Ray McCaffrey (Assembly Research)
Ms Hilary Cleland-Bogle (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: None

5. Review of the Code of Conduct

Members noted that any decision or view taken by the Committee at this stage would be reflected in the Committee's consultation document. However, they would not be binding as far as the future Code is concerned. Final decisions will not be taken until after the Committee has considered the responses to the consultation.

Members noted the Clerk's Paper on the Purpose of the Code.

The Clerk briefed the Committee on this issue.

Agreed: Following discussion the Committee agreed that the consultation document should propose that the purpose of the Assembly's Code should be as follows—

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 principles 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.

Members noted the Clerk's Paper on the Scope of the Code; the Paper from the Commissioner; the memo to the Commissioner on the application of the Code to Ministers; and the papers on the application of the Code to committees.

The Clerk briefed the Committee on the scope of the Code only covering Members in that capacity.

Agreed: The Committee considered the issue of whether the scope of the Code should be extended to apply when it could reasonably be presumed that a Member was acting in

that capacity. The Committee agreed to invite comments on this matter in its consultation document.

The Clerk briefed the Committee on issues in relation to the application of the Code to the conduct or activities of Members in their private and family life.

The Committee considered whether the scope of the Code should in any circumstances extend to the conduct of Members in their private and family life. The Committee agreed to defer taking a decision until after it had received legal advice on the disqualification of Members.

1.58pm Mr McCann left the meeting

1.58pm Colum Eastwood joined the meeting

The Clerk briefed the Committee on the current application of the Code to Ministers.

Agreed: Following discussion the Committee agreed that the wording of the scope of the Code in relation to its application to Ministers should be clarified.

The Clerk briefed the Committee on the current position on the scope of the Code in respect of complaints about the quality of service provided by Members.

Agreed: The Committee agreed the existing position should be reflected in the scope of the new Code.

The Clerk briefed the Committee on the application of the Code to members in committee.

Agreed: Following discussion the Committee agreed that the scope should continue to extend to members' conduct in committees. However, the Committee also agreed that the Code should clarify that members of committees should not feel inhibited from subjecting witnesses to challenging questioning.

2.10pm Mr McAleer left the meeting.

2.10pm Mr Eastwood left the meeting.

Members noted the Clerk's Paper on Staff Conduct and Sanctions and the Assembly Research Paper.

The Clerk briefed the Committee on this issue.

The Chairperson invited Mr Ray McCaffrey, Assembly Research to brief the Committee on the Research Paper.

The Committee considered the issue of Staff Conduct and agreed that steps should be taken to ensure that Members' staff cannot and do not act in a manner that places private interest before public interest when carrying out official duties on behalf of the Member. The Committee agreed that Members' staff should be expected to adhere to the standards expected of Members. However, the Committee expressed concern about how in practice Members might be held to account for the actions of their staff in circumstances where the Members had no knowledge of these actions.

Agreed: The Committee agreed to give particular consideration to this issue during its review and to invite comments on it in its consultation paper.

2.28pm Mr Storey left the meeting.

The Committee considered the issue of Sanctions –

Agreed: The Committee agreed that the existing sanctions at the Assembly's disposal are effective, proportionate and dissuasive.

Agreed: The Committee agreed that while the most serious sanctions should be reserved for the most serious offences, the Committee should retain some discretion when deciding which sanctions are applicable in particular cases.

Agreed: The Committee 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 sanctions on any breach found by the Commissioner.

The Chairperson thanked Mr McCaffrey for his briefing.

Members noted the Clerk's Paper on the Principles of Conduct and the Legal Advice.

The Clerk briefed the Committee on this issue.

2.40pm Mr McCrea left the meeting.

The Chairperson invited Mr Simon Kelly, Assembly Legal Services, to brief the Committee on the Legal Advice.

2.44pm Mr McAleer returned to the meeting.

Following discussion the Chairperson thanked Mr Kelly for attending the meeting.

The Committee considered the public duty principle and the issue of free speech.

Agreed: The Committee agreed that complaints about Members' comments and opinions should be outside the scope of the Code as long as the comments are lawful.

Agreed: The Committee agreed that the duty to uphold the law should become an enforceable rule and should mean that any Member found to have committed an offence in their capacity as a Member would also have breached the Code of Conduct.

The Committee considered the principles of equality and promoting good relations.

Agreed: The Committee agreed that the Code of Conduct should not impose additional duties upon Members over and above the existing duties in discrimination legislation in Northern Ireland which already apply to Members. The Committee agreed that consideration should be given to removing these principles lest they give the impression that Members had additional duties above those set out in legislation.

Agreed: The Committee considered the principles of Respect and Good Working Relationships and agreed these could be recast as a single principle.

Agreed: The Committee agreed to invite comments on the introduction of an enforceable rule which would require Members not to subject others to unreasonable behaviour.

2.55pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday, 19 February 2014

Room 21, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Ms Paula Bradley
Mr Ian McCrea
Mrs Sandra Overend

In Attendance: Mr Paul Gill (Assembly Clerk)
Mr Simon Kelly (Assembly Legal Services)
Mr Ray McCaffrey (Assembly Research)
Ms Hilary Cleland-Bogle (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: None

7. Review of the Code

Members noted the Clerk's Paper on the Rules of Conduct and the Research Paper on Codes of Conduct, contempt and developments in relation to the rules on Members' Interests in UK Legislatures.

The Chairperson invited Mr Douglas Bain to rejoin the meeting and welcomed Mr Ray McCaffrey, Assembly Researcher.

Mr McCaffrey briefed the Committee on his paper.

Members noted that any decision or view taken by the Committee at this stage would be reflected in the Committee's consultation document. However, they would not be binding as far as the future Code is concerned. Final decisions will not be taken until after the Committee has considered the responses to the consultation.

The Clerk briefed the Committee on managing conflicts of interests.

Agreed: The Committee agreed that the rule on managing conflicts of interest should remain in the Code.

The Clerk briefed the Committee on the rule prohibiting bribery.

Agreed: The Committee agreed to seek advice on whether the rule should be updated to take account of The Bribery Act 2010.

The Clerk briefed the Committee on the rule prohibiting the improper use of payments and allowances.

Agreed: The Committee agreed to consult with the Assembly Commission on the wording of the rule.

The Clerk briefed the Committee on the rule enjoining compliance with Assembly guidance and instructions.

Agreed: The Committee agreed to consult with the Assembly Commission in order to identify and clarify which rules and guidance should fall under this rule.

The Clerk briefed the Committee on the rule on information received in confidence.

Agreed: The Committee agreed that that part of the rule recommending compliance with the Data Protection Act was redundant.

The Clerk briefed the Committee on the rule imposing an obligation to co-operate with standards investigations.

Agreed: The Committee agreed that this rule still performed a useful function insofar as it applies to the Committee. However, the Committee agreed that insofar as it applies to the Commissioner, they would consider whether it had been rendered obsolete by the Assembly Members Act.

Agreed: The Committee agreed to supplement the rule with a requirement on Members to maintain the confidentiality of the Commissioner's investigation.

The Clerk briefed the Committee on the unauthorised disclosure of information.

Agreed: The Committee agreed that an explicit rule should be introduced prohibiting the unauthorised disclosure of Assembly information.

The Clerk briefed the Committee on Privilege and Contempt issues.

Agreed: The Committee agreed to give further consideration to a rule requiring Members not to act in any way which was likely to interfere with the functions of the Assembly.

The Clerk briefed the Committee on bringing the Assembly into disrepute.

Agreed: The Committee agreed to consider the merits of such a rule further at a later date.

The Committee noted that the consultation paper should also mention the possibility of rules imposing duties of respect, for staff conduct, and in relation to contact with lobbyists.

The Chairperson thanked Mr Bain and Mr McCaffrey for attending the meeting.

Members noted the Clerk's Paper on the Scope of the Code and the Legal Advice.

The Clerk briefed the Committee on this issue.

The Chairperson welcomed Mr Simon Kelly, Legal Assistant, to the meeting and invited him to brief the Committee on his paper.

Agreed: The Committee agreed that the scope Code the scope of the Code should not be extended to Members' private lives.

The Chairperson thanked Mr Kelly for attending the meeting.

2.47pm The Chairperson adjourned the meeting.

[EXTRACT]

Wednesday, 5 March 2014

Room 21, Parliament Buildings

Present:	Mr Alastair Ross (Chairperson) Ms Anna Lo (Deputy Chairperson) Mr Steven Agnew Mr Cathal Boylan Mr Declan McAleer Mr Fra McCann Mr Ian McCrea Mrs Sandra Overend
In Attendance:	Mr Paul Gill (Assembly Clerk) Ms Ursula McCanny (Assistant Assembly Clerk) Mr Jonathan Watson (Clerical Supervisor)
Apologies:	Ms Paula Bradley Mr Colum Eastwood Mr Mervyn Storey

6. Review of the Code

Members noted the Clerk's Paper on the Rules of Conduct.

Members noted that any decision or view taken by the Committee at this stage would be reflected in the Committee's consultation document. However, they would not be binding as far as the future Code is concerned. Final decisions will not be taken until after the Committee has considered the responses to the consultation.

The Clerk briefed the Committee on Section 43 and Standing Order 69.

Agreed: The Committee agreed that as part of the review of the Code the Committee should consider whether the wording of standing order 69 remains appropriate.

The Clerk briefed the Committee on the Rules of the Code of Conduct.

Agreed: The Committee agreed that the wording of those rules in the Code applying section 43 of the Northern Ireland Act and Standing Order 69 should be considered again.

The Clerk briefed the Committee on the Registration of Interests.

Agreed: The Committee agreed to consider each of the current categories of registrable interest and assess the extent to which they might be streamlined and simplified without compromising transparency.

Agreed: The Committee agreed to consider whether the thresholds below which no registration is required remain appropriate.

Agreed: The Committee agreed to consider whether there are any circumstances in which the receipt of a gift might be perceived as compromising the integrity of the Member.

Agreed: The Committee agreed to review the threshold of 0.5% of the current salary of an Assembly Member (currently £240) for the registration of gifts.

Agreed: The Committee agreed to review the threshold for registration of shares (currently where either 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 the market value of the shares at the relevant date exceeds, or exceeded, 50% of the current salary of an Assembly Member).

The Clerk briefed the Committee on dual reporting and the Electoral Commission.

Agreed: The Committee agreed to explore with the Electoral Commission the extent to which the Assembly's 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 the thresholds for registering these interests.

The Clerk briefed the Committee on the rule on Declaration of Interests.

Agreed: The Committee agreed to consider whether the advice in paragraphs 81-94 of the Guide might be clarified or simplified while ensuring that transparency is not compromised.

The Clerk briefed the Committee on the Advocacy Rule.

Agreed: The Committee agreed to consider whether the Advocacy Rule and the guidelines on its application remain appropriate.

The Clerk briefed the Committee on non-financial interests.

Agreed: The Committee agreed to consider whether either the Code or the Guide should provide formally for Members to be excluded from proceedings of the Assembly when they have certain non-financial interests.

The Clerk briefed the Committee on the Attorney General for Northern Ireland.

Agreed: The Committee agreed to evaluate the categories of registrable interest in light of their application, where relevant, to the Attorney General for Northern Ireland.

The Clerk briefed the Committee on the current provisions in relation to bringing the Assembly into disrepute.

Agreed: The Committee agreed to consider the merits of such a rule as part of the review.

Agreed: The Committee agreed that the Clerk should draft an issues paper, reflecting these agreed points, for consideration and approval at the Committee's next meeting.

3.41pm The Chairperson adjourned the meeting.

[EXTRACT]

Monday, 10 March 2014

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
Mr Mervyn Storey

In Attendance: Mr Paul Gill (Assembly Clerk)
Ms Ursula McCanny (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: Ms Anna Lo

7. Review of the Code of Conduct

The Chairperson referred Members to the Clerk's Paper and the draft issues paper in the regular pack.

Members discussed the draft issues paper and suggested some amendments to it.

12.42pm Ms Paula Bradley left the meeting.

Following discussion, the Chairperson thanked Mr Bain who left the meeting.

Agreed: The Committee agreed that it was content for the issues paper, as amended, to be published on the Committee's webpage.

Agreed: The Committee agreed that the Clerk should write to the stakeholders detailed in the Clerk's Paper, enclosing a copy of the issues paper and asking for comment.

Agreed: The Committee agreed that the press notice and signposting notice should be issued as drafted.

The Chairperson referred the Committee back to agenda item 6.

Agreed: The Committee agreed with the Commissioner's conclusion that the complaint is inadmissible.

Agreed: The Committee agreed that the Clerk should write to the complainant on behalf of the Committee, enclosing the Commissioner's correspondence and setting out the Committee's position. The Committee also agreed that the Clerk should write to Mr Storey and the Commissioner.

[EXTRACT]

Wednesday, 9 April 2014

Room 21, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Ms Paula Bradley
Mr Fra McCann
Mr Ian McCrea
Mrs Sandra Overend
Mr Mervyn Storey

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: Mr Colum Eastwood

6. Review of the Code of Conduct

The Chairperson referred Members to the Clerk's Paper which summarised the Committee's recent visit to Washington in relation to the review. The Clerk briefed the Committee and this was followed by a Committee discussion in relation to the visit.

Agreed: The Committee agreed that the Clerk publish relevant aspects of the paper on the Committee's visit to Washington on the Committee page of the Northern Ireland Assembly website.

Agreed: The Committee agreed that Members would contact the Committee Office to confirm attendance at the Committee's forthcoming visit to the Scottish Parliament.

Agreed: The Committee agreed that it should seek to have published in the main newspapers a platform piece on the review of the Code, and that this should be written in the first person in the name of the Chairperson.

[EXTRACT]

Wednesday, 30 April 2014

Room 29, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Ms Paula Bradley
Mr Colum Eastwood
Mr Fra McCann
Mr Ian McCrea
Mrs Sandra Overend
Mr Mervyn Storey

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: None

6. Review of the Code of Conduct

The Committee noted the Clerk's paper in relation to the Review and a briefing paper from Dr Tom Walker (Director for the Centre for Ethics at Queen's University Belfast)

The Chairperson welcomed Dr Walker and invited him to brief the Committee. This was followed by a question and answer session.

During questions

1.48pm Mr McCrea joined the meeting.

2.03pm Mr McCrea left the meeting.

2.00pm Ms Bradley left the meeting.

The Chairperson thanked Dr Walker for attending the meeting.

2.13pm The meeting adjourned.

2.20pm The meeting resumed in open session with Mr Ross, Ms Lo, Mr Agnew, Mr Boylan, Mr McCann, Mr Storey and Mrs Overend present.

The Committee noted a briefing paper from the Northern Ireland Ombudsman.

The Chairperson welcomed Dr Tom Frawley and Ms Marie Anderson (the Northern Ireland Ombudsman and Deputy Ombudsman) and invited them to brief the Committee. This was followed by a question and answer session.

During questions:

2.49pm Mr Eastwood joined the meeting.

3.15pm Mr Storey left the meeting.

3.16 pm Ms Lo left the meeting.

The Chairperson thanked Dr Frawley and Ms Anderson for attending the meeting.

The Committee noted a submission on the review of the Code from the Northern Ireland Assembly Commissioner for Standards.

[EXTRACT]

Wednesday, 28 May 2014

Room 29, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Ms Paula Bradley
Mr Colum Eastwood
Mr Declan McAleer
Mr Fra McCann
Mr Ian McCrea
Mrs Sandra Overend
Mr Mervyn Storey

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)
Mr Jim Nulty (Clerical Supervisor)

Apologies: None

6. Review of the Code of Conduct: Responses to the Committee's Issues Paper on the Review of the Code

The Committee noted the Clerk's paper summarising written submissions received to date.

The Clerk briefed the Committee and answered questions from Members.

Agreed: The Committee agreed that the Clerk should write to the Electoral Commission to clarify some points in relation to its submission on the Review.

The Committee noted the Clerk's paper in relation to its recent visit to the Scottish Parliament which was made as part of the Review.

[EXTRACT]

Wednesday, 4 June 2014

Room 29, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Mr Colum Eastwood
Mr Declan McAleer
Mr Fra McCann
Mr Ian McCrea
Mrs Sandra Overend
Mr Mervyn Storey

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)
Mr Jim Nulty (Clerical Supervisor)

Apologies: Ms Paula Bradley

4. Review of the Code of Conduct: Briefing from the Equality Commission for Northern Ireland

The Chairperson advised the Committee that the Northern Ireland Government Affairs Group was due to provide oral evidence at the meeting. However, following the election of a new Chair and committee, NIGAG will not now be giving evidence as part of the Review. The Clerk will update the Committee on this matter in due course.

Dr Michael Wardlow, Chief Commissioner and Mrs Roisin Mallon, Senior Policy Officer, both of the Equality Commission, joined the meeting and were invited to brief the Committee. This was followed by a question and answer session.

1.45pm Mr Eastwood joined the meeting.

1.55pm Mrs Overend joined the meeting.

2.15pm Mr Eastwood left the meeting.

[EXTRACT]

Wednesday, 11 June 2014

Room 106, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Mr Cathal Boylan
Ms Paula Bradley
Mr Colum Eastwood
Ms Anna Lo
Mr Declan McAleer
Mr Fra McCann
Mr Ian McCrea
Mrs Sandra Overend

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: Mr Steven Agnew
Mr Mervyn Storey

4. Review of the Code of Conduct: Briefing from the Assembly Research and Library Service - 'Rules on the receipt of gifts and hospitality'

The Clerk reminded the Committee of the background to its request for the research paper 'Rules on the receipt of gifts and hospitality'.

Mr Ray McCaffrey, Assembly Researcher, joined the meeting and was invited to brief the Committee. This was followed by Committee discussion and a question and answer session.

1.42pm: Mr Eastwood joined the meeting.

1.59pm: Mr McCann left the meeting.

Agreed: Members agreed that they should be provided with further information on what effect the introduction in other legislatures of tighter rules in relation to the receipt of benefits from lobbyists had had on Members being able to undertake overseas visits in relation to matters of public interest.

Agreed: Members agreed that they would discuss with their parties the various issues raised during the session.

[EXTRACT]

Wednesday, 25 June 2014

Room 106, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy 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)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: Mr Declan McAleer
Mrs Sandra Overend
Mr Mervyn Storey

7. Review of the Code of Conduct

The Chairperson referred members to the Clerk's Paper at 7.1, to the summary of submissions at 7.2 and to the Approved Judgment in the case of Heesom v Public Service Ombudsman for Wales at 7.3.

The Clerk briefed the Committee.

The Chairperson asked whether the Committee would like any further briefings or advice before proceeding to make decisions on the content of the new Code.

Agreed: The Committee agreed that the Clerk should request legal advice on the implications for the review of the Judgement in Heesom v. Public Service Ombudsman for Wales.

Agreed: The Committee agreed that the Clerk should contact the Independent Financial Review Panel in relation to the review.

Agreed: The Committee considered a summary table of responses to its issues paper and agreed that the Clerk should, over the summer recess period, commission any other research or legal advice relevant to the review.

[EXTRACT]

Wednesday, 2 July 2014

Room 106, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Ms Paula Bradley
Mr Declan McAleer
Mrs Sandra Overend

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Mr Jonathan Watson (Clerical Supervisor)

Apologies: Mr Colum Eastwood
Ms Anna Lo (Deputy Chairperson)

7. Any other business

Agreed: The Clerk should inform the Ministry of Justice that the Committee expects the GRECO recommendations to be implemented by the Assembly through the adoption of the new Code of Conduct by December 2014.

Agreed: The Clerk should seek to arrange for the Committee to meet with its Standards counterparts at the National Assembly for Wales and at the Dáil Éireann, as part of its Review of the Code of Conduct.

[EXTRACT]

Wednesday, 10 September 2014

Room 106, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Ms Paula Bradley
Mr Colum Eastwood
Mr Declan McAleer
Mr Fra McCann
Mr Ian McCrea
Mrs Sandra Overend
Mr Mervyn Storey

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Ms Hilary Cleland-Bogle (Assistant Assembly Clerk)

Apologies: None.

8. Review of Code of Conduct

Members noted the Clerk's Paper; the Submission from ACCP; the submission from the Assembly Commission; correspondence from the Independent Financial Review Panel; and correspondence from the Environment Minister.

The Clerk updated the Committee.

Agreed: The Committee agreed to invite both the APPC and the Assembly Commission to provide oral evidence to it at a future meeting.

Agreed: The Committee agreed that the Chairperson should meet with the Independent Financial Review Panel as proposed in their correspondence.

[EXTRACT]

Wednesday, 24 September 2014

Room 106, Parliament Buildings

- Present:** Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Mr Colum Eastwood
Mr Fra McCann
Mrs Sandra Overend
- In Attendance:** Mr Paul Gill (Assembly Clerk)
Mrs Ashleigh Mitford (Assistant Assembly Clerk)
Ms Hilary Cleland-Bogle (Assistant Assembly Clerk)
Mr Jonathan Kerr (Clerical Officer)
- Apologies:** Mr Declan McAleer
Mr Mervyn Storey

5. Review of the Code of Conduct

Members noted a Clerk's paper, legal advice and a research paper in relation to the Committee's Review of the Code of Conduct.

Members were provided with legal advice on various issues in relation to the review of the Code of Conduct and this was followed by a question and answer session and Committee discussion.

Agreed: The Committee would write to OFMdFM in relation to the Ministerial Code of Conduct.

Agreed: The Committee agreed that the Clerk should prepare a draft version of the new Code of Conduct for its consideration, based on the Committee's comments on what the new Code should say.

The Committee discussed arrangements in relation to possible future visits in relation to the Review.

[EXTRACT]

Wednesday, 15 October 2014

Room 106, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Mr Steven Agnew
Mr Colum Eastwood
Mr David Hilditch
Mr Fra McCann
Mr Ian McCrea
Mr Robin Newton

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Hilary Cleland Bogle (Assistant Assembly Clerk)
Mr Jim Nulty (Clerical Supervisor)
Mr Jonathan Kerr (Clerical Officer)

Apologies: Mr Cathal Boylan
Ms Anna Lo (Deputy Chairperson)
Mr Declan McAleer
Mrs Sandra Overend

5. Review of the Code of Conduct: Evidence Session

Members noted the Clerk's Paper; the Consultation response from the Assembly Commission; and supporting documents.

The Chairperson welcomed Mr Trevor Reaney, Clerk to the Assembly/Chief Executive; and Mr Richard Stewart, Director of Corporate Services to the meeting and invited them to give evidence to the Committee on behalf of the Assembly Commission.

2.08pm Mr Steven Agnew left the meeting.

2.09pm Mr Robin Newton left the meeting.

2.12pm Mr Steven Agnew returned to the meeting.

Following discussion the Chairperson thanked Mr Reaney and Mr Stewart for attending the meeting.

The meeting moved into closed session

6. Review of the Code of Conduct: Other issues

The Clerk briefed the Committee on the update from the Association of Professional Political Consultants (APPC).

Agreed: The Committee agreed that it would not be necessary to hold a conference call with the Chairman.

Members noted the Clerk's Paper; correspondence from the Office of the First and deputy First Minister; and the 2000 Ministerial Code.

The Chairperson invited the Clerk to brief the Committee on these issues.

Agreed: Following discussion the Committee agreed that the Chairperson should write to the Office of the First and deputy First Minister seeking clarity on the issues set out in the Clerk's Paper.

Members noted that the Chairperson would be visiting the National Assembly of Wales on 16th October 2014 to meet with the Chairperson of the Standards of Conduct Committee and the Welsh Standards Commissioner.

Members also noted that the Chairperson would be meeting with the Chair of the Independent Financial Review Body.

[EXTRACT]

Wednesday, 5 November 2014

Room 106, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Mr Colum Eastwood
Mr David Hilditch
Mr Fra McCann
Mr Ian McCrea
Mr Robin Newton
Mrs Sandra Overend

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Hilary Cleland Bogle (Assistant Assembly Clerk)
Mr Jonathan Kerr (Clerical Officer)

Apologies: None

4. Matters arising

The Chairperson updated the Committee on his visit to the National Assembly for Wales on 16th October 2014 when he met the Chairperson of the Standards of Conduct Committee and the Welsh Standards Commissioner.

The Chairperson also updated the Committee on his meeting with the Chair of the Independent Financial Review Panel on Monday 3rd November 2014.

[EXTRACT]

Wednesday, 26 November 2014

Room 106, Parliament Buildings

Present: Mr Alastair Ross (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Mr Colum Eastwood
Mr David Hilditch
Mr Fra McCann
Mr Ian McCrea
Mr Robin Newton
Mrs Sandra Overend

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Hilary Cleland Bogle (Assistant Assembly Clerk)
Mr Jonathan Kerr (Clerical Officer)

Apologies: Mr Declan McAleer

7. **Review of the Code of Conduct**

Members noted the Clerk's Paper; the draft new Code of Conduct; and other relevant papers.

The Clerk briefed the Committee on the background to this issue.

2.06pm Mr Newton left the meeting.

2.08pm Mr McCann left the meeting.

Agreed: Following discussion the Committee agreed it was broadly content–

- (a) with the structure of the Code (i.e. with separate aspirational principles and enforceable rules);
- (b) with the purpose of the Code;
- (c) with the scope of the Code;
- (d) that versions of each of the eleven principles should be included; and
- (e) that versions of each of the twenty rules should be included.

Agreed: The Committee agreed that its preference was for the Code to be supplemented by a Guide which would explain the application of, and how to comply with, the Code of Conduct and that the Committee should have the role of agreeing such a Guide.

Agreed: The Committee agreed that the draft Code of Conduct should be taken back to parties for consideration; and that any final comments from the parties should be forwarded within two weeks. Following this, Legal Services should be consulted on the drafting and other legal issues.

The Committee noted that it could amend the draft Code of Conduct at a later date as it has not been formally agreed.

[EXTRACT]

Wednesday, 21 January 2015

Private Dining Room, Parliament Buildings

Present: Mr Jimmy Spratt (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Mr Sammy Douglas
Mr Colum Eastwood
Mr David Hilditch
Mr Declan McAleer
Mr Fra McCann
Mrs Sandra Overend

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Hilary Cleland Bogle (Assistant Assembly Clerk)
Mr Jonathan Kerr (Clerical Officer)

Apologies: None

6. Review of the Code of Conduct

Members noted the Clerk's Paper; the draft new Code of Conduct; and other relevant papers.

The Clerk briefed the Committee on the background to this issue.

The Chairperson welcomed Ms Angela Kelly, Legal Adviser and invited her to brief the Committee on the Legal Advice.

Following discussion the Chairperson thanked Ms Kelly for attending the meeting.

Agreed: The Committee agreed that the Clerk should seek further legal advice in relation to the Guide to the Rules.

The Committee noted tabled papers in relation to the Northern Ireland Ombudsman's consultation on the Northern Ireland Local Government Code of Conduct for Councillors and correspondence dated 16th January 2015 from the Equality Commission.

The Clerk briefed the Committee on the background to these issues.

Agreed: The Committee agreed that the draft new Code of Conduct be updated to reflect the suggested wording on the Principle of Good Relations as suggested by the Equality Commission.

Agreed: The Committee agreed that the Clerk should consult with the Commissioner for Standards on making further changes to the draft Code, based on the points raised in the legal advice.

[EXTRACT]

Wednesday, 18 February 2015

Room 30, Parliament Buildings

Present: Mr Jimmy Spratt (Chairperson)
Ms Anna Lo (Deputy Chairperson)
Mr Steven Agnew
Mr Cathal Boylan
Mr Sammy Douglas
Mr Colum Eastwood
Mr David Hilditch
Mr Declan McAleer
Mr Fra McCann
Mrs Sandra Overend

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Hilary Cleland Bogle (Assistant Assembly Clerk)
Mr Jonathan Kerr (Clerical Officer)

Apologies: Mr Robin Newton

5. **Review of the Code of Conduct – Evidence Session with the Independent Financial Review Panel**

Members noted the Clerk's Paper and associated correspondence.

The Clerk briefed the Committee on the background to this issue.

Following discussion –

1.45pm The Committee moved into open session.

The Chairperson welcomed Mr Pat McCartan, Dr Henrietta Campbell and Mr Alan McQuillan of the Independent Financial Review Panel. The Chairperson invited Mr McCartan to brief the Committee.

1.52pm Mr McCann joined the meeting.

2.08pm Mr Eastwood left the meeting.

2.32pm Mr Hilditch left the meeting.

Following the briefing and a question and answer session the Chairperson thanked Mr McCartan and his colleagues for attending the meeting.

2.43pm The meeting moved into closed session.

6. **Review of the Code of Conduct Legal Advice**

Members noted the Clerk's Paper; the request for Legal Advice; and the Legal Advice.

The Clerk briefed the Committee on this issue.

2.45pm Mr Agnew left the meeting.

Agreed: The Committee agreed that, in light of the Legal Advice, the Guide to the Rules should be agreed by the Assembly.

The Committee noted that it could still bring forward amendments to the Guide for the Assembly's agreement as and when it considered necessary to do so.

7 Review of the Code of Conduct – outstanding issues

Mr Bain, Assembly Commissioner for Standards joined the meeting.

Members noted the Clerk's Paper, the correspondence of 3 February 2015 from the Commissioner and the updated draft Code of Conduct.

2.48pm Mr Hilditch returned to the meeting.

The Clerk briefed the Committee on outstanding issues.

2.50pm Mr Agnew returned to the meeting.

Agreed: Following discussion the Committee agreed that it was content with the suggested amendments to the draft Code of Conduct.

2.55pm Mr Douglas left the meeting.

Members noted the Clerk's Paper, the draft Guide to the Rules and the existing Guide to the Rules Relating to the Conduct of Members.

Agreed: The Committee noted that the draft Guide only related to rules 4 – 8 of the draft Code of Conduct and agreed it was content that the Guide does not need to address any other rules at this stage.

The Committee noted that it would be necessary to prepare an introductory section to the draft Guide to the Rules.

2.56pm Mr McCann left the meeting.

The Committee considered the draft Guide to the Rules category by category.

3.01pm Mr McAleer left the meeting.

3.10pm Mr McAleer returned to the meeting.

Agreed: The Committee agreed to give further consideration to (a) whether remuneration received by Members should be registered as falling within particular bands instead of the specific amount; and (b) whether those Members who do not know how much remuneration they will receive until the end of their financial year should be required to estimate the amount they expect to receive (as per the defined bands). This estimate could then be amended, if necessary, at a later date.

Agreed: The Committee agreed that the threshold above which gifts, benefits and hospitality must be registered should remain the same (currently £240).

Agreed: The Committee, after having noted a research paper on the issue, agreed that it did not wish to extend the registration requirements of Category 12 to "associated parties".

Agreed: The Committee agreed that the requirement to register certain interests should be extended in a number of circumstances to interests acquired by a third party. The Committee agreed to give further consideration to whether the requirement to declare interests (which might reasonably be thought to influence the Member's approach to the matter under consideration) should be extended from immediate relatives to any third party.

The Clerk asked the Committee to pay particular attention to the section of the draft Guide on Paid Advocacy.

Agreed: The Committee agreed that it was content to issue the draft Guide to parties, subject to a number of amendments being made to take account of the views expressed at the meeting.

Agreed: The Committee agreed that parties should be given two weeks to consider the draft Guide to the Rules and that any comments received would be considered at the next meeting.

Agreed: The Committee agreed to seek legal advice on the draft Guide to the Rules and to consider this advice before agreeing the final version.

The Clerk briefed the Committee on the report by Transparency International UK.

Agreed: Following discussion it was agreed to give consideration to whether the Members should be prohibited from providing paid advice to lobbyists (as in the House of Lords).

Agreed: The Committee agreed that it would advise Members to keep a record of lobbying meetings (as in Scotland and Wales).

Agreed: The Committee agreed that the Code of Conduct did not need to provide for mandatory attendance by Members on training, induction and professional development in ethics standards.

Agreed: The Committee agreed to that the legal advice should also address the relevant recommendations in the Transparency International UK report.

3.40pm The Chairperson thanked Mr Bain for attending the meeting.

The Committee noted the request for legal advice in relation to the Ministerial Code of Conduct and that the advice would be provided at the next meeting.

[EXTRACT]

Wednesday, 18 March 2015

Room 21, Parliament Buildings

Present:	Mr Jimmy Spratt (Chairperson) Ms Anna Lo (Deputy Chairperson) Mr Steven Agnew Mr Cathal Boylan Mr Sammy Douglas Mr Colum Eastwood Mr David Hilditch Mr Fra McCann Mr Robin Newton Mrs Sandra Overend
In Attendance:	Mr Paul Gill (Assembly Clerk) Mrs Hilary Cleland Bogle (Assistant Assembly Clerk) Mr Jonathan Kerr (Clerical Officer)
Apologies:	None

7. Review of the Code of Conduct – outstanding issues

Mr Bain, Assembly Commissioner for Standards re-joined the meeting.

The Committee noted the Clerk's Paper; the Committee's Issues Paper; and the amended Code of Conduct and Guide to the Rules relating to the Code of Conduct.

The Clerk briefed the Committee on these issues including each of the amendments to the draft Code and Guide.

The Assembly Commissioner for Standards indicated that he was content with the draft new Code of Conduct and Guide to the Rules.

Agreed: The Committee agreed that parties should be given more time to consider the draft new Code of Conduct and Guide to the Rules before the Committee approved it.

The Committee noted the new deadline for parties to respond.

The Committee noted that it would be provided with legal advice at its next meeting on the draft new Code of Conduct and Guide to the Rules.

1.48pm Mr Eastwood left the meeting

1.50pm Mr McCann returned to the meeting

2.01pm Ms Lo left the meeting

Agreed: The Committee agreed that it did not need to consider a draft report until after any comments from parties on the draft new Code of Conduct and Guide to the Rules had been considered.

Agreed: The Committee confirmed its position in relation to the new Code not applying to the conduct of a Member when acting exclusively in their private, family or wider public life. The Committee also agreed that the draft report should refer to its discussions with the IFRP on the proposal to allow for a Member's salary to be reduced by 90% during any period when that Member was imprisoned.

- Agreed:* The Committee noted the new rule 10 and agreed that when it reviews the General Procedure Direction (following the review of the Code of Conduct) it will ensure that the Commissioner does not have to investigate any breach of such rules which are of a minor or technical nature.
- Agreed:* The Committee agreed to recommend that, in light of the new rule 13, the Committee on Procedures review whether Standing Order 70 remains appropriate.
- Agreed:* The Committee agreed to recommend that the Assembly Commission review the current Secretariat Staff/Member protocol to take account of the rule 15 in the new Code of Conduct and that, following this, consideration could be given to the Commissioner only investigating complaints that had first been considered under the protocol but which remain unresolved.

The Committee also discussed the application of this rule to Members and the treatment of their own staff.

- Agreed:* The Committee agreed that it would amend the General Procedure Direction so that under the new Code the Commissioner will not investigate those complaints which should properly be resolved in another statutory or official forum.
- Agreed:* The Committee agreed that it should liaise with the Assembly Commission and others to ensure that, if possible, a code of conduct for Members' staff is agreed and introduced to have effect from the start of the new mandate.
- Agreed:* The Committee agreed to recommend that OFMdFM give consideration to whether a Register of Lobbyists in Northern Ireland would be appropriate or beneficial.
- Agreed:* The Committee agreed to recommend to the Committee on Procedures that Standing Order 69 be reviewed and amended at the earliest opportunity to reflect the provisions of the new Code and Guide.

The Committee noted that the new Code and Guide would not come into effect until the new Standing Order 69 is agreed.

- Agreed:* The Committee agreed that categories 2 (Donations and other support) and 9 (Family members who benefit from Office Cost Expenditure) should not apply to the Attorney General. However, the other provisions of the Guide to the Rules should inform the Attorney General's duties in respect of registering interests, declaring interests and paid advocacy.
- Agreed:* The Committee agreed to recommend to the Assembly liaising with Politics Plus to put in place appropriate arrangements for training in relation to those matters which had been identified during the review.

2.14pm The Chairperson thanked Mr Bain for attending the meeting.

Members noted the Clerk's Paper and related papers on issues with regard to the Ministerial Code of Conduct.

The Chairperson welcomed Mr Simon Kelly, Assembly Legal Adviser to the meeting and invited him to brief the Committee on the Legal Advice.

Following this briefing, Mr Kelly answered members' questions.

The Chairperson thanked Mr Kelly for attending the meeting

- Agreed:* The Committee agreed that its report on the review of the Code of Conduct should point out that complaints that the Ministerial Code of Conduct has been

breached should be sent to OFMdFM. The Committee agreed it was for the Executive to decide whether it wishes to amend the Ministerial Code to provide for a process and for the making of all other necessary arrangements for the independent investigation of, and report to the First Minister and deputy First Minister on an alleged breach of the Ministerial Code of Conduct;

Agreed: The Committee agreed that Executive departments should be invited to routinely publish details of gifts, benefits and hospitality etc or overseas visits accepted by Ministers.

Agreed: The Committee agreed to recommend that the Executive should publish the guidance contained within the Ministerial Code published in 2000 to which there is an expectation that, should particular circumstances arise, Ministers would have due regard.

[EXTRACT]

Wednesday, 15 April 2015, Room 21, Parliament Buildings

Present:	Ms Anna Lo (Deputy Chairperson) Mr Steven Agnew Mr Cathal Boylan Mr Sammy Douglas Mr David Hilditch Mr Robin Newton Mrs Sandra Overend
In Attendance:	Mr Paul Gill (Assembly Clerk) Mrs Hilary Cleland Bogle (Assistant Assembly Clerk) Mr Jonathan Kerr (Clerical Officer)
Apologies:	Mr Jimmy Spratt (Chairperson) Colum Eastwood

7. Review of the Code of Conduct – outstanding issues

Members noted the Clerk's Paper; the amended draft Code of Conduct and Guide to the Rules relating to the Code of Conduct; and the Legal Advice on the amended draft Code of Conduct and Guide to the Rules.

The Clerk briefed the Committee on the outstanding issues for consideration.

- Agreed:* The Committee agreed that the draft Guide should be updated to take account of a number of issues set out in the legal advice.
- Agreed:* The Committee agreed that it would not recommend in its report the introduction of legislation to place restrictions on Members in post-public employment in lobbying.
- Agreed:* The Committee agreed to give further consideration to a potential new amendment that would lift the restrictions imposed by Rule 8 in circumstances where a benefit is repaid in such a way as to mean it would no longer be a registrable interest.
- Agreed:* The Committee agreed to extend the deadline for parties to consider the draft Guide to the Rules and some outstanding issues to Monday 11th May 2015
- Agreed:* The Committee agreed that it should seek to agree the final version of the Code and Guide at the next meeting of the Committee; and that the Clerk should begin preparing a draft report on the Review of the Code based on the latest draft.

2.29pm Mr Hilditch left the meeting.

[EXTRACT]

Wednesday, 3 June 2015

Room 106, Parliament Buildings

Present:	Mr Jimmy Spratt (Chairman) Ms Anna Lo (Deputy Chairperson) Mr Steven Agnew Mr Cathal Boylan Mr Tom Buchanan Mr Colum Eastwood Mr Declan McAleer Mr Fra McCann Mr Robin Newton Mrs Sandra Overend
In Attendance:	Mr Paul Gill (Assembly Clerk) Mrs Hilary Cleland Bogle (Assistant Assembly Clerk) Miss Alison Ferguson (Clerical Officer)
Apologies:	Mr David Hilditch

6. **Review of the Code of Conduct**

Members noted the Clerk's Paper, the new Code of Conduct and Guide to the Rules, and the draft Committee Report.

1.35pm Mr Eastwood left the meeting.

The Clerk briefed the Committee on the draft Committee Report and took the Committee through the draft report section by section.

Executive Summary

Paragraphs 1 – 6 read and agreed.

Recommendations

Paragraphs 7 – 19 read and agreed.

Background to the Review

Paragraphs 20 – 25 read and agreed.

Terms of Reference

Paragraphs 26 – 28 read and agreed.

The Committee's Issues Paper

Paragraphs 29 – 41 read and agreed.

Purpose of the Code

Paragraphs 42 – 43 read and agreed.

The Private and Family Lives of Members

Paragraphs 44 – 57 read and agreed.

When is a Member acting as a Member

Paragraphs 58 – 67 read and agreed.

Application of the Code to Ministers

Paragraphs 68 – 78 read and agreed.

Freedom of Expression

Paragraphs 79 – 90 read and agreed.

Members Conduct in the Chamber and in Committee

Paragraphs 91 – 106 read and agreed.

Quality of Service provided by Members

Paragraphs 107 – 113 read and agreed.

Principles of Conduct

Paragraphs 114 – 119 read and agreed.

Additional Principles of Conduct

Paragraphs 120 – 130 read and agreed.

Aspirational Principles and Enforceable Rules

Paragraphs 131 – 143 read and agreed.

Rules of Conduct

Paragraphs 144 – 145 read and agreed.

Managing Conflicts of Interest

Paragraphs 146 – 149 read and agreed.

Upholding the Law

Paragraphs 150 – 156 read and agreed.

Members' Interests

Paragraphs 157 – 161 read and agreed

Gifts to Members

Paragraphs 162 – 179 read and agreed.

Misuse of any payment, allowance or resources

Paragraphs 180 – 181 read and agreed.

Compliance with Assembly Commission Rules

Paragraphs 182 – 184 read and agreed.

Confidential Information

Paragraphs 185 – 192 read and agreed.

Privilege and 'Contempt'

Paragraphs 193 – 195 read and agreed.

Improper use of your position as a Member

Paragraphs 206 – 210 read and agreed.

Respect

Paragraphs 211 – 222 read and agreed.

Investigations into Members' Conduct

Paragraphs 223 – 230 read and agreed.

Staff Conduct

Paragraphs 231 – 250 read and agreed.

Reporting approaches to act in a way that would breach the Code

Paragraph 251 read and agreed.

Urging other Members to contravene the Code

Paragraph 252 read and agreed.

Bringing the Assembly into disrepute

Paragraphs 253 – 260 read and agreed.

The Guide to the Rules

Paragraphs 261 – 266 read and agreed.

The Political Parties, Elections and referendums Act 2000

Paragraphs 267 – 277 read and agreed.

Declaration of Interests

Paragraphs 278 – 282 read and agreed.

The Advocacy Rule

Paragraphs 283 – 287 read and agreed.

Minor Amendments

Paragraph 288 read and agreed.

Lobbying

Paragraphs 289 – 312 read and agreed.

Standing Order 69

Paragraphs 313 – 314 read and agreed.

The Attorney General

Paragraphs 315 – 316 read and agreed.

Sanctions

Paragraphs 317 – 321 read and agreed.

Induction/Training

Paragraph 322 read and agreed.

Conclusion

Paragraphs 323 – 325 read and agreed.

The Committee agreed that it would consider some further amendments to the draft report at its next meeting following which it will then have to agree the final version of the report.

The Chairman, on behalf of the Committee, thanked committee staff for the work involved in producing the new Code and Guide.

Agreed: The Committee noted that the new Code and Guide has to be agreed by the Assembly and agreed the following wording of the motion to be placed before the Assembly:

“That this Assembly notes the report of the Committee on Standards and Privileges on the review of the Code of Conduct and the Guide to the Rules Relating to the Conduct of Members [NIA 178/11-16]; agrees to the new Code of Conduct and Guide to the Rules set out in annex 1 of the report; and further agrees to the other recommendations contained within the report.”

Agreed: The Committee agreed that a press release be issued to mark the Assembly's agreement of the new Code and that a draft press release would be agreed by the Committee at its next meeting.

[EXTRACT]

Wednesday, 10 June 2015

Room 21, Parliament Buildings

Present: Mr Jimmy Spratt (Chairman)
Mr Steven Agnew
Mr Cathal Boylan
Mr David Hilditch
Mr Declan McAleer
Mr Robin Newton

In Attendance: Mr Paul Gill (Assembly Clerk)
Mrs Hilary Cleland Bogle (Assistant Assembly Clerk)
Miss Alison Ferguson (Clerical Officer)

Apologies: Ms Anna Lo (Deputy Chairperson)
Mr Tom Buchanan
Mr Colum Eastwood
Mr Fra McCann
Mrs Sandra Overend

6. Review of the Code of Conduct

The Committee noted the tabled version of the draft report and the Clerk drew members' attention to the amendments contained within it.

Agreed: The Committee considered and agreed the final amendments to the updated version of the draft Committee Report.

Agreed: The Committee agreed the Committee Powers and Membership should form part of the Report.

Agreed: The Committee agreed that Appendices 1 – 7 should form of the Report.

Agreed: The Committee agreed that an extract of today's Minutes of Proceedings, should be included in Appendix 1 of the report.

The Committee ordered the Report on the Review of the Northern Ireland Assembly Code of Conduct and the Guide to the Rules Relating to the Conduct of Members to be printed.

Agreed: The Committee agreed that an embargoed copy of the report be sent to each of the witnesses who gave oral evidence.

Members noted that the Report would be embargoed until the commencement of the Committee debate in Plenary on Monday, 22nd June 2015.

Agreed: Members agreed the draft Press Release, as amended, to be released following the debate of the Committee's Report in Plenary on Monday, 22nd June 2015.

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

30 April 2014

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
 Ms Anna Lo (Deputy Chairperson)
 Mr Steven Agnew
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Fra McCann
 Mrs Sandra Overend
 Mr Mervyn Storey
 Witnesses:

Dr Tom Frawley	<i>Northern Ireland Ombudsman</i>
Ms Marie Anderson	<i>Northern Ireland Ombudsman's Office</i>

- The Chairperson:** Welcome back, Dr Frawley. I suppose that is the appropriate greeting.
- Dr Tom Frawley (Northern Ireland Ombudsman):** Yes, you should never revisit the scene of the crime, Chairman. *[Laughter.]* Sorry, I should not have said that against myself.
- The Chairperson:** Whenever you are ready, you can brief us. You are obviously aware of what we are doing, and you will perhaps have more knowledge of the previous code than some of us in the room will have. We look forward to your contribution.
- Dr Frawley:** Thank you so much. Marie will join me, Chairman. She is my deputy. In fact, I am absolutely astonished that she allowed me out alone. She is striving to get the car parked and will be with me in a moment.
- With your permission, Chairman, I will make a few opening comments, and then we can hopefully take questions that members may have. Chair and members of the Committee, thank you for the opportunity to address the Committee on the review of the Assembly code of conduct and the guidance on the code. In my note to the Committee, I explained that I had read the issues paper and proposed only to deal with what I would call the headline issues that concern me when considering the review of the code and guidance. As indicated in the note, I intend to address the issues in more detail in the formal and final response to the Committee's consultation, which, as you know, closes on 16 May 2014. As outlined in my briefing note, I remind the Committee that, as we meet to discuss the code today, there is a parallel consultation initiated by the DOE on the proposed mandatory code of conduct for councillors — the local government code. That consultation is closing today. Therefore it is important, I would suggest to the Committee going forward, that these two critical strands of work should converge and, as far as possible, be based on similar ethical frameworks to ensure public confidence in elected representatives at all levels of our democracy. It is my view that any divergence could give rise to public criticism and mistrust.
- In approaching the review of the code, I respectfully suggest to the Committee that it might be useful to reflect on a quotation from Sir Christopher Kelly CBE in the Committee on Standards in Public Life (CSPL) publication 'Standards Matter', published in January 2013. In that publication, he said:

"High standards are a public good. They improve predictability and promote better outcomes for society, increasing public confidence and the functioning of the economy."
- As it undertakes this important task, the Committee should, I believe, also be mindful that it has been almost 20 years since the Nolan principles were first established. As you will remember, they were developed against a background of real difficulty for the Parliament at Westminster, when the need for the public to have its trust in institutions generally, and particularly

- the Westminster Parliament, had to be restored. It is important to take stock of that experience and, indeed, of the resulting experience over the two decades of establishing and regulating ethical standards.
8. One wants to acknowledge that much has been achieved. I suggest that a revised MLA code should build upon and take account of all of those previous experiences. I need not remind Committee members of the challenges that you have negotiated, as a Committee, as you have examined and, in a sense, investigated the conduct of Members since the inception of the Assembly. Indeed, in so doing, you have established, I suggest, a set of precedents and principles and rules that comprise the current code, which came into effect in October 2009.
 9. Then, as now, standards of behaviour matter to MLAs, their peers, the Assembly and the citizen at large. Again, quoting from the CSPL publication on the need to build a culture of high standards:

“the leadership of some organisations has been seen to have failed to inculcate a culture of high standards in tune with public expectations.”
 10. I therefore urge members of the Committee to ensure that a revised code is in tune with public perception, and that the highest standards continue to be your ambition.
 11. You will be aware, Chair, of the recent resignation of an MP as a result of a damning report from the Standards Commissioner at Westminster. Whatever amendments are brought to the existing code, I consider that they should aim to objectively secure the trust of the public we are all here to serve. I do not underestimate the challenge and responsibility that the Committee bears to ensure that public trust in our elected representatives and the Assembly is maintained. It is important, therefore, that a revised code should provide for clear and unambiguous rules, but also standards of conduct that must be honoured. If the MPs’ expenses scandal has taught us anything, it is that rules alone are not sufficient to regulate behaviour.
 12. I am happy to take any questions or to expand on my comments if that would be considered helpful.
 13. **The Chairperson:** Thank you very much. On the first issue that you raised, about the code of conduct for councillors under the new council regime, we understand — not least because the Chairman of the Environment Committee is on our Committee — that it is hoping to get that code through before the council elections at the end of May. You talk about the importance of those two codes converging. Why is that the case? We already have a number of different codes to determine the behaviour of elected representatives at different levels of government. So, why should the code of conduct for our new councils in Northern Ireland be closely aligned to the code of conduct for MLAs? That is aside from the MPs, who are obviously subject to the code of conduct at the House of Commons or House of Lords. Why should we have more convergence between MLAs and councillors than, perhaps, with MPs or Lords?
 14. **Dr Frawley:** Fundamentally, if I may put it like this: what is right is right. At the end of the day, the principles that apply to one should apply to the other. The public would look with some disbelief if a particular conduct or behaviour were acceptable in this place and yet found to be unacceptable in another place. I am talking about general behaviour and conduct; beliefs are obviously different, emphases are different on some occasions. However, the standards against which people should be judged should be common.
 15. That is particularly important in a jurisdiction the scale and size of ours that they are closely aligned in terms of both the party alignment and configuration, and equally, then, the judgements that are made. Our newspapers may move to a local authority page and an Assembly page, but I think that these stories are

- told across and beside each other. I think that you could therefore argue that as the senior house, so-called, the Assembly might want to set the standard for others. So it may even want to exceed the standards that councillors might have, because it is clearly where the law is made for this region. I think that it would be very hard to understand how a standard of behaviour in the Assembly would be judged to be acceptable by the Committee and an equivalent standard in a council setting would be considered to be unacceptable. I think that the public would find that difficult. I am not saying that it will always be easy, because you will have to judge each case on its merits, but I think that it is very important for you to be aware of the circumstances that would apply elsewhere, and vice versa: the judgements that you make could well have major implications for those other settings as well.
16. That is a personal perspective, Chairman. You may take a different view and feel that the nature of the work, the product and the content are different and, therefore, you should act to a different standard. That is your choice to make. However, at the outset, I feel that it is important to look at convergence. That would be my aspiration.
17. **The Chairperson:** For what it is worth, I think that it is surprising that the Committee was not asked about the changes to the code of conduct that we may be implementing when the Department decided to have its draft code of conduct for the new councillors. I think that it would have been useful if it had done that at an early stage, but perhaps that —
18. **Dr Frawley:** I am sure that that is a question that you might want to put to the Minister of the Environment, Chairman.
19. **The Chairperson:** I am not sure that it was a question; it was more of a comment. Hopefully, that will be done through one of our members.
20. One of the other comments that you made was about ensuring that we are in tune with public perceptions. Obviously, much of that is driven by the media and the newspapers. I recall, when you were Interim Commissioner for Standards, newspaper articles were not enough on their own to substantiate a claim, and correctly so. If we were to write our revised code of conduct based on public perception, is there a danger that we would do ourselves a disservice? As we all know, the perception of politicians is very different to the reality, particularly in the Assembly.
21. **Dr Frawley:** Chairman, I would not, in any way, suggest that you should base it on public perception. What I am suggesting is that you should be aware of public perception. I think that it is for the Committee to test the validity of those perceptions. However, those perceptions are very powerful, and I accept entirely that they can be shaped by the media on occasions and some issues can be exaggerated while others, equally, can be understated. You then have to make an objective assessment.
22. I suggest that it is also important that the public mind as reflected in the media is no longer necessarily the public mind but something that you are aware of and that is taken into account. Having considered that, you may well make the judgement that it is not something that you consider to be fundamental nor, indeed, that you consider accurately reflects the public mood at a particular time. Notoriously in Northern Ireland, I often hear people say, “I read that paper to confirm my prejudices.” In that sense, our media potentially represents stories in particular ways, as well. So, there is not one clear view, but nevertheless I think that it is important to be aware of that as a sense of the public mind at any one time.
23. **The Chairperson:** On the aims of what we are trying to do with the review of the code, we are perhaps trying to separate the aspiration part from the enforceable part. You and all members of the Committee will be aware of how difficult it is to judge by the aspirational

- language in the code. You have indicated some concerns about that. Would you care to comment on your concern about the separation that we may be suggesting?
24. **Dr Frawley:** It is always clearly tempting to strip issues down to rules. As I mentioned in the final part of my initial remarks, what we found with something like the MPs is that you get rules and people will follow rules, but actually there is an expectation that the context and the emphasis taken in relation to a rule also needs to be understood. So, there is an aspirational side to this, and people want to demonstrate the highest standards of public conduct and behaviour.
25. As the elected representatives, you are the exemplars. There are some who would say that, in that circumstance, you become, if you like, the conduit for the judgement of how society itself should be or how it should behave in being respectful towards each other, towards different groups of people and so on. In the cut and thrust of politics, that cannot always be attained. However, I am always struck — this is me having a cheap shot — by how civil you are to each other in the corridors. I then sit down at 11.20 pm on a Monday and a Tuesday — it is a rather sad reflection on me — and watch an incredibly intense exchange going on between two people who, the day before, I had observed being very civil. In that sense, I understand that there is an element of exaggeration to the political exchange in the formal exchanges. When you come to make that judgement here in this room, of course, you have to be able to stand over those judgements, and they have to be robust and rigorous, but I also think that you come to it with a certain personal view of what good conduct is and what the test should be. I think that that is often informed not just by the rules but by the aspirational aspects of what we would like to see, as a society and as a community.
26. **Ms Lo:** That is very interesting, Tom. I recall the last session — and I am not going to go over too much of it —
- when, to me, the complaint against two members of a Committee who were questioning someone who came to give evidence —
27. **The Chairperson:** I remind members that we do not want to get into the specifics.
28. **Ms Lo:** No, I just want to use it. Clearly, it was deemed not to be a breach of the code. You talk about respect, but, to me, there was a lack of respect and a lack of courtesy to the witness, but it seems that we cannot tie it down to what code the two members have breached. As you said, it is, in some ways, aspirational; it is the spirit of the code rather than the rules. So, when that happens, how do we enforce it? How do we say that a member has breached the code when you cannot say what code it is?
29. **Dr Frawley:** At the end of the day, there is a specific issue around Committee meetings and how they are managed. That is a very difficult issue. People come here to give evidence — to be tested on their responsibilities or, for that matter, their performance. That can become quite a challenging and testing environment. As I said in the note, one of the key areas is the chairmanship of a Committee and how that is managed. The spirit in which a Committee undertakes its work will, I think, often be reflected in the atmosphere around how witnesses are engaged with. That becomes important.
30. This is going to sound incredibly cheeky and impudent of me, but, on one level, I think that we could sometimes be better trained in how we chair meetings. I think that we could be better prepared and equipped for those roles. Everyone thinks that they come here as the finished product. I would argue that there is work to be done in that area. If you do that work, you do what you do in most areas, even in the so-called multinational global companies: you have a chairman to deal with scenarios where there are difficult personalities and people behaving in a particularly aggressive way — sometimes for effect, and sometimes because they do not know any better and are innately rude

- anyway. I do not believe that there is any place for rudeness. On the other hand, I have no difficulty with robustness or an expectation of an honest, complete and comprehensive answer. If somebody is being evasive or avoiding an answer, it is perfectly reasonable for a Chairman to support a question or to reinforce a question by saying. "We really need this question answered."
31. In the sadness that is me, I have also watched encounters in some Committees where witnesses have come to be aggressive and to demonstrate that they are not going to be intimidated by you people in any way. I think that that in itself provokes; the human condition is quite capable of behaving in that way as well. However, while it might not necessarily be possible to make a finding given certain circumstances, it might be a reminder to say that a meeting might have been dealt with in a different way. Sadly, the outcome is that someone feels that they have not been treated fairly.
32. I have dealt with some very serious complaints, as Marie will confirm, about bullying and harassment in public places and in work. It is very hard for elected people to stand up and say, "This bullying and harassment is completely unacceptable". I have representations from Members of the Assembly about bullying and harassment of constituents who work in different settings in the public sector. They rightly say that that is completely unacceptable in schools or wherever it happens, but is permissible in this environment. I think that is irreconcilable. That is not a very helpful answer and is probably very wordy, but it is a complex issue. There is a training issue and a development issue, and there is a briefing of witnesses as well. You might say I talk too much, which I probably do, but how often do we get an A4 page that says, "This is what is expected of a witness and this is the commitment that the members will bring to their exchanges with you"? That would be a beginning for that relationship so that you can assume this is the way it will feel because we want
- this place to be as fair as it can be. That is my view, Chairman.
33. **The Chairperson:** You said that it may not be possible to make a finding. Do you mean in terms of whether or not a Member has breached the aspirational language in the code?
34. **Dr Frawley:** Absolutely.
35. **The Chairperson:** Is that not a reason why we have found so much difficulty with some of the aspirational language: because it makes our current commissioner's job much more difficult? You will understand that from having the role before. Through our code, we want to make it as easy as possible for the commissioner to determine whether or not somebody has breached the code.
36. **Dr Frawley:** Sometimes things are complicated. I can feel the glare on my back as I speak. It is easy for me to say this now. You cannot strip things down so that they are black and white. Life is not like that. It is complicated. Sometimes I cannot reach a definitive decision, but there is clearly a need for some clarification or for some elaboration on how a situation was arrived at. Those situations do not happen in a minute. You have attended those meetings before, and you can sense when it is all moving into a different atmosphere and a different place. A Chairman should sense that too, and adjourn or whatever. This is all trading. Equally, when you are making a judgement, you might be able to say, "I cannot say definitively that that code was breached, but certainly there was an atmosphere and a general demeanour on the part of individuals involved that is not helpful and does not make for constructive dialogue. That may need to be addressed."
37. I know that you now have a Chairs of Committees forum and so on. There are different forums where those issues could be addressed. The individual might not get the definitive answer that "This man is guilty of this" or whatever, but they would get a sense that the matter was going to be addressed

- because that atmosphere was not how we would wish it to be.
38. **Mr Agnew:** Thank you, Tom. I have a few points that I want your opinion on. You said that politicians are the exemplars, and if —
39. **Dr Frawley:** I did not say that they are; I said that they should be.
40. **Mr Agnew:** They should be, sorry. I will trust you on that; I am sure you are right. If we start with that principle, do we not set ourselves up to fail, and actually fuel public mistrust of politicians?
41. **Dr Frawley:** The alternative is to say that we are not the exemplars and how we behave does not matter at all.
42. **Mr Agnew:** If we set ourselves aspirations over and above what people expect of themselves — we are people and, at the end of the day, getting elected is a popularity contest. It does not make you some kind of saint.
43. **Dr Frawley:** I am not coming here to seek canonisation for any of you. When I use the word “exemplars”, I mean that you start to establish a standard of behaviour. Let us look at these seven principles. In the main, I would absolutely say without any difficulty that the majority of the 108 MLAs come to this task with integrity, honesty and openness and a desire to do the very best they can for the people whom they are elected to represent, and all of those above. Then, things happen or circumstances arise where someone wants to complain, and one tests.
44. I am trying to say that if you approach this task of the code by setting the standard that you wish to achieve, some of it will inevitably be aspirational. However, to say that you would want to just have a mediocre standard and you just want to be average and get through the day or survive until the next election or whatever it might be — that does not give the stretch that this legislature should have of itself. I have said before — I remember saying it when Carmel Hanna was in the chair, which shows how long this has gone on for — that you are the conscience of this organisation, for better or for worse. You are the guardians of its integrity and you are the one forum to which, across all parties, people arrive at to look for their issue to be properly and fairly heard and addressed. If you say that that is aspirational, that you are not perfect — no one is perfect — it is all right for you to do that because you did not break a rule as far as anyone can see.
45. **The Chairperson:** To take on Steven’s point, if we had a part of our code that said that we had to treat each other with respect and use respectful language and all that, and I got particularly heated in a debate in another forum — say, in a town hall meeting with another Assembly Member — and someone felt that I was not treating my opponent with respect, they could make a complaint because I was clearly there as an MLA acting in my capacity as an MLA. The commissioner of the day might say that, according to the code, I had breached that part of the code that says that I have to treat my colleagues with respect. Do I not have a legal recourse, then, to say that under freedom of speech I can say that? Does that not undermine the aspirational part of the code?
46. **Dr Frawley:** Marie, do you want to answer that? It is a very difficult question. *[Laughter.]*
47. **Ms Marie Anderson (Northern Ireland Ombudsman’s Office):** I think that freedom of speech in itself is aspirational, but I do not think that the public would have difficulty in assessing when there had been a lack of an opportunity to freely express. These are difficult areas of balanced judgement. At paragraph 3.5 of the note, the ombudsman has already outlined the fact that, when it comes to freedom of speech, you are elected representatives who are there to put forward the voice of the people who you represent, and no one would deny that. Nevertheless, I do not think that someone who is bullying or harassing an individual necessarily gets into the freedom of expression arena. Those are two different things.

48. Some of this is around remembering that, in the context of behaviour, if you like, the victim's perception and feelings about that exchange are important also. That might not take you immediately to a judgement but it is important to say, because we know about this already in equality law and established jurisprudence on bullying and harassment. It is not only about the individual who expressed a view; how the victim feels must also be taken into consideration. I would assume that this Committee and the commissioner would take that into account when deciding any issues.
49. **Mr Agnew:** I suppose, then, the challenge is how we reflect that in the code. We have certainly been heading towards an idea of having aspirations and rules and that separation. I think, Tom, you expressed some uncertainty about that approach. There is an issue with bullying and harassment; we have mentioned how witnesses are treated in Committees but it is also about how Members treat each other. In my relatively brief experience of the Committee compared with yours, Tom, we have never been able to enforce anything around the issue of respect, because it comes back to free expression and whatever. How could we reflect it in a meaningful way? I am not saying that enforcement is everything, but it is certainly a large part of what we do.
50. **Dr Frawley:** At the end of the day, the enforcement bit of it is always an issue. In my findings and conclusions of the reports and investigations I do, I cannot always give to the complainant what they want, which is someone's head on a plate. I can honestly say, if I were to survey the attitudes of complainants to my office, that the people who are really happy are the people I found in favour of; the people who are completely dissatisfied are the people I said did not have a case. That is the nature of these situations. On occasions, without making a finding of a definitive breach of the code, one can certainly indicate, "Although that behaviour didn't meet the standard of a breach, it's certainly not behaviour that we would condone or accept or believe is acceptable, and we would ask you to look at that behaviour and how it impacted on the atmosphere of that meeting." If you are in a Committee meeting and you are trying to seek advice, information and clarification, I absolutely would say to you that, once that atmosphere arises, all the clarity and information disappears and we get into defensive positions, and so the whole purpose of the process is lost. It is about how we draft letters, outcomes, reports, findings and so on. They may not necessarily give a definitive decision about a breach of the code, but they might well say, "While that did not constitute a breach of the code, the general atmosphere and the demeanour you adopted was not helpful or conducive, and we would ask you to reflect on that in terms of further involvement or contributions to meetings, etc."
51. The cynical politician will tear that up and say, "That's not worth the paper it's written on". However, over time, you build up a case file and say, "Here we go again". There is a public audience for everything you do. If people push the line and behave in an unacceptable way all the time and nothing ever happens, there is the sense of it becoming bullying behaviour. There is no consequence: they seem to be able to do whatever they like. That is hugely damaging. You set a standard that you might not be able to say is a breach, but you certainly say, "We'd like to see that circumstance improved".
52. **The Chairperson:** Anna wanted to come in on the back of that point.
53. **Ms Lo:** Thank you, Chair, for your indulgence. I am very glad that you said that, Tom. Referring back to the previous case, it seemed to be dismissed because it was not admissible; it is not a breach of conduct, but there is no going back to say to the person complained about that perhaps he has not breached the code of conduct, but it certainly was not the best behaviour we would expect. It is kind of like a halfway house rather than for it to be totally dismissed as not admissible.

54. **Dr Frawley:** I would hate for the Chairman to have that opportunity to be showing yellow cards and red cards, and, in the case of the GAA, the black card.
55. **The Chairperson:** I would not rule it out. *[Laughter.]*
56. **Dr Frawley:** It seems that one of the outcomes that you might look at — this is another way to look at this — is whether we can just take reports and maybe develop them a little bit without making a finding. Equally, it might be completely beyond the pale to suggest that we should propose that the Chairman of that Committee should speak to that individual and say, “Disappointing. Concern. There is a public out there observing us, and that does not help our standing with the public. No more; no less, but we have noted it”. That would mean that there is a bit of a follow-up and a comeback and a dialogue ongoing. When it comes to the Chairman of Committee meetings, that debate can go on, so there is a constant output from the Committee; it is asking for behaviour to be addressed, changed or altered without definitively saying, “There’s a sanction on you for doing that”. You might well say to me that there comes a point when that sanction might be applied, but, on the other hand, maybe it will not be applied. I do not think that it is all about the rules being broken, therefore there is a sanction. There have to be some other points along the gradation as well.
57. **Ms M Anderson:** I think back to the point about how, in a code, you would have aspirational but nevertheless important principles of standards of behaviour and, alongside those, a set of rules. The Committee, in its issues paper, referred us to the CSPL document ‘Standards matter’, in which it states — it is a position that the ombudsman endorses — that the principles and the rules are complementary. If you set a code of ethics that is rule-based only, you will never be able to end that list of rules, because in its context, as society moves, standards change and public expectations change, you will always be either adding to those rules or changing them. There needs to be some underpinning of the rules.
58. I go back to the example that Tom addressed in his opening comments, which was the MPs’ expenses. The criminal activity and those MPs who were found to be guilty of fraud apart, many of them, at the beginning of the outing of the MPs’ expenses issue, would say, “But those were the House of Commons rules. I faced those rules”. However, if you ask a member of the public whether simply producing a receipt, which complies with the rules, for an expensive pen or a second house is enough, a member of the public would say, “No. I am shocked that that is how our public money is being spent. I am shocked and that is because I require openness, transparency and accountability for public money”. I am not suggesting for a minute that it is an easy task. It is not, or you would not be asking us here to give evidence. However, I think that a rules only-based approach is an impossible set of rules that would need to be updated and that would actually miss an opportunity to raise standards.
59. **The Chairperson:** Obviously, in the paper where we set out where we are heading, we have a catch-all of bringing the Assembly into disrepute. Is that enough to provide comfort to you? Even if somebody has stuck by the letter of the rules, is the catch-all phrase of bringing the Assembly into disrepute enough to address the concerns that you have just outlined?
60. **Dr Frawley:** I suppose, expressed in the rather stark way that you express it, Chairman — for someone who loves words like I do, that would never do — I think that it needs to be more than that. That is the final catch-all, but I think that, along the way, one does need to talk about standards in a way that is aspirational by its nature, because only by having an aspirational dimension to it can you see that constant seeking after improvement being delivered. That is a very slow process, and sometimes it is two steps forward, three steps back, but that is where I would like to see the

aspirational side, not just some stark set of rules and, finally, the catch-all of, “By the way, if we do not get you on any of the above, we will get you on bringing us into disrepute”, which seems to me to be very minimalist.

61. **Mr Agnew:** Taking us on to a different issue, which is probably a personal favourite of mine, when is an MLA an MLA? It is quite clearly defined in the code at present. I personally think that it is quite narrow. It goes back to that idea of what the public expect of us. They do not just expect us to meet those standards when we are in this Building. You have adjudicated over many complaints. Have you seen a problem there with the scope of when we are judged to be acting in our capacity as Members?

62. **Dr Frawley:** I do think that there is a line to be drawn between public and private life. That is the first thing. I think that every MLA is entitled to their private life and their family life in that sense. That is very fundamental. On one level, it sounds difficult, but actually, in most of those instances, it is very clear that that impinges on your role as an MLA. The problem I have quite often — this is where I am supportive of the MLA and the privacy piece — is that the media intrude into private life a lot, particularly when it comes to family. I have particular concerns about the teenage children of MLAs and so on. Thankfully, it has not happened a lot, and, in some ways, our media are much more responsible about this than maybe the national media. There are key areas where I think that protections are needed for MLAs as distinct from the other way around, where there needs to be more openness or more willingness to treat every aspect of an MLA's life as public, which it is not.

63. **Mr Agnew:** What about overtly political events that are not necessarily Assembly events? I am referring to rallies, protests and even party conferences.

64. **Dr Frawley:** Party conferences have a life of their own. I would not like to try to adjudicate on those. I suppose

that, in a sense, by its nature, a party conference's core events are political moments and political events and that, therefore, what goes on in those arenas is part of an MLA's role. They are, to the party and to the external world observing that event, acting as elected representatives of that particular party. So, I think that that is one. I think that the protest is a more challenging type of issue because there are circumstances, no doubt, where an MLA would say that they are there in a private capacity, that it is private and personal to them and that they want to take a position on it in that personal way. Again, perception becomes the important aspect of that and then it is left for maybe the commissioner to judge whether that separation is reasonable, fair and defensible. I think that most of these issues are not as difficult as they look. There are certainly a number that are very difficult.

65. **Mr Agnew:** I have one final question, Chair. Thank you for your indulgence. On the matter of how we deal with complainants, from the complainants' point of view, we see the letters and never see the complainants. It is quite a formal judicial process. The complainant is asked, “Please tell the part of the code that you are basing your complaint on, and please give us all the evidence.” The complainant will then be told whether their complaint is admissible. Do we give enough support to complainants?

66. **Dr Frawley:** Again, I think that that is a judgement call. With most of the complaints that I dealt with when I was in the interim role, I did not sense that complainants were in any way vulnerable or lacking in capacity or ability to articulate their complaint. That was certainly my sense. There may well have been people out there who would have liked to make a complaint but who did not feel confident enough to make it. That is a different issue entirely. That will arise in my work every day. There may well be people who have been failed by the public service who lack either the

- capacity or the confidence to make the complaint.
67. One of the things that has come up is interesting. You will not have been aware of this, but Marie has been following it very closely for us. The Public Administration Select Committee (PASC) published a report last week in London about the parliamentary ombudsman saying that there should no longer be any requirement to write a complaint and that a person should be able to make a complaint in whatever form they wish, be it verbal or by SMS, text or email. The way of controlling complaint submission by saying that it must be written and that you must describe the injustice and all the evidence is a huge barrier to complainants. You might want to think about that. It opens up a whole series of issues.
68. One of the big issues, I think, is geography. If you are out in the Foyle constituency or the Fermanagh and South Tyrone constituency or wherever, getting the help to you might be much more difficult than someone who is living close by in Dundonald coming to make a complaint. So, does that make the MLA in Dundonald much more vulnerable to a complaint than someone who is out somewhere else at a distance? There are lots of issues that you need to consider on that, but, in a modern world where all communication is instant and so many of our young people have real facilities with these technologies and all of the so-called channels, you may need or want to look at how people submit complaints.
69. **The Chairperson:** Would you still be of the view that somebody should substantiate their complaint?
70. **Ms M Anderson:** That is very important. As I listened to Steven Agnew's question, I was thinking that sooner or later, regardless of how you communicate the initial dissatisfaction with the conduct or behaviour, somewhere along the line that has to be recorded. You said, Steven, about being given all the evidence. It is quite important — we are grappling with this as the local government standards commissioner piece unravels — in admissibility terms, that there is some evidence to substantiate a complaint in order to manage spurious or vexatious complaints. Otherwise, people are accused and left standing to defend themselves.
71. **Mr Agnew:** The type of thing that I was alluding to was the case of somebody making a complaint that we might think had some merit, but they do not refer us to a specific aspect of the code. I do not necessarily think that that is the complainant's job. We would not expect that in a court. We would not ask the person to please tell us which law has been breached. Should someone be burgled, we do not ask, "Can you point to the law?", and they say, "No". Then we say, "Sorry". I do not think that we —
72. **Dr Frawley:** It is like what we have in our current model, in which we ask the complainant to please indicate the injustice they believe they have experienced. To most ordinary people "injustice" is something that is felt; it is not that they can tell you what paragraph and sub-paragraph of which Act was broken. So, you are right. Should there be a willingness to help and should the language used ask for a little more clarity or a little bit of refinement of the complaint? Probably yes, rather than saying, "I'm stepping back and, until you come up with an answer, you are getting no help from me". There is, I think, a need to engage a little more constructively.
73. **Ms M Anderson:** I think that you used the word support. Perhaps, the issues are around accessibility, ease of making a complaint —
74. **Mr Agnew:** Not putting up barriers.
75. **Ms M Anderson:** Individuals might also get support from Citizens Advice or others. Information is important, so it should be very clear on the Assembly website how to make a complaint or otherwise. Such information should be available to complainants. So, there should be accessibility, information

and, I suppose, a degree of flexibility in approach, as Tom said.

76. **Dr Frawley:** The other thing to say on that is that one of the great problems for my own office is young people. Young people do not complain. My assumption that they therefore have nothing to complain about is defeated over every evening meal. So, again, how do we reach those people? Part of it is to make ourselves more accessible. I spent this morning with a huge advocate for deaf and hearing impaired people. Again, their lives are limited and public bodies are not good at engaging them. The group that I feel most significantly concerned about is learning disabled people. Tonight's 'Panorama' will highlight the vulnerability of elderly people. So, there are vulnerable people who, even should they wish to complain, would have great difficulty engaging with a complaint.
77. **Mr Storey:** Thank you, Tom; good to see you again. You said that compliance with the code should apply not only to Members but, where appropriate, their staff. Where and in what way would that apply beyond the current legislation governing the relationship between the employer — namely the MLA — and the employee — the member of staff?
78. **Dr Frawley:** In so many of the instances that I was thinking of in making that point, the employee is acting on behalf of the Member. The assumption is that they are acting on the direction of the Member. They may well not be; maybe they are acting completely on their own initiative. If that is the case and they have caused offence, I think that the Member should be aware of it. Now, the Member may say, "Well, you're very thin skinned, and if that caused you offence that's your problem". However, in a sense, the Member is then picking up the issue and saying, "I have no problem with what that person did". I say this about political advisers, as well as staff who work in your constituency offices and offices here: they only have a status and a standing because they work for you. They have no standing beyond that, other than as employees. So, when they speak, take an action or a decision, or write a letter or a response, they are doing it on your behalf. Other than that, they have no authority. That, therefore, makes you party to whatever failure or failing that they have allegedly been involved in.
79. **Mr Storey:** You are really going into another set of rules or regulations on employment law. Do you think that there is scope for an appendix that can easily sit for that regime, which says that, while you have a contract of employment, you will be subject to all the rules that apply according to the law of the land, but also that you will be subject to the Members' code of conduct, as set out in whatever paragraphs?
80. **Dr Frawley:** I think that many employing authorities have those arrangements. Look at trusts and other major employers: there are house rules and internal arrangements that apply to people, as well as the fundamentals of the legal arrangement that exists between the employee and employer. To return to the briefing — I do not want to overdo this, and it should not be for this Committee alone — it seems to me that, for staff working in this Building and staff working for Assembly Members, there needs to be guidance, training and induction. What is the induction like when people come into a constituency office? What is the training? What are the ground rules on health and safety, equality training and all that goes on and should go on? In my view, it gets done once and never again; everyone thinks, "We do not need to do any of this stuff", but, actually, yes we do.
81. So, there are other issues beyond the rules. There are issues about how we train and equip people. The great strength of Northern Ireland is, in my opinion, its people. I would say that in any company. Despite our worst and darkest moments, which we are capable of having, most people who come here say that it is the openness, friendliness and willingness to engage the stranger that makes us different. That is a strength. I argue that being respectful, concerned for others and willing to go

- the extra yard is something that you would want your staff to live out every day because it then reflects on you. That is what it says about Mervyn Storey's office or Alastair Ross's office. So, I think that that is important.
82. **Ms M Anderson:** If you look at other sectors, you see that there is an increasing tendency to have the requirement — the contractual obligations that an employee will have under a contract of employment — and a code of ethics alongside it. Think of the members of the PSNI: they have a code of ethics, but, in addition to that, they must not breach the criminal law. Think of senior civil servants: they have a code of ethics; in addition to that, they have legal obligations as an employee of the NICS. Tom spoke about the two decades following on from the Nolan principles, and that is one of the areas in which there has been a development, in increasingly rolling out codes of ethics across sectors. That is something to be welcomed.
83. **Mr Boylan:** I think that all the questions have been asked by now. Thank you very much for your presentation. I have just one thing to say. I think that you summed it up, Tom, in paragraph 4.2. It is about how you started out and how you finished. You said:
- "I depart from the Committee's stance that only a breach of the rules can provide the basis of a complaint to the Assembly Commissioner."*
84. And then you end up by saying that new circumstances and situations continually arise. I think to myself that, obviously, we cannot have a definitive list because clearly new situations arise all the time. Steven touched on that. I was just thinking of all the answers that you have given. One thing that we have not really considered in all of this is how it looks from the public point of view. If we are going to get to the point where we have a good standard, both in principle and in the code of conduct, we have to learn from the complaints made through engagement with the public. As part of the process, I know that you have encountered some of the issues in chairing meetings and all that. In my time, a lot of the complaints — even though most of them have been inadmissible or whatever — are like small case studies of what is coming forward. I wonder how we can better that process or how it could influence our final document. Is that a reasonable question?
85. **Dr Frawley:** One of the things is that part of this is resources and part is capacity. I do not think that this process is ever complete. It is no different in my office. My worry is always that we produce great policies, fine documents and principles, and, once they are published and circulated, that is it finished; we have no more to do and our work is done. In fact, we need to continually work at that and to find ways of picking up on the learning from different circumstances. My office does huge, detailed investigations, as some of you will know, and in them I make extensive recommendations. I am terribly smug about what a wonderful finish that was, and yet I never know whether those changes are implemented or ever happen. Did anyone pay any attention, or did the public body just say, "Thank God that is over and we will not hear from Frawley for a while."
86. There are big issues in all systems about how, having reached conclusions and made recommendations, we ensure that the changes that we proposed are lived out by people. We would like to be able to test that. That is one of the things that is important in the work that you do. As I have always said, the Assembly and the whole devolution dispensation is a project, and, therefore, what you want to be is the exemplar. I go back to that word again. Therefore, when we have cases and outputs, we must ask — it is not for you to do; maybe it is for the Assembly Commission — how we take that learning and make sure that it is communicated to staff, individuals and Committees, if that is what it is related to, so that we demonstrate that we are a learning organisation, one that wishes to evolve but also to improve, as

- far as it is possible. Without spending our lives navel-gazing and reflecting all the time, we should take things forward. Where we find that there are difficulties, problems or failures, we should address them and continue to be proactive in doing so.
87. **Mr F McCann:** My contribution is a comment, rather than a question. We live in an ever-changing world. Whether you are a Chair or a member of a Committee, training is essential. Events change, so you have to change with them and learn how to deal with them. I do not think that, in the running of an advice centre or whatever, the training of staff is any different. We live in an era of ever-changing legislation. There is a responsibility on people who give advice to ensure that the advice that they give is correct. There could be penalties, for politicians or people who run advice centres, who give the wrong information.
88. All that having been said, to work in a place like this, you need a degree of flexibility to be able to deal with people. Not everybody is the same, not everybody requires the same bit of advice; and you have to give advice in different ways. However, you can ensure that the people who work with or are employed by you are trained to a level that allows them to do that. You spoke earlier about training. I was a member of Belfast City Council for 23 years, and every chair brought a different personality to the job. They each tried to do it to the best of their ability, but I believe that training enhances performance.
89. As for standards, conduct and a code of conduct, in many ways, we are all new to this level of political life. We are on a learning curve, and, hopefully, we will get there. We would all like to have the standards set as high as possible, but sometimes when you do that, you feel that you are not capable of reaching those standards and that it makes you a lesser person. A happy medium has to be found, and it goes back to the idea of aspiration, which was talked about. We must set a standard and work towards it.
90. **Dr Frawley:** Exactly. Thank you, Chairman.
91. **The Chairperson:** Does anyone else wish to ask a question?
92. **Mrs Overend:** I think that we have covered everything.
93. **The Chairperson:** Thank you very much, Tom and Marie. That was very useful.
94. **Dr Frawley:** Thank you very much.

30 April 2014

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
 Ms Anna Lo (Deputy Chairperson)
 Mr Steven Agnew
 Mr Cathal Boylan
 Ms Paula Bradley
 Mr Ian McCrea
 Mrs Sandra Overend
 Mr Mervyn Storey

Witnesses:

Dr Tom Walker *Queen's University
Belfast*

95. **The Chairperson:** I welcome Dr Tom Walker to the meeting. Thank you for joining us. You know the body of work that we are doing. I am happy to hand over to you, and you may want to discuss some of the issues that you have raised.
96. **Dr Tom Walker (Queen's University Belfast):** There are three main points. I would like to discuss the scope of the code, what is included and what is not.
97. The first thing is that, at the moment, the code applies to Members when they are acting in their role as a Member. There is a suggestion that that should be widened to apply to when there is a reasonable presumption that they are acting in that role. That introduces some uncertainty and lack of clarity as to when the code applies, and that is probably a bad move. A lot of the changes that were made have made clearer what is included and what is not. Because there will be disagreement as to what counts as "reasonable presumption", whether Members can be reasonably presumed to be acting in that role, additional confusion will be added to the code. It would be good not to add that in at this stage. It is not there already; and it would be better to keep it out, so that Members know when the code applies and when it does not. They can be clear about that. Either they

are acting in their role or they are not, and that is the end of the issue.

98. The second thing is the idea of bringing the Assembly into disrepute. The issue is whether there should be a general rule about that. The problem with a general rule is that you are likely to get complaints under it that are outwith the scope of the code. For example, people's behaviour in private life might be claimed to bring the Assembly into disrepute. Things that people say, even if it is lawful speech, might well be claimed to bring the Assembly to distribute. So, a general rule is going to lead to disagreements as to whether or not such behaviours are covered. One way to avoid that is to do what happens in the House of Commons, where it is specifically ruled that those kinds of behaviour, even if they bring Parliament into disrepute, will not be investigated under that clause of the code. What is covered and what is not is very specifically restricted and written into the rules. I think that something similar is needed for the Assembly, otherwise you will find that people's behaviour in private life will be claimed to bring the Assembly into disrepute under that rule, so it is a breach of that rule even though it is not within the scope of the code. Again, I think that that would be something that is good to avoid while you are revising the code at this point.
99. The final point is about staff and Members' staff and whether that should be included in the code. I think that if there is a role for Members to be responsible for their staff, I do not think that the code is the right place to introduce it. I think that that would have to be looked at separately. There may be some rules that would apply to Members, but they would be more to do with Members, say, being required to ask their staff whether they have conflicts of interest and what Members should do if they discover that a member

- of their staff has a conflict of interest on a particular point. In that way, the code covers only what the Members do or do not do, and it does not directly apply to their staff. If staff need to be covered by a code or responsibilities of Members, I think that it is a different process and it should be dealt with differently.
100. **The Chairperson:** OK. Members?
101. **Mr Storey:** Thank you, Dr Walker, for your paper and for coming to us today. Do you believe that the issue of staff is better covered by the normal rules and regulations insofar as we are the employer of the staff and, therefore, the responsibility for their conduct falls under the remit of normal employment rules and regulations?
102. **Dr Walker:** I think that is the best place for it, because you already have that relationship between the Member and their staff. Because it is an employment relationship, I think that is the way to deal with it, rather than having it in a code of conduct for Members.
103. **Ms Lo:** Just to follow on from Mervyn's question, what about the MLA's conduct with Committee staff? Would that fall under the same rule and be dealt with by labour relations law?
104. **Dr Walker:** I think, if the Member is employing the staff, wherever those staff are, then that is the right place to deal with it under the employment rules and legislation covering that. I think that adding that into something else is going to add confusion and lack of clarity about what is covered and what is not, and it would be best to avoid it. I do not think there is anything additional needed, but if it was thought that there was, it should be dealt with separately.
105. **The Chairperson:** In terms of the general rule about bringing the Assembly into disrepute, I think that we have all recognised that that could potentially invite complaints that members of the public or Assembly Members could not find a specific part of the code, so they use bringing into disrepute as a catch-all. However, is there not a danger that, if we do not have a catch-all, certain behaviours of Members that the public may find abhorrent are not covered in the code of conduct, and we will leave ourselves open to criticism?
106. **Dr Walker:** I think there is potentially a danger of that happening, but the problem with a general rule is that, if you want to make a complaint and there is nowhere else to put it, that seems to cover pretty much everything. Because of that, it perhaps invites more complaints that should not really be covered by the code.
107. I think it would be better if there were specific rules included that covered everything that we could think of that would bring the Assembly into disrepute, rather than have a general catch-all, which will just invite complaints about any behaviour, because, however people behave, there could always be a claim that they bring the Assembly into disrepute, no matter what they are doing or which area of their life it is in. I think a better option is to have specific rules or, alternatively, to make very clear that that general catch-all only covers behaviour in specific areas; it only covers them when they are acting in their role as a Member but does not cover lawful speech. That very much narrows the kind of thing that would be included in it. As I said, that is an option that has been taken in some other places. Other places have just got rid of general rules altogether.
108. **Mr Agnew:** Thank you for the information and answers so far. I will continue on that question of disrepute. I think we have a clear intention to bring greater clarity to the code and simplify it so that people can understand what is an admissible complaint and what is not. I do not think it is realistic to say that you can be exhaustive in your lists, foreseeing every possible type of complaint. The other aspect of it is having principles, which are going to be as vague as "disrepute". How do you feel about the issue of having overarching principles that Members should live up to?

109. **Dr Walker:** It is good to have principles, but I think they should be aspirational rather than enabling a complaint just because someone has not complied with the principles. There is a danger of confusing the two, so I think a better move is to have a clear set of principles, which Members would be expected to live up to, but also rules that they have to comply with, and they are the ones that the complaints would be under. If you have principles and complaints can be brought if you do not comply with a principle, I think that just muddies the waters and makes it much less clear what is included, what is not included, what is required and what is an aspiration. Codes work better when it is clear which category different things fall into. I would resist having principles to do that kind of catch-all.
110. **Mr Agnew:** The issue of reasonably assuming that someone is acting in their capacity as a Member has come up on a number of occasions. A general example is of an overtly political event, and an MLA is at it; an MLA makes a political statement, and somebody believes it to be a breach of the code. That is something that we should investigate. When a politician is being a politician, it is reasonable that they should be covered by the code. I think that the public certainly have that expectation. I know that there are probably different views on that in the Committee. I would be reluctant to lose that simply for clarity. Although clarity is certainly an aspiration, to use the term, of what we are trying to do here with the review of the code, do you not think that it is reasonable to expect a Member, in overtly political acts, to be governed by the code?
111. **Dr Walker:** The problem is wording it in such a way that you include those kinds of cases but you exclude other kinds of cases where somebody might think that they are reasonably claiming that the Member is acting in their capacity as an MLA but where that is not the case. The problem is going to be with how you define the distinction. It is clearer to say that it applies only when they are actually acting in that capacity. It would be useful perhaps for the public to have some guidance about what is meant by that so that what is included and what is not is clearer. There is a danger that, as soon as we start talking about reasonable presumptions, and given the disagreement about whether a presumption is reasonable, it is harder for Members to judge whether they are covered by the code in a particular case. There will be claims that, "In acting in this way, I wasn't acting in my role as a Member. Somebody mistakenly thought I was, and now I'm suddenly caught by the code." You would want to avoid those kinds of things. If you want to include more, what more do you want to include? How would you draw a line to include only those things? The clearest line is that they are actually acting in their capacity as a Member. You have that line at the moment. It is a line that you should stick to, rather than trying to extend it to deal with things to do with reasonable presumption.
112. **Mr Agnew:** What about something like Twitter, where the MLA's "about me" section clearly states, "I'm an MLA", for North Down, in my case, and, "Vote for me, because I'm a great guy" and all the rest of it? Coming back to the term "reasonable", do you not think that it is reasonable for people to expect that, in that capacity, you are promoting yourself as an MLA, and so you are acting as an MLA?
113. **Dr Walker:** Yes. People might presume that you are acting as an MLA sometimes in those roles. There is also the question of whether you are acting as an MLA or a candidate for an election. Which of those roles are you acting in? It is not always very clear to the public. Again, the problem is that, if you think that how people use Twitter should be covered by the code, it is better to cover specific rules about how Twitter is used rather than trying to have some kind of reasonable presumption about the different roles that people might have. People would have to make different judgements about whether they are acting in that role. Would somebody

- reasonably presume that I am acting in this role when I am acting in this way? It is good to avoid those things. The reasonable presumption idea is too vague; it potentially includes too much. If there are other things that need to be covered, such as Twitter accounts, they should be covered specifically. If there are rules on how people use Twitter, that would be the place to put it.
114. **The Chairperson:** When you say that a better way would be to provide guidance to those who are reading the code of conduct, are you suggesting that we have a list of activities that we believe are an individual acting as an MLA and a list of activities that we do not believe are a Member acting as an MLA?
115. **Dr Walker:** It would be more of a kind of indicative list. It would not be exhaustive; it would be hard to be exhaustive. One of the potential problems is the difference between an MLA's opinion about when they are acting as a Member and that of some members of the public, who may well have a broader conception of when you are acting as a Member. It could be something to indicate the kind of things that we are concerned about people acting in these roles doing and sets out what the code covers. It would help the public to know the scope of the code. It is important to be clear about what the scope is and for the public to be clear about that.
116. **Mr Boylan:** Thank you for your presentation. I have listened to the conversations, and I want to pick up on two points. If we went down the line of defining things, that would nearly inhibit MLAs from doing certain things. You have to get the balance right between what they are trying to do and what they are allowed to do. If we were to define it, how would you see that? Is there a model that is working elsewhere that we could use?
117. **Dr Walker:** I do not think that there is. Most codes have it that it applies only when you are acting in the role as a Member or whatever.
118. **The Chairperson:** Just to clarify: It would not prohibit a Member from doing an activity, but it might inhibit them from behaving in a certain way while doing an activity.
119. **Mr Boylan:** I agree with you. However, if we go down the line of definitive lists, you would not do it. You are nearly tying freedom of expression in with everything else that they are trying to do as an MLA, or the perception of what an MLA can and cannot do, and that is the problem. If you start to define things like that, you could get that situation; that is all that I am saying. That is the difficulty — this whole idea of when you are acting as an MLA and when you are not. Do you know what I mean? I do not think that a definitive list would be right in this case, and I wanted to get your views on that.
120. In relation to the catch-all, we are getting a number of cases of people trying to find a way of asking the question of whether or not people are behaving within the code. Are there any other models for that? If we went down the route of trying to define it, how would you see that working?
121. **Dr Walker:** I am not suggesting that there should be a definitive list. However, I think that it would be useful to have some guidance about when Members are acting in a particular role or not. That would be only to indicate which behaviours are covered by the code. It would not have any effect on how they could act. It would be a case of, "If they are doing these things, the code applies. If they are not doing these things, the code does not apply." That is the way that I was thinking of it. I do not think that that should particularly inhibit people from doing things. It is just to be clear about when the code applies and when it does not and when a complaint can be made about a behaviour under the code and when it would not be admissible to do that. That is all that I was thinking about as regards clarification on that point.
122. When it comes to the bringing the Assembly into disrepute catch-all, one

- way of trying to avoid conflicts between that rule and the broader questions about the scope of the code is to include in the rule something like the proposed rule about unlawful behaviour and criminal offences. The rule is really strict about when people are acting in their role as an MLA. That would have to be in the bringing the Assembly into disrepute catch-all. So, the rule would be better phrased as something like, “Members should not bring the Assembly into disrepute when acting in their role as an MLA.” So, it is very clear in the rule that this rule only applies in some things that they do, and there is not the opportunity to say that, although they have brought the Assembly into disrepute, they are acting in their private life or in some other role. They have broken the rule, and the rule says they should not do it. That brings the question of whether the scope takes precedence over the rule or whether the rule takes precedence over the scope. If it were written into the rule, that would help to clarify what is included and what is not.
123. **The Chairperson:** So, bringing the Assembly into disrepute while acting as an MLA would still involve a breach of other rules in the code to bring the House into disrepute. For us to define what disrepute means, you would need to have —
124. **Dr Walker:** Yes. I think that if we do that, that rule becomes less useful in many ways, and it might well be that you would want to drop it altogether. I take the point that there is some sense that people want a catch-all rule, but, at the same time, they want to restrict the code so that it only covers certain types of behaviour and behaviour in certain roles. The catch-all tends to undermine all of that because it allows people to say that something brought the Assembly into disrepute. OK, it took place in their private life, but it still broke the rule. It kind of sets up the possibility for disagreements about whether this rule applies, when it applies and when it takes precedent. If you are looking at redrafting the code
- anyway, I think that it is better not to include something that opens the door for those kinds of considerations.
125. **Mr Storey:** On that point, has paragraph 16 of the current procedures in the House of Commons been successful in practice, or has its opt out been the means of circumnavigating that?
126. **Dr Walker:** I do not know how it has worked in practice. I do not have any data on that. Its code is not that clear because, although that is written into the details of the rules, elsewhere there is mention of behaviour in your private life bringing the Parliament into disrepute. So, although it looks very clear in the rules, other parts of its code muddy the waters again. The advantage of something like that is that it makes it clear to people what the scope of that rule is. If you write it into the rule, you are not relying on something earlier in the document to sort out the scope issues.
127. **Mr Storey:** Have you any view on the comment that is made later on strengthening the rule to the point where there will be a requirement where Members “shall” observe the rules as opposed to having an aspirational attendance to the rules? Do you think that that is strengthening?
128. **Dr Walker:** I think that the rules should be phrased in a way to say that you shall do this or that or not do this or that, whereas the aspirations would be written in a different way. The aspirations should not say that you shall do this. They should not be written in a way that allows them to be confused with the rules, so I think that language is important. The rules should say, “Here are things that you shall do and here are things that you shall not do, and these are the things that we will hold as binding.” Aspirations, I think, would be worded in a different way. They would say something more positive about the kinds of standards of behaviour that we would expect Members to live up to. They are often very aspirational. They can set the bar very high because

- they will not be imposed or enforced on people.
129. **The Chairperson:** You have highlighted three general areas. Obviously, you were involved from the beginning of our process of reviewing the code, and you know where we want to get to. Is your general view that the recommendations that we have made or the draft code are improvements on what we had previously?
130. **Dr Walker:** Yes, I think that they are. There are two areas in particular where it has improved. It will be clearer what is not included in the code and what the rules do not cover. Taking out that ambiguity makes for a better code. It will be clearer to everyone involved what is covered and what is not covered. The other particular improvement is the split between the rules and aspirations. There is an overlap in the existing code and there are some paragraphs that seem to include rules and aspirations almost in the same sentence. If that is separated out it will make it a lot clearer what is expected and what is required — what the aspirations are and what the rules are that are required to be obeyed. Those are the two main areas where improvements have been made; the separating out of aspirations and rules and being clearer about what is what is not included.
131. **The Chairperson:** My next question is more general and is not specific to our code of conduct. You will be aware, with the RPA process, that there will be a new code of conduct for councillors. If they have a radically different code of conduct from ours, will that undermine the changes that we have made because there will be greater public confusion about the two codes that exist for what they see as politicians, as opposed to making a distinction between councillors and Members?
132. **Dr Walker:** I do not think so. There are already lots of different codes. There are codes at Westminster and codes here, and it depends on how radically different they are. Without knowing what they might suggest, it is so hard to know. There is a sense that there are already lots of different bodies that have codes of conduct, and, as long as it is clear what is required for the Assembly, there should not be a problem. There is a sense in which the Assembly is a different body from councils, which will make a difference to what the code says; it should make a difference to what the code says. Just as there are differences between what the Assembly does and what the House of Lords does — its code is different from what you have here — the code should vary depending on the role of the body to which it applies. There should not be a problem.
133. **Mr Boylan:** I mean no disrespect to the general public, but they may view the codes as one and the same. A lot of people go to councillors thinking that councils and this place do similar things, and they may view both codes in that way. Is that an issue?
134. **Dr Walker:** Again, it is hard to say without knowing how different their codes are or will be. I agree that sometimes the public are unclear about what is covered by the council and what is covered by the Assembly and that there is uncertainty about who covers what and who to go to in different cases. Without knowing what the councils' codes say it is hard to say whether there is going to be a problem. I do not think there is a problem at the moment around the differences between the Assembly's code of conduct and the code at Westminster. We will have to wait and see whether there will be problems; I do not think that there should be any differences, but I would expect their code to cover many of the same things and to contain many of same kinds of rules and aspirations. If the code is radically different, then we will have wait and see whether it causes problems.
135. **The Chairperson:** I suppose the end of the dual mandates is hugely helpful in that regard, because it will take away that confusion about whether a Member was acting as an MLA or a councillor and, likewise I suppose, between the

- code in the House of Commons and the Assembly code, whether the Member is acting as an MLA or an MP.
136. **Mr Boylan:** I do not disagree, Chairperson. It is just that, knowing about dealing with the public, it is about the way in which the public look at it. That is all I am saying. It was a good point; I just wanted an opinion on it, that is all.
137. **Ms Lo:** The Chairperson is right to make the point that there may be confusion, but, apart from confusion, there is, perhaps, an implied judgement that we expect less of councillors in a code of conduct and that, presumably, our standard of conduct is going to be slightly higher and the scope is wider. Would that give the impression to people that we expect less of councillors and more of MLAs?
138. **Dr Walker:** I think that depends on what they say in their code. A lot of the codes are going to have a similar basis in the Nolan principles of public life. They are going to say the same kind of things in relation to those, so it might turn out that the code is very similar in any case. I do not have much more to say than that, without knowing what their code will be or having sight of it. I would expect them to have the same general principles and cover the same things.
139. **Ms Lo:** They are very much based on the seven Nolan principles. It is out for consultation at the moment.
140. **The Chairperson:** Nobody from the Department has approached you?
141. **Dr Walker:** No, they have not.
142. **Mrs Overend:** Thanks very much for everything today. I just want to pick up on what Stephen was saying earlier about social media. Do you think it would be helpful to have an annex for how to behave, what to do and what not to do on social media as an MLA?
143. **Dr Walker:** I think that guidance on social media is a good thing in general. A lot of different organisations have already started thinking about guidelines for use of social media when you are acting in a particular role. I think that what is needed, if anything, is guidelines about good practice, rather than specific rules written into the code about what you can and cannot do.
144. **The Chairperson:** Thank you very much. We appreciate your time and your contribution.

28 May 2014

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
 Ms Anna Lo (Deputy Chairperson)
 Mr Steven Agnew
 Mr Cathal Boylan
 Ms Paula Bradley
 Mr Colum Eastwood
 Mr Declan McAleer
 Mr Fra McCann
 Mr Ian McCrea
 Mrs Sandra Overend
 Mr Mervyn Storey

Witnesses:

Lord Paul Bew *Committee on
Standards in Public
Life*

145. **The Chairperson:** Lord Bew, you are very welcome. We understand that you will be flying solo today. If you want to introduce yourself for the record and then talk to us about your evidence, we will facilitate questions.

146. **Lord Bew (Committee on Standards in Public Life):** I have a brief opening statement. First, I would like to thank you all; I am very grateful for the chance to be here. Ruth Thompson, who is the head of the office of the Committee on Standards in Public Life in London, through some navigational error, is in Shannon airport not Belfast airport. Therefore I am without the support of the most efficient person I have ever met in my life, who has been working on this. Nevertheless, it is better that we go ahead and do not cancel or rearrange the meeting, because you are all very busy people.

147. As I said, I am grateful for the chance to be here, albeit alone. One reason why I am grateful is that in 2012, before my appointment, the triennial review that governs the work of the Committee on Standards in Public Life reviewed a number of things and significantly reduced our budget. The review also

stated — and the Government accepted the recommendation — that the Committee should not inquire into matters related to devolved legislatures such as here, Scotland or Wales except with the agreement of those bodies. Everything that I say today is in that spirit. There are certain things that it might be useful for you to discuss with me today, but, fundamentally, the decisions are yours. Your commissioner's role is not the same as mine. We will come across that, and I will try to explain why it is not the same, even in the sense that it is not the Belfast variant of the London role. It is a different sort of role, as, indeed, your commissioner has made clear. He has a different role from that in Scotland as well.

148. The objective of the Committee on Standards in Public Life in London is to maintain an overview of ethical issues across public life. The Committee's first report famously set out three common threads to ensure that the seven principles of public life are properly understood and integral to the conduct of individuals in public life and the culture of public sector organisations: codes of conduct, independent scrutiny and guidance and education. I should explain briefly that the seven principles, known as the Nolan principles of public life, are selflessness; objectivity; openness; honesty; accountability; integrity; and leadership. We will come back to the descriptors later and look at how we have refined them. There is debate — it comes up in response to your document — about the descriptors. However, that is where we are.

149. We consider it good practice to review codes of conduct regularly, as you are doing, in order to learn the lessons from administering the code and changing expectations and standards. My Committee welcomes the extent to which the document that we have seen draws from the recommendations in

- our report ‘Standards Matter’ and your emphasis on providing both aspirational principles and enforceable rules. ‘Standards Matter’ was produced in January 2013, and was the last major document of the previous Chairman, Sir Chris Kelly. The subtitle is a review of best practice in promoting good behaviour in public life, and I will probably make some reference to it. Although the work of the previous chairman has been of significant guidance to me in what we are trying to do in the Committee on Standards in Public Life in London, I have changed some things or put different emphasis on some points. However, there are many points in here that I have tried to follow faithfully.
150. Our response is confined to issues of principle and areas of recent changes in standards or expectations, as we consider that practical issues about the clarity of guidance are best resolved on the basis of the Northern Ireland Assembly’s Committee on Standards and Privileges. In other words, we do not consider that it is valuable for us to intervene in some of the practical issues. It is your key problem. However, there is one issue of principle that I would like to emphasise, if I may, and that is the seven principles of public life, which are widely recognised as providing a common set of standards for those who serve the public. As such, we have reservations about amending the descriptors or the principles, as ‘Standards Matter’ offers some new descriptors.
151. Of course, we have absolutely no difficulty with your adding additional principles or elaborating in guidance how they apply to Members. I should explain what I mean by that. This was our most revised attempt — January 2013 — to give you descriptors of what is meant by selflessness, objectivity, honesty, integrity, accountability, openness and so on. I do not want to sound dogmatic. I am already open to the view that the descriptors could be modified. Take integrity, for example — a problem that was very visible at Westminster in the past year — where the emphasis is on decisions that a Minister might make and on the undue influence of money that led him to make such a decision.
152. One of the things that you saw in the past year in and around Westminster was that what was at stake was not quite so much a decision as such, for example HS2 or the Government’s position on AstraZeneca. One of the things that the lobbying crisis revealed during the past year was an element of what might be said to look like the selling of advocacy futures — you might even say fantasy futures. In other words, a Minister being lobbied might say, “Bung me £10,000 and I will do that for you.” Some of those cases appear to involve issues where foreign governments in particular want advocacy or a platform of some sort in Westminster. There is no decision here at all; it is advocacy rights essentially.
153. It is fundamentally important for Parliament to defend its integrity. The Parliament of the United Kingdom has a certain standing in the world, so the idea that you could influence all-party groups, for example, through the application of serious money is a problem. I am not completely convinced that the descriptors should not be modified to broaden the discussion of integrity away from being merely about a Minister’s decisions to the broader issue of advocacy rights, which seems to be part of the problem in the past year. I am not saying to you in some fanatical, fundamentalist way that the seven descriptors that we committed ourselves to 18 months ago will never change. What I am saying is that, for the time being, they are widely recognised by the public and that it is pretty clear what they mean. There is room for debate, and, over time, we might modify those descriptors again in another document like ‘Standards Matter’. There is another issue about whether delivery ought to be a Nolan principle.
154. At the moment, and as a practical matter, we have seven principles that are pretty well understood — like the Ten Commandments. Although we can

- have a debate about it in future and will be flexible and keep it constantly under review, at the moment we think that it is wisest to keep it within the framework of the existing descriptors. That is not because I have some intense, ideological commitment to them or am inflexible about what might develop in future, but that is our view as a Committee.
155. On lobbying, which is at least partly a problem for you, or, at least partly an issue for you — I am not so clear how deep the problem is here — we published our report on strengthening the transparency of lobbying in November 2013. We issued a call for evidence from the lobbying industry, charities, campaign bodies, academics and think tanks and had a particularly valuable seven-hour session in London at which members of the press were present. It is a major issue in London, and the Prime Minister has said that the abuse of lobbying has contributed to a lack of trust and confidence in political decision-making.
156. Our report applied the Nolan principles to lobbying and concluded that more needed to be done to guarantee greater openness and transparency in lobbying and to provide greater clarity on the standards expected of public office holders. It made certain recommendations for enhancing transparency.
157. Let me say, straight away, that we are well aware of the fact that decades of work of enhancing transparency in various areas — going back two decades with our Committee — has not had a magical effect on public trust. We are well aware of the fact — I will just say this as it is valuable — that it is perfectly obvious that a great labour has gone on in British public life to increase transparency. One example is the question of party political donors. I was at an Organisation for Economic Co-operation and Development (OECD) seminar last autumn, and the United Kingdom was the best for transparency in party-political donations — right at the top of 47 OECD countries. However,
- there is one problem area, which is where we are now because of the rules on political donations here and the formulations on disclosure not being the same as the rest of the United Kingdom. Nevertheless, the UK is at the top for transparency in party-political donations. However, I suspect that if we polled the British public next week about the transparency levels of party-political donations, you would get pretty dim and dusty figures.
158. Transparency has not magically increased trust, whatever trust may be — that is, of itself, an interesting concept — but it is unavoidable. We take the view that you will not be able to defend the public life of the country without transparency. Anybody who thought that all Lord Nolan needed to do 20 years ago was to implement measures of transparency for the public to stop being so cynical about politicians would have been wrong. That does not mean that there is an alternative; there is certainly no question of that. Our Committee recommended measures to enhance transparency in lobbying. As regards Parliament, we also raised special concerns about issues relating to Chairmen of Select Committees. One of the great changes in Parliament during the past few years has been the emergence of Chairmen of Select Committees as being far better known than most junior Ministers. They are elected by the whole House. They have a standing, whether it is Bernard Jenkin, the Chairman of the Public Administration Select Committee (PASC), to whom I have a particular responsibility. I have had one hearing and have another shortly.
159. The new Defence Committee will have a new Chairman, and there is a great deal of media attention on that. The role of Margaret Hodge's Public Accounts Committee is something that we have been involved in. All those people now have a significance in public life in the country and in Parliament that they did not have when we were first drawing up documents 20 years ago. We have suggested that you have to look closely

- at their relationship to lobbyists. That is something that the House Committee is looking at. As a consequence of our report, Sir Kevin Barron's Committee on standards has taken up and is looking at the question of Committee Chairs and what is to be done.
160. The other major thing that has happened, pleasantly, to my surprise, is that the House of Lords has essentially accepted our recommendations for the House of Lords. It is essential. You need only glance at the newspapers to realise that Parliament's problems have not been just with elected Members. I will put it no higher than that. There have been cases that affected the House of Lords. The House of Lords has just accepted our document on lobbying.
161. Nevertheless, as we say at the beginning of our document on lobbying, lobbying is part of the healthy lifeblood of any democracy; it is simply a question of ensuring maximum transparency. Without it, we would not be as well informed as we are. I would not be as well informed, to take a simple example, on the medical and health matters that come up in the House of Lords without the various lobby groups in that field contacting me. There is a perfectly legitimate role for lobbying groups as part of the democratic life of a country. It is not just legitimate; it actually enhances our democracy. It is just a question of ensuring that the public does not have reason to believe that undue weight is given to the power of money behind the scenes.
162. The public is strongly inclined to believe us in Britain. We recently published our Eurobarometer, looking at all European countries, citizens' actual experience of corruption and how corrupt they thought their country was. Some Europeans — the Italians, for example — say, "I'm not sure we have a very clean system, and, yes, quite a lot of us have had to bribe people at certain times to get things done". The Dutch and the British have virtually no actual experience of corruption; they cannot say that they had to bribe anybody. It is very low. The Dutch deduce from it that their system is clean; whereas the British deduce from it that their system is pretty bad, they just do not know about it. We have a particular public mood. The Eurobarometer is quite interesting, showing the gap between people's empirical experience of their country and what they believe is actually going on.
163. I want to refer to a couple of other pieces of work that we have done and then continue. You have a long section in your document on Members' staff, but my Committee, as you will be aware, did not consider that it had the necessary expertise to comment on such questions in detail. However, our Committee has stated previously when considering MPs' staffing in our document on MPs' expenses and allowances — which I have brought with me — that it is important as a matter of principle and good practice that there should be broad parity of treatment of staff and that a code of practice backed up by appropriate training and HR support for Members is one way of achieving that.
164. Since our response was drafted, we note that the House of Lords Committee for Privileges and Conduct has issued a report that a new code of conduct for Members' staff should be introduced. The proposals include provisions relating to a requirement to abstain from lobbying or using access to Parliament to further outside interests in return for payment or other reward, a requirement to register all employment, any financial interests in businesses or organisations and any gifts received above £140 in value that arise from their work in Parliament. Breaches of that code could result in the individual's parliamentary pass being removed.
165. I want to conclude by talking about a couple of other areas of our work; I then want to hear your questions. We are producing two documents. One is about ethics in practice. It is about the grasp of ethical education across the public sector, not just Parliament. You realise that there is a controversial point about MPs and their relationship to broader ethical questions. We will publish it in

about a month. The question of ethics in Parliament and across the public sector in general is something that we feel we have to deal with head on. Moreover, we are publishing a major document on the new mix of public/private and the way in which many public services are now carried out by private concerns. We are discussing the ethical world in which the new mix of public/private providers provide services to members of the public who often have no alternative. Those two documents are forthcoming.

166. I am anxious that you understand the difference between my role and that of your commissioner, Douglas Bain. He has been asked to look at individual cases: we do not do individual cases. The reason why I stress the nature of our work is to point out that we focus on general issues. We do not do individual cases; I have no expertise to offer with respect to individual cases. Take the recent drama of the Maria Miller case. Because the nature of our body and our title — Committee on Standards in Public Life — are quite close to those of two parliamentary standards bodies that were involved, the public rang us endlessly asking what we were doing and why we were not doing it. The answer was that we were doing nothing.
167. The triennial review to which I referred earlier specifically says that it is not the role of the Chairman to rush into TV and radio studios to comment on such cases. That drives the people who run TV and radio studios absolutely mad. “You are the Chairman of the Committee on Standards in Public Life, so why are you not down here telling me whether Maria Miller should stay in office or resign?” That went on incessantly for 10 days. However, I took the job on the basis of the rules that governed the job and that it was no longer our business to be involved in the work of devolved Assemblies without their agreement and consent. Similarly, I took it on the basis that I was not going to be rushing into television studios in these cases. There is a very good reason for that: you can get it wrong. You might remember some of the alleged cases over the past

18 months. Something that looks not so good may not be quite so bad when it is clarified. You compromise your office if you get it wrong. I said nothing about the case until Maria Miller had resigned. I then went immediately to the ‘World at One’ studio to talk about the implications of the case for the values in public life that we are supposed to be defending. However, at no point did I speak during the eight or nine days in which she was in trouble.

168. I can see a media expectation that your commissioner, Douglas Bain, should respond to individual cases where people have complained about things that MLAs have done or said. I cannot offer much advice or refinement in that area. I understand from talking to him how he sees the future developing in what he thinks is the best possible way, but, as far as individual cases and issues that relate to individual cases are concerned, I do not have much to say. In fact, it is more than that: I am effectively forbidden from addressing individual cases in order to preserve the integrity of the office to defend the general principles.
169. Sorry to go on, but I felt that, if I stuck to my opening statement, I would not be in danger of Ruth telling me five minutes from the end of the meeting the things that I should have said, as normally happens. I have at least put some things on the record and hope that I have not forgotten too much.
170. **The Chairperson:** A number of members have questions for you. I ask members to keep questions relatively brief. Hopefully, we will get answers that are relatively brief as well. If there is any further documentation that you want to provide the Committee with afterwards, we will be happy to receive it; that would be good.
171. I have a question around the issue of principles and rules. In your submission to us, you welcomed the emphasis on providing aspirational principles and enforceable rules that complement each other. Can you make clear to us what you see as the difference

- between the aspirational principles and the enforceable rules and what the relationship should be between them?
172. **Lord Bew:** I can understand why you are moving towards having a clear-cut set of rules. We have no problem or difficulty with that approach, especially if there is a sense that they lack clarity. The fundamental thing is to look at any rule that you might adopt and ask, “Is it physically in discordance with the principles?” The job is to ask, “Have we suggested a rule that means that we are not defending honesty, accountability or integrity?” However, you have a set of very specific circumstances here. You have issues that are not going to appear the same way throughout the rest of the United Kingdom. I know enough to know that. Therefore, I think that, from your point of view, the way to go is to aim for a clear set of rules and just have the principles there as a backdrop. I can well understand why the drive is on from your end to modernise and clarify. We have no problem with that at all.
173. **The Chairperson:** So, you do not necessarily think that every principle should have a corresponding rule. You are happy enough that —
174. **Lord Bew:** No, I do not. I am the worst fetishiser of the principles of public life, but I think that that is for our work. Sometimes people ask us to engage in issues. One thing that we did a lot of work on was party political funding. There is a moral dimension to this. It is related to the work of our committee. We produced a major document on it that, to put it this way, is not going to be implemented before the next general election. It is very much within the boundaries that we debate. It might well be returned to after the general election. However, with public opinion of politicians so critical in Britain, it is hard to imagine them paying more for their politics at the moment. Having said that, I have no doubt that that is a really important document that is alive in the sense that everybody knows that we have a difficult situation. It is not going to be picked up in the short term. It will
- be part of the debate in future; that is where it sits.
175. We were asked to do it. I have this slight reservation. The Prime Minister asked us to do it so we are going to do it. My reservation is not about the quality of what we produced or its viability intellectually. It is because what I call old-fashioned trade union donations to the Labour Party, which is the easiest one, and old-fashioned business donations to the Conservative Party are not moral questions of the seven principles of public life. You can say that, in practice, things have gone wrong when the unions have money in the Labour Party, but, in principle, it is not a moral question.
176. I have already said this, but I would like it to be a principle of our work that we do not do things that are morally significant, which this is. This is a good document that we have produced. As regards our principles, I do not see what is morally wrong with, for example, the old-fashioned way that the Labour Party funded itself. You may think that lots of things are wrong with it. You may have a political judgement or philosophy that trade union donations and so on are wrong. You may have lots of good political arguments. However, I am talking about honesty, integrity, accountability; do you see what I mean? I do not see the moral wrongness of it.
177. I accept completely that we have a system today that, for a variety of reasons, has a taint around it, but, as I said, I am almost a fundamentalist about the seven principles and getting our work back to the seven principles. It is a general point of view, but not to the point where we say that there must be some one-on-one with anything that the Northern Ireland Assembly thinks is a rule. The type of issues that I am sure that you are thinking about — because it will be based on experience of cases that have come before you or been around you in the last two or three years — do not actually fit neatly with the seven principles. Fundamentalist though I am on the seven principles, as I have

- just explained, I am not that much of a fundamentalist.
178. **The Chairperson:** I think that you are right in your view of where the Committee is heading in separating the two out and having a cleaner document. Although we have not made any final decisions, that is probably the view of the Committee. On that basis, if we are trying to be a bit more prescriptive with the rules that we have in our code, do you think that there is value in having a catch-all rule about not bringing the House into disrepute or something along those lines? Is there value in that rule, or is it unfair to those individuals because they have not broken any of the rules above and it is sort of, "Oh, we will get you on this one then".
179. **Lord Bew:** To answer that with accuracy, you would have to know what you decide on in the rules above.
180. **The Chairperson:** But I suppose that there is no way of always covering every possible scenario in the rules. Therefore, the question is, should there be a —
181. **Lord Bew:** This is where I suppose that there is a value in saying as a backdrop that, in deciding on the specific rules, we have also had in our mind the seven principles of public life, because the seven principles of public life would possibly cover a gap in that light. However, life is like that. Things happen and, once they happen, everybody says that it was wrong, but they did not think about it the year before. I have already given an example of that when I talked about how our definition of political integrity is related to money, lobbying and ministerial decision when, actually, what went wrong in the following year, after we published it, was not related to that at all; it was related to what I call the selling of advocacy rights. Everybody says, "Oh, that is wrong too", but nobody saw it. The very able people who drew up the document defined the problem more narrowly than it actually turned out to be.
182. I see your problem. It is always inevitable in the complex world of Northern Irish politics that something may emerge that is not covered by your rule, but at least if it is not covered, first, by your rules and, secondly, by some broad adherence to the principles of public life, it is a pretty lucky customer. You cannot say, "Either you have adhered to the principles of public life or you have not". We have laid out what we want.
183. **The Chairperson:** I suppose that the difficulty comes if you have separated the two out and you are saying that your principles are not rules. Your principles are things that we should all aspire to, and we give a nod in that direction in our code, but if they are not enforceable rules then it will not help —
184. **Lord Bew:** I get your point, but it is very difficult for me without seeing your final list of rules, which you have not agreed, to see how serious the problem is. I am reluctant to say at this point that I have anything of value to say on the question that you are asking me, which is whether there should be some general rule on letting down the House as well. I would have thought that your rules would largely be defining various bits of letting down the House, as it were. Sorry; without seeing the final definition of the rules, I cannot give you a definitive answer.
185. **The Chairperson:** That is fair enough.
186. **Ms Lo:** I will add just a couple of short questions. I understand what you are saying about us not trying to change the descriptors of the seven Nolan principles as understood by the public, but, in your submission to us, you said that if we have any additional principles, we should separate them from the seven principles. Why?
187. **Lord Bew:** Let us suppose — I mentioned one earlier that is a genuine area of debate in London — that we should have delivery. We do not at this point. It is an example of a possible other principle that we do not currently have.

188. **Ms Lo:** For example, in Northern Ireland, good relations is a big thing for us that we should all adhere to.
189. **Lord Bew:** When the office is responding, it is responding from a perspective that is very much governed by the work of the CSPL in London. Maybe because I live here and so on, I am no longer involved in these matters in and around the Assembly and so on, while [*Inaudible.*] was much more so. I am relatively relaxed as long as it is clear. What I really want and would be very happy with is for you to flag up, as you are currently doing, where you stand on the seven principles. You could then say that, in the context of Northern Ireland, there are certain things in your mind that are of particular importance. Personally, I am quite relaxed about that. It can go beyond the seven principles.
190. **Ms Lo:** ‘Standards Matter’ says that, whenever possible, a code should be framed positively. Can you explain what you mean by that?
191. **Lord Bew:** ‘Standards Matter’ represents a moment 18 years into the life of the Committee on Standards in Public Life where something like 10 or 11 regulatory bodies exist in London. There is a separate one for expenses and two that were involved in dealing with the Maria Miller case. There are three that are very visible on Westminster alone. I have not counted them all, but I have been told that there are something like 12 bodies set up as a result of recommendations by our committee over the years. The strong sense and tone of the document is “Enough already”. I said that the resources of my committee had been cut back, and part of the reason for that is the general Whitehall squeeze on public expenditure. Part of the reason is a not unreasonable view on the part of government that you have set up all of these other committees and you do not have to do that bit of work any more because you have set up that committee or the other committee to do it and that, therefore, you do not need quite as much of a slice of the cake.
192. So, we are in a place where there is a certain jadedness of tone about new regulatory institutions. I have been there for almost a year now, and I have not suggested yet another new regulatory institution and have no intention of doing so. Our whole approach now is not to suggest new rules, new regulations and new institutions to enforce better behaviour. Our whole approach is to try to canvass on first principles across the public sector, and, again this is the difference between my role and that of your commissioner. We have a responsibility across the public sector. The first thing that I was most involved in was policing. The first document that came out under my chairmanship was on police statistics. Our whole approach is to talk about embedding and people getting it in their head and canvassing across to make sure that people in the public sector know that this is what you are expected to do and achieve and not to establish yet more bodies or even yet more regulations.
193. That is why we are doing the ethics document in the next month. That will be controversial because some of the people who it is addressed to do not think that they need to be talked to about ethics. They think that they already know right from wrong; and, by the way, I get it. I know why they think that they already know right from wrong, but I still think that we as a committee have a duty to say that there is a need for a stronger ethical awareness across the public sector. It actually exists in parts of the public sector, and it exists even in parts of the private world, and it works quite well. That is where we are. That passage is getting at the importance of getting it into people's hearts and no longer saying, “If you do not do this, the regulator will get you”. We have done that enough and are coming down with regulators in London. We are coming down with systems of rules. I know that you want to clarify, and I think that you are going this way anyway. The simpler and more straightforward and clear-cut they are, the better.

194. **Mrs Overend:** Thanks very much, Lord Bew. As you said, we seek clarity. One of the difficulties that we have with a lot of the complaints that come to the Committee is identifying when a respondent is acting in his or her capacity as an MLA.
195. **Lord Bew:** I know.
196. **Mrs Overend:** As a matter of principle, how do you think we should define that or draw a line between private and public life?
197. **Lord Bew:** I am open to the argument that a way out of a difficulty that, I understand, the Assembly has, where the public might reasonably perceive that a Member was acting as an MLA, may be through the wording. I am not quite sure that it will resolve it. I am aware of cases in the past when that issue, in principle at any rate, was there. It may be that that is a way out.
198. It is not just a question of whether they are acting as an MLA. In many cases, of course, including in some of the controversial ones, people say, “I was acting as an MLA, and that is it. You may not like what I did or said on that occasion, but I was acting as an MLA”. I realise that, in cases in which Members are not as frank as that, it might be helpful for the language to state something like “where it is perceived that they are acting as an MLA”. It might be necessary in cases in which somebody says that they do not have anything to discuss because they were doing something in some private capacity.
199. **The Chairperson:** I suppose that the difficulty comes in at a political event if the individual was invited as an MLA or a political representative. They could not necessarily claim that they were acting in a private capacity if they were at a political event by virtue of the fact that they are a politician.
200. **Lord Bew:** There are certain things that are a bit different in the political culture here. I do not think that the political culture in London quite tolerates the concept of elected persons acting in a private capacity in the way that, theoretically at least, it is all right here — if I could put it like that.
201. **Mrs Overend:** I will follow on from that. In ‘Standards Matter’, you state:
“it is important to recognise that there can be circumstances in which private behaviour can affect the reputation and integrity of a public institution ... Such intrusion should only happen where there is a clear public interest to justify it, and should always be proportionate.”
202. Under what circumstances do you believe that it would be in the public interest to investigate conduct related to the private life of the Member?
203. **Lord Bew:** We drew attention to that because of the substantial part of your document that related to the question of the private. We took a view and used that language.
204. We talked for quite a long time in the office about how we should respond to that section of your document and went back to our take on it. The advantage of what we did is that, of course, it does not discuss individual cases. I am perfectly well aware of the sort of individual cases that might be in people’s minds, but I would like to stand over the language that is used in ‘Standards Matter’. To go beyond it would require me to talk about individual circumstances, and, even if I talked about individual situations without naming names, it would be rather against the rules that govern my job to do that or to get into that.
205. We spent quite a lot of time looking at that section of your report, and there is a reason why we quoted ‘Standards Matter’ at that point in reply. I would like to stand over that and not go beyond it, if that is all right.
206. **Mrs Overend:** We did our best to draw you in. *[Laughter.]*
207. **Lord Bew:** I know you did. It is fair enough. That caused quite a lot of anguish over coffee in the office about two weeks ago.

208. **Ms P Bradley:** Another issue that has arisen for the Committee is the right to free speech. ‘Standards Matter’ recognises 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.”

209. What is your view on political office holders such as us and why we should be treated differently from other pillars in public life?
210. **Lord Bew:** I have been much involved in that at Westminster. The first point is that I think that what is said in the Chamber should have absolute privilege — your Chamber and the Chamber in Parliament. There is a complicated subsequent question as to the reporting of that. That does not have absolute privilege, and the privilege Committee that I sat on in Westminster did not recommend that as an absolute privilege. There is a slight problem with that in that you can hear somebody saying something on the parliamentary channel, yet the press is reluctant to report it as they know that they do not have absolute privilege. They do have the lesser forms of privilege in that one would have to prove malice in what they were doing if they reported it. As I understand it, they have qualified privilege. I think that it is entirely correct that Members have the right of absolute privilege.
211. We have had a recent debate with the Hansard Society on public attitudes to the standing of Members of Parliament and what they can and cannot do. One of the things that came out of that is that the public believe that, if you are an elected Member, that is a special privilege and you must be prepared to make certain sacrifices. For example, I speak now as a person who for most of his life has been a university teacher. A university teacher is on the public payroll. Quite a lot of university teachers are paid quite well, probably more than Members of Parliament. Lots of them are great people and so on, but some

are not such great people and do not deliver dramatically. The public do not believe that university teachers, who you might say have an equally privileged life, have some special, extra tax on them because they went into that job, yet the public do believe that about Members of Parliament.

212. I draw attention to that as I am not convinced that it is totally fair if somebody has a relatively comfortable job, if you see what I mean. However, it is a fact: the public do not believe that university teachers bear a special tax because they went into that job. There are lots of other quite privileged people in comfortable public sector jobs — not nurses and not those with top-end jobs in the public sector. The public do not view senior local government officers, which is probably not the most exhausting role — I do not know — or public sector employees in general, some of whom would be reasonably well paid and have reasonably comfortable lives, in that way, but they do think that Members of Parliament have an extra tax to pay as they are elected and owe more.
213. The other side of the coin is that, if they believe that, one of the reasons why that might be a viable argument — I am uneasy about that argument for the reason I have given — is that the people who speak in the Chamber must have an extra privilege. That is the one extra privilege that people who speak in Parliament have and nothing should be done to reduce that right.
214. I would go slightly beyond ‘Standards Matter’ in tone and in what it says about what Members of Parliament can say. However, it remains the case that, outside the Chamber, you are in the same position as everybody else. That is the reality, and you have the same responsibilities under the law as to what you say and do not say. I have defended people’s right to say things in the Chamber, which I am sure that I would ferociously disagree with, with no legal penalty. However, outside the Chamber, they are in the same position as everybody else under the law.

215. **Mr I McCrea:** I would like to ask you about complaints of bullying and harassment. We are always referring to ‘Standards Matter’, but it acknowledges that those issues can be particularly complex. It states:
- “Organisations where elected members work alongside employed staff need to have agreed procedures in place establishing who has the authority to investigate and adjudicate on complaints, what sanctions can be applied and by whom.”*
216. Obviously, the code is one avenue through which complaints can be investigated. Given the formal nature of the commissioner’s investigations and the fact that the Committee publishes all its reports, the process will not always be satisfactory. Do you think that, in the first instance, organisations have a responsibility to investigate those sorts of complaints in a more informal and sensitive manner, before complaints under the code of conduct are considered?
217. **Lord Bew:** I get the point. I always have a bias in favour of attempting to sort things out, to use your words, in an “informal and sensitive” way. However, in my introduction, I said that we take a strong view, as a Committee, that, as a matter of principle and good practice, there should be broad parity of treatment of staff.
218. Secondly, I drew attention to the fact that, in the past few days, the House of Lords has produced, through its Committee for Privileges and Conduct, a new document related to issues around members of staff. I notice that the Committee Clerk noted that, and we will make sure that you get it. There is a fair amount of detail there. It is certainly the most recent document on this issue to be produced at Westminster. It has actually been published within the past week. I hope and I am sure that you will look at it, because it may, in some ways, be helpful to you.
219. **Mr Boylan:** Thank you very much for your presentation so far. I wish to have some clarity on Members’ staff. Should they have their own code of conduct or should Members be accountable for them?
220. **Lord Bew:** The implication of the new document from the House of Lords is that they should have their own code of conduct. Although I have just said that we have produced a new document that might be interesting, the truth is that the Lords and their staff are in a different world from here. For example, peers who have staff pay for that out of their own pocket. I guess that nobody around this table is personally doing that, so that alone means that you are not comparing like with like.
221. All that I am saying is that we will happily pass along this new document, which came into the office just a few days ago. However, you cannot deduce from a particular House of Parliament what is appropriate here. That is all that I can reasonably say, because it is just totally different.
222. **Mr Boylan:** You have done a report on strengthening the transparency of lobbying. Do you believe that it should be mandatory in our code to record and publicise meetings with lobbyists or should it just be a guide to best practice?
223. **Lord Bew:** I think that there is a case for people to publish, every three months, their meetings with lobbyists. That is my personal position, and it is based on my experience in London. It is not based on any realistic understanding or insight into the situation in this Parliament. However, I think that there is a case for doing that. Again, I do not think — as I have said before — that these greater measures of transparency remove public disenchantment. They clearly have not. However, I am equally convinced that without them, you cannot get on the right side of —
224. **The Chairperson:** Are we ever going to get round that? If the public perception of politicians is so bad, irrespective of the massive strides in increasing accountability and transparency in recent years, is it realistic to expect the public to suddenly think that we are all

- doing a good job and we are all squeaky clean? How can we ever deal with the public perception? Surely, we have to deal with the reality of it. If the reality is that there is not a lobbying issue here in Northern Ireland —
225. **Lord Bew:** That is why I was careful to say that I was not saying what I said on the basis of any sense of that; I said what I believe is right for —
226. **The Chairperson:** Were a lot of the positions that you have adopted not based on the public perception and attitudes as opposed to the reality?
227. **Lord Bew:** What you are asking me, Chairman, is at the very heart of everything. Your commissioner's job and your Committee is different from the ones that I have been working with through my job in London or the other regulatory bodies that, over time, Lord Nolan's Committee set up. Nonetheless, we are all plunging around in this problem. That is what you are asking the question about. I indicated to you what I think is the problem.
228. I should say that the triennial review, which made the changes involving devolved Assemblies and other changes that I referred to about Chairmen not rushing into television studios and so on, states that, because of the way that public opinion is, Chairmen should not set themselves the target that, three or four years from now, Parliament and people's assessment of Members of Parliament will have gone up in the polls. That is just back-breaking given your point and where public opinion is. I have accepted the job with a kind of invocation to be modest in what you can achieve and with a view to not go racing around the place trying to revolutionise the public's opinion of politicians. That will not work.
229. I accept all that and the gist of what you are saying, but let me add something. There is a couple of things that I think are worthy of special concern. The first is that, if you look at our polling — we polled massively on that issue — and other recent polling by the Hansard Society, you will see that we are possibly moving away from a situation in which, in the United Kingdom generally, the public always thought quite ill of individual MPs but believed in the institution. They believed that Parliament was more than the sum of its parts and that, although there are of course some issues, Parliament is more than the sum of its parts. For a variety of reasons, one of which was the way in which the expenses scandal made it harder to argue that it was just a few bad eggs or a few rotten apples, some of the polling would suggest that we are moving beyond a kind of expanded outward cynicism about Members of Parliament because of the expenses crisis to a cynicism of Parliament as an institution. I think that that therefore creates a special problem that you have to bear in mind.
230. It is also about common sense. In 1944, the British people were polled. Whatever your view is of British history, in 1944, they had held back Hitler for four years and the political leadership was on the verge of invading France, winning back the continent and pushing Hitler out and so on. You could say that that was a heroic moment in British history, yet a third of the British people who were polled at that time thought that their MPs were just out for themselves. Just bear that in mind. Even at a time when everybody, whatever their point of view, said that they were not doing badly and that people look back on with a certain amount of patriotic feeling, a large chunk of the British public felt that MPs were feathering their own nests.
231. Going back to your point, it is not that easy. Bear it in mind that you have to have that degree of common sense and the common sense that my appointment documents enjoin me to hold. That basically states, "Don't break your back trying to change those figures; they are not going to change very much. Just continue to do what you think is the right thing and continue to advocate for Parliament the changes that are right". Let us say for example, that, in the next Parliament, more attention is given to

- ethics awareness among MPs — the CSPL has played a key role in that argument — we should not expect the public to say that that is great and so on. Just do it. That is my approach.
232. I get nervous when I see figures coming through that show that it is not just the individual Members but the institution. The all-enveloping nature of these crises in public standards in recent years is developing into a new kind of thing. The BBC has suffered. Suddenly, it is not just Parliament or a couple of people making some mistakes. It has become “What were you doing about Jimmy Savile?” or whatever. It is not just Parliament alone. Something is happening because of the all-enveloping nature of these crises and the broad institutional contamination. I get your point, but I am just saying that, from my position, you cannot afford to feel comfortable about that. You cannot afford to say, “Oh well, people are always a bit grumpy”. Something else is happening here that is a bit more worrying than that.
233. **The Chairperson:** That was my fault; I brought in the perception issue instead of sticking to the quote.
234. I will ask you one question before I go to Fra. In response to Mr Boylan, you mentioned that you felt that it would be appropriate for the details of meetings with lobbyists to be released every three months or over a regular period. What is your definition of a lobbyist? Is it somebody who is a paid advocate? Is somebody from the local community who is lobbying for a facility a lobbyist? Would there not be difficulties around data protection?
235. **Lord Bew:** I think that it is up to the Assembly to define those rules. There is another complexity: is an intellectually defined interest — a think tank — a lobbyist? As I understand it, the current position in London is that it is not. You need to decide what you think is a lobbyist. I suspect that the problem here is not on the same level as it is in London.
236. **Ms Lo:** What you said about trying to get a balance is really very interesting. You said that, when we meet one lobby group, we should balance our views and meet those from the opposite end of the argument. I understand what you are saying, but that will be quite difficult. For example, we have a lot of all-party groups on single issues. There are a number on, say, different mental health issues; dementia versus something else. So, if we have, say, an APG on dementia, should we then —
237. **Lord Bew:** I think that common sense applies there. I am on one of the all-party groups, and I completely get what you are at there. I should clarify it a bit more. In certain areas, there clearly is a reasonable public debate between different people lobbying for different causes. Let us take the example of the HS2. I do not think that people lobby in this way, but there are reasonably acceptable public arguments on one side and the other about that railway line. Obviously, in other areas, where you have APGs, for example, all that you deal with is people who are concerned about a certain issue. I was heavily involved in, and am a supporter of, the all-party group on human trafficking; I still am, but to a lesser extent. We meet all kinds of groups that are concerned about human trafficking and so on. However, we have not yet met the human traffickers’ association. It will not come in to explain to us why human trafficking is actually not such a bad thing after all, because it increases people’s economic opportunities, but there is a certain price to pay for it.
238. **Ms Lo:** Is there such a group in existence?
239. **Lord Bew:** We have not seen it. I quite agree that it would be ludicrous. That is your point, is it not?
240. **Ms Lo:** Yes.
241. **The Chairperson:** Fra, you have been very patient.
242. **Mr F McCann:** We had set questions, but I think that the last two members who spoke asked them.

243. I want to get back to the point in and around lobbyists. Let me give you an example. Most of us who have been contacted by local builders about an issue go and represent them, and if the residents have an objection, we go and meet them as well. So, you lobby on their behalf for a development that may be beneficial to the constituency.
244. **Lord Bew:** That is the lifeblood of democracy.
245. **Mr F McCann:** Yes, but how do you make the distinction? Let me give you an example. A number of years ago in Belfast City Council, when the whole thing around waste management was changing and being put out to public tender — it was a huge tender — there were councillors who refused to go into the room in case they were heavily lobbied to make a decision that may have ended up in court. Some of us were at the rough end of lobbyists then. Obviously, you say no and report it, but what is the difference because they are lobbying for a contract? A local builder would be lobbying also for something that will be financially beneficial to them.
246. **Lord Bew:** First, in terms of residents' associations, one of the things that you mentioned is just the lifeblood of democracy. That is what it is. I said earlier that the whole point of our document is to accept that lobbying is a legitimate part of democracy. The way out in difficult cases is transparency. Partly as a result of our advocacy in at least one of the Houses of Parliament, we now have a way out. Members of the House that I am in can make clear what their dealings have been. That has to be transparent and timeless. Sunlight has to be the way out. The House should make it easier for you so to do. It is as simple as that.
247. Lobbying is not an illegitimate activity. Residents' groups, for example, have legitimate concerns that everybody around this table has had to respond to at some time or other in their career. Regarding significant gifts and so on, what the public are concerned about is the undue weight of money behind the scenes. The House rules should allow you to defend yourself. They should allow you to meet lobbyists and make it clear that you have not been influenced by the undue weight of money behind the scenes. That is the only thing that the public are really concerned about, and quite rightly concerned about.
248. **Mr F McCann:** Why do you think that gifts from professional lobbyists should be treated differently? Given the array of organisations and individuals who might make representations to Members, how do you define a professional lobbyist?
249. **Lord Bew:** Let me tell you why we thought that in London. Perhaps I am wrong, but the more I reflect upon that here, and even the tone of this discussion, I do not think that professional lobbyists are a significant part of your lives. So, I think there is a problem there. In other words, it is not a piece of wordage that I would stand over as being particularly helpful to you.
250. **The Chairperson:** We have a session with some lobbyists next time round, so —
251. **Mr F McCann:** You spoke in your presentation about the attitudes in different countries, and you came down to the Dutch and the British thing, and the way the Dutch thought about this. What is the attitude of the press in Holland?
252. **Lord Bew:** Our seminar is on the website. Also on our website is our Euro-barometer document, as I call it, which is a survey of trust in different European countries. You will see there, just as you are saying, Fra, that a number of people — I mean some very serious people, not angry Members of Parliament but people who academically studied it for a long time, people who are judicious and not in the first firing line — said that a reason for the difference is the press. The Dutch press does not major on stories of corruption and so on.
253. A lot of people whom I really respect, and you can see it on our hour-long tape, get up and make that point three or four times in the discussion, which is implicit

- in your question. I understand why you made that point. Ireland is exactly the same in this respect. We have a long press tradition going back to the 18th century of contempt and not being impressed by the people who rule you. There is a constant blast upwards that they should not get above themselves. That is one of the great things about British life: people say, "They think they are all wandering around in the Palace of Westminster laying down the law. We're going to let them know that they are human just like the rest of us and that this or that is wrong". That has been the culture since the 18th century, and it is the culture of this island, too. It is not going to change.
254. You talk about transparency. Now, all our MPs' expenses and everything are laid out there. The only problems we have, according to IPSA, is that some people find problems with the technology of reporting some things, and I totally sympathise with them. People make technical mistakes in reporting, but, basically, it is all out there. Press stories run all the time asking whether you know this, that or the other about your Member of Parliament. Perhaps they have put something down. There has been no digging behind the scenes. The person obviously felt that, for some reason, that trip was completely valid for their work or whatever. No question; they put it down and declared it. I see stories that are never mentioned; all I did was switch on my computer last night, and I saw this. There is a problem, which is what you are getting at. I am reluctant to speak against what I see as a great British and Irish tradition of disdain for people in power. I am not quite going to go down that road. Look at the difference between the Dutch press and the British press. That is the answer. That is why there is such a gap between actual experience of corruption and the belief that it is there. The Dutch press is a more sedate press. I am not saying that it is not a democratic press; it is just more sedate than the British press, but do we really want a sedate press? Do we?
255. **The Chairperson:** You are probably asking the wrong people.
256. **Ms Lo:** In America, they are very strict about lobbyists; they all have to be registered. There are also very strict criteria about hospitality and gifts. Should we go down that road?
257. **Lord Bew:** Perhaps I am overemphasising it, Anna, but I have just come back from Washington, where my son was working in the past year. Because I was there and because of the job I have, I read quite a lot about the situation currently in Washington. I am particularly thinking of the work of Leibovich. The Obama regime's announced crackdown on lobbying has had virtually no impact at all. Lobbyists are still as well rewarded in Washington. They are as influential and as close to power. Some of the things described in Leibovich's book, for example, are things that could not happen in London. The presidency was announced as a presidency that would really crack down on lobbyists. I am not sure that anybody actually thinks that lobbyists are any weaker in Washington today than they were six years ago. It is well worth reading about some of the routes by which people gain influence. When you are dealing with very large sums of money, there is an ability by indirect means, such as supporting charities. It is not like a lobbyist saying to you, "Here you are. There's legislation coming up in the Assembly. Here's £10,000". It is by supporting charities that senior people are known to be keen supporters of. The routes by which lobbyists intervene and then gain access to those people are massively complex. It is not a £50 cheque; it will be millions of dollars going to a charity that x person is interested in. There are registers and all that. The reality is that lobbying is as live in Washington as it was six years ago. There is a conventional wisdom on all sides; it is somewhat wryly accepted by all sides in Washington.
258. **Ms Lo:** Looking at the figures of spending on lobbying, I see that now it is more or less the same, if not more, than six years ago.

259. **Lord Bew:** Yes.
260. **The Chairperson:** OK. Nobody else has indicated any questions. Lord Bew, thank you very much for your time. We appreciate it.
261. **Lord Bew:** Thank you. My apologies again on behalf of Ruth. It all would have been so much better if she had been here. I hope that there will be a chance for us to meet again and for you to meet Ruth Thompson, who heads up the office and did an awful lot of the work on the lobbying document in particular. I am very grateful for the opportunity. Thank you all for this afternoon's session.

4 June 2014

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
 Ms Anna Lo (Deputy Chairperson)
 Mr Steven Agnew
 Mr Cathal Boylan
 Mr Colum Eastwood
 Mr Declan McAleer
 Mr Fra McCann
 Mr Ian McCrea
 Mrs Sandra Overend
 Mr Mervyn Storey

Witnesses:

Mrs Roisin Mallon *Equality Commission*
 Dr Michael Wardlow *for Northern Ireland*

262. **The Chairperson:** Dr Wardlow and Mrs Mallon, you are very welcome to the Committee. Please formally introduce yourselves for Hansard and make some introductory comments. Following that, we will take questions.

263. **Dr Michael Wardlow (Equality Commission for Northern Ireland):** For the past two years, I have been the chief commissioner of the Equality Commission for Northern Ireland.

264. **Mrs Roisin Mallon (Equality Commission for Northern Ireland):** I am a senior policy officer with the Equality Commission.

265. **Dr Wardlow:** Thank you for allowing us to come. We have given you a fairly detailed view in our briefing paper, but I thought that it would be useful if we each spent up to five minutes highlighting some issues. I will cover leadership and say a little about free speech and the equality and good relations principles. Roisin will look into the wording of the equality and good relations principle and say a little about what we feel about the enforceability of rules. There are lots of other things, such as the public/private debate, on which we are happy to engage with you.

266. We feel that the code of conduct is very important, and we are glad that you are taking this opportunity to engage with people and listen to a range of stakeholders. For us, the code is not simply a rule book — it is that, but it is not simply that. Over the past number of years, when we have talked to the public, there has been a growing challenge function. People are saying, “I’m involved in other stuff. Governance is very high, and accountability and probity are very high”. I think, rightly so. However, the code is not simply a rule book or a set of restrictions. This is much more about aspiration and trying to lay the way ahead for a united community and saying that this is what leadership looks like, and these are the aspirational principles that should underpin it.

267. You will, of course, have read the ‘Standards Matter: A Review of Best Practice in Promoting Good Behaviour in Public Life’ report, and I know that you have taken evidence from the US. All say the same thing: ethics are extremely important. How we do things, and the DNA of how we do them, are as important as what we do. That is the context in which we want to talk to you. Although we will talk about rules, we are trying to say that, in a sense, the rules are the foundation and that the code of conduct is “rules plus”.

268. That brings me to leadership. We said very clearly that we need to be sure that the Members elected to here provide a model of effective, democratic and good, positive leadership. People tell us that they expect that from those whom they elect, and not just here; they expect it of me in my public position. When I take decisions, I am always aware that I take them as the chair of a board but that there must also be an attempt to model good leadership. Those who have a significant leadership role need to be champions of the promotion

- of the equality of opportunity, not simply reactive defenders. It is about proactively promoting. As you know, that ties in with the section 75 duties, which, regardless of whether you feel that they are good, set us apart from a lot of places. They put a requirement on public bodies not simply to react but to promote equality and good relations.
269. The public life section of the 'Standards Matter' report contains a great quote about standards and behaviour:
- "High standards of behaviour need to be understood as a matter of personal responsibility, embedded in organisational processes and actively and consistently demonstrated".*
270. This is about demonstrating competence and leadership over a period. It is not simply a skill set that you carry with you in a CV. We are saying that this should be demonstrated, and it should be capable of being seen to be demonstrated by all individuals in leadership roles. Even if a behaviour or language does not constitute a breach of the code, perhaps because the words were said privately or casually, it is not about a set of rules to catch people out. The report in GB said that, sometimes, people use the code to avoid something. We are saying that you should understand the significant, negative and detrimental impact that inflammatory language and behaviours can have. It is not enough for people simply to ask whether they can do enough to pass the code, although that is important. Rather, it is about asking whether the code sets aspirations for what would constitute good leadership in a given situation. That is not forensic. This is case by case. There are no absolutes, except the principles that we want to talk about.
271. We get into, then, a second issue, which is free speech. There has been a lot of debate and discussion, and I am happy to engage with some of that. We have said publicly, as I have when interviewed, that there is a misunderstanding that freedom of speech is unfettered, which is not true. We know that it is fettered by, for example, obscenity laws and libel and slander laws. Generally, in the United Nations and according to international human rights, free speech is about the principle of doing no harm or offence. So we need to have a discussion about what free speech looks like and about the fact that just because you can does not necessarily mean that you should. Therefore, we are looking for people to act in a way that does not offend the underlying principles. The code is not simply a set of rules; it has underlying aspirational principles.
272. That leads me to the final area that I want to deal with, the principles of conduct, particularly those that obtain to equality and good relations. We will be consistent on this because these need to be clear, relevant, concise and understandable. There is no use having airy-fairy stuff about which you have to ask what it all means. We have the Nolan principles, which go beyond requirements. There is, obviously, a precedent for those in public office who have signed up to Law Plus. We are simply saying that when we look at this code, we are saying yes to the law and regulations, to equality and international human rights standards, but that there should be more than that. There should be a need to promote this good relations and equality context.
273. Therefore, section 75 duties are one element to which we want to link this, but we know that you have also signed off on Together: Building a United Community. Frankly, we are moving beyond orange and green. We are looking at how we might promote a united community, not communities. Although there is still sectarianism and lots of issues between the two main traditions, we are increasingly becoming a more diverse society. Just under 5% of people who now live in this place were not born here, which says something about those equality and good relations principles.
274. We need a code that requires Members to act for the entire community. Therefore, it is important for us to have principles, not just rules. They need to

- be made clear in more documents than just 'Standards Matter'. Sometimes, if we do not have principles and simply react to the regulations, there can be a restriction. At times, principles allow us to lift beyond regulations and get a vision, idea or aspiration of what good leadership would be. Adherence to a code of conduct might not necessarily, in every circumstance, provide for a defence of poor behaviour or good behaviour. Something between these aspirational principles should draw us up, and the founding principle of the regulations should be clear and concise and able to be determined.
275. My final point is that the code should encourage Members to act in a manner that proactively requires them to seek to challenge prejudice and promote understanding. They should stop prejudice and challenge it when they see it, but, more importantly, it is about creating an aspirational leadership that shows what good relations should be.
276. **Mrs Mallon:** I will follow on from Michael's comments and turn to the equality and good relations principles currently in the code of practice. We feel that a number of changes are required. We believe that they need to be clarified, strengthened and amended so that they more accurately reflect the types of behaviour to which Members should aspire. At the moment, we do not feel that they adequately do that.
277. First, I will outline our recommended changes to the equality principle. You will be aware that the current wording is that Members should promote equality "by treating" people in a certain way. There is some ambiguity in that, so we suggest that the wording be amended to read that Members should promote equality of opportunity and not discriminate against any person, treating people with respect regardless of race, age, religion etc. We want changes to the wording "by treating" because that is not clear.
278. We also recommend changes to the good relations principle. You will be aware of the current wording in the code:
- "acting justly and promoting a culture of respect for the law."*
279. Again, we do not feel that that accurately reflects the proactive nature of the good relations duty. We recognise that neither good relations nor promoting them is defined in legislation. There are four words in our guidance for public authorities on what we meant by promoting good relations, and you will see that in our paper:
- "to promote respect, equity and trust, and embrace diversity in all its forms."*
280. We are considering a revised definition of good relations in the context of the Together: Building a United Community (T:BUC) strategy. In coming to a proposed wording, we are also looking to what is happening in Great Britain under the Equality Act, which talks about "tackling prejudice" and "promoting understanding". Although we do not have a final definition for the Committee at this stage, we are happy to engage further, but we ask the Committee to look at focusing on the need to tackle prejudice and promote understanding between people on a number of equality grounds. We will come back to the Committee with our updated position.
281. I turn now to enforceable rules. It was very clear in the issue paper that the Committee was of the view that, for principles to be meaningful, there have to be rules that explain how they apply in specific circumstances. We recommend, in addition to the equality and good relation principles, enforceable rules directly linked to those principles. We give one suggestion in the paper for the equality principle. We recommend the inclusion of an enforceable rule that makes it clear that Members must not discriminate on any equality grounds or act in a manner that is in breach of hate crime legislation.
282. We also recommend consideration of the inclusion of an enforceable rule directly linked to the principle of good relations, but, as I said, we are still looking at a revised position on that, so I cannot give you an exact formulation

- of the wording. We will come back to the Committee on that.
283. **The Chairperson:** Thank you very much. I have just a couple of questions before I go to other members. Both of you spoke about principles, not just rules; about aspiring to what good leadership would look like; and how Members should aspire to a particular type of behaviour. Then you talked about enforceable rules linking to aspirational language. You gave two examples: one about Members not discriminating against individuals; the other about hate speech, but those are already prohibited. Previous advice to the Committee was that there is no need to restate that in our code, given that it already is the legal position that Members cannot do that. If Members were to engage in that kind of behaviour, existing laws govern that. Do you think that there is an issue with restating existing law, given that some of the legal people say that that is bad practice, or do you think it so important that you need to restate it?
284. **Dr Wardlaw:** This is a public document, and there is a sense in which we should state within it some of the types of behaviours. The other point is one that we have not yet touched on, but it is in our paper. My personal view is that, once you get the code, it is very helpful to state that this is the anti-discrimination legislation plus the hate crime. To name those does not diminish what is already out there. If anything, it reinforces and then holds them up. I do not think that you are running contrary to any legal precedent by including them.
285. For us, once you have that code, something else has to happen. We will work towards developing guidance alongside it. That guidance might show indicative examples of what you could and could not do to help colleagues, but it would be tied into training and induction. In other places, when talking about good relations, everybody thinks that they know all about it, but then, suddenly, some new legislation comes in, and people are looking for the code to find out whether they can or cannot do something. We thought that stating it in the code would demonstrate that everyone knows all this stuff: everyone knows that this is the baseline, but we are restating it. If new legislation comes, you can, of course, update it. For us, the more important thing is to state it, and a form of regulation needs to be tied in to see whether, outside the law, you have crossed the line somewhere. We are saying that the high-level principles should draw us up. You already have the Nolan principles of selflessness, integrity and so on. We know that it is very difficult to test for integrity. We do not suggest that you have 27 regulations tied to each principle, because that just would not work. The trick will be how you use the principles to draw you up and how, within the great principles governing equality and good relations, you get something that at least allows you to test through a regulation whether people were actively promoting good relations or equality beyond what is well trusted and well tested. The legal field is full of tests on equality. Quite frankly, there are very few on good relations. We know what reasonableness looks like in equality legislation, but good relations remain to be tested. This will be in T:BUC when we are looking at the good relations indicators, so it is not only you who will struggle with it. We do not think that inclusion diminishes what already exists; in fact, we think that it is elevated by being included. If there was a legal ground from, say, a professor of law saying that it does not need to be there, I would defer to that.
286. **Mrs Mallon:** I agree with Michael. The House of Commons code specifically says that Members must not discriminate. That has been pulled out as a separate duty even though it is clearly in the equality legislation in Great Britain. We mentioned the paper in Wales. It is a local government code of practice, so it is not quite the same, but it also has a clear enforceable duty that it must not discriminate. So we see that there is value in having an overarching principle followed up by an enforceable rule.

287. **The Chairperson:** You also said that Members should be champions for equality. Members should not discriminate against people in their job, but how can a Member be a champion for equality? How can you have a code that imposes a duty on a Member to be a champion for equality, particularly when you can envisage a circumstance in which a Member has been democratically elected on a platform not perceived as promoting equality? How could the code impose on that Member a duty to be a champion for equality?
288. **Dr Wardlow:** I hope that I said “equality and good relations”. If I did not, please amend that for the record because it certainly was not just equality. This is in the aspiration. This is not about equality in one particular area, whether it is disability, gender, LGB or sexual orientation. When people look at a code, they are not simply looking for a set of rules that say, “Here is what you must work within.” People tell us that they want to see, as do we, “Here are your aspirational principles.” It is not saying, “This is your working definition of equality.” You are already bound by anti-discrimination legislation across six characteristics anyway. We are saying that how you work is promoting good relations and equality. In that sense, you are modelling and being a champion. We are not saying that you should advocate for one particular issue on equality, although, by all means, if that is in your mandate, do so; we are saying that this is an active call to do that. It is a bit like section 75(1) and (2). It is not enough to ensure that you cover the law. The requirement put on public bodies was to work towards the promotion of equality of opportunity. In the same way, we are saying that you should work towards the promotion of equality and good relations.
289. **The Chairperson:** Is it not easier to place that duty on a corporate body than an individual? Frankly, we have 108 Members here, all with different views.
290. **Dr Wardlow:** We are in our place, the Human Rights Commission is there, and other bodies do certain bits of discrimination law. We look to elected MLAs, who are here as leaders and are meant to set the vision for this “united community”. You say in your preface to T:BUC that it is built on fairness, equity and justice. We are simply restating that, if that is the case and that is the aspiration in the Programme for Government and in T:BUC, it needs to be evidenced in what you say and do here. It is not about 108 individual champions running about; it is the DNA. That is the rock, and, if you broke it open, that is what you would see written on it.
291. **Mrs Mallon:** Absolutely. I will tease out the difference between promoting equality and not discriminating. The rule is what the law states, which is “do not discriminate”. The principle that we suggest is more aspirational and goes beyond that. The principle is to promote equality and good relations. As Michael mentioned, that links into the existing duty on public bodies to have due regard for the need to promote equality and good relations. We feel that Members can promote equality and inclusion rather than simply not discriminating. They can encourage the participation in public life of disabled people and women That goes beyond just not discriminating. That is taking proactive steps that encourage others to go beyond simply not discriminating.
292. **Dr Wardlow:** I think, for example, the publication for consultation this week of the race strategy is an absolute way in which you are championing equality and inclusion. That is the sort of thing that I am talking about. As opposed to one party putting its stamp on it, it became a united launch. Of course, parties will do their own things, but, when parties unite, do not underestimate the power that that has to set a model. I do not need to tell you that lots of people do not vote. When something like the race strategy happens, it sends a signal of modelling effective, good leadership. That is what we are saying. We are not saying that there should be a test: he said “X” or she said “Y”, and so they fail the test of promoting good relations. That is not what this is about. We are

- not trying to catch people out. We are asking this question: how do we say that this is “legislation plus”? We have done that, for example, in workplaces, which now do many things that they do not necessarily have to do because they see that diversity is good thing and brings results and greater productivity. Incomers have added about 0.5% to GDP here. We know that that is happening. So, Alastair, that is what it is about. It is not about setting somebody up, giving them a test and saying that they have failed it.
293. **The Chairperson:** Before I open the meeting to questions from other members, let me ask about freedom of speech, which is, of course, of particular interest at the moment. I do not want to go into any specifics, but it is an issue, and it has been an issue for the Committee over the past number of months. When discussing a number of topics, the issue of freedom of expression and speech has come up. Perhaps, when someone has said something that is not controversial, it is dead easy to say that we all support freedom of speech. It becomes increasingly difficult when someone says something that is perceived as offensive or damaging to good relations. Do you believe that the code should go beyond stating the legal definition of freedom of speech? Of course, freedom of speech is not absolute. There are caveats on incitement to hatred and so on. Are you of the view that the code should go beyond the legal position?
294. **Dr Wardlow:** Roisin will answer that, and I will then pick up on some of what we have been trying to say over the past couple of weeks at a more strategic level.
295. **Mrs Mallon:** You are quite right in saying that freedom of speech is not absolute; it is qualified by criminal law, which includes hate crime and public order offences, equality law and human rights legislation. There are a lot of restrictions on freedom of speech. What we have said is nearly, in a sense, what is already reflected in the code, which is that Members should be free to express any political opinion that they hold but not to do so in a way that offends the underlying equality or good relations principles.
296. We agree that the wording must be compliant with human rights legislation. We know that there is already a tension, and it is set out in the issues paper, between to what degree Members can express political opinion and still not be manifestly in contradiction of the principles. We agree that it should be compliant, but when you look at the wording to ensure compliance, we want you to take a proportionate approach to striking the appropriate balance between permitting Members to express a lawful political opinion and expressing it in such a way that does not offend the underlying principles.
297. **Dr Wardlow:** Let me give you an example. Without naming anything in particular, let us take the subject of interfaith dialogue that I have been speaking publicly about recently. I think that we should have more of that and that the Churches should engage much more with other faith communities. I have been brought up to understand that a faith tradition, a religious belief, is open for discussion and debate. I have had really strong debates with colleagues from other traditions, both Protestant and Catholic and beyond the Christian traditions. I am quite open to people saying that my belief system is terrible and then having a robust debate. Freedom of speech is all over that. The issue is when you take that and somehow build up and predicate a characteristic on a group or a race. “So-and-so cannot be trusted”, or whatever it happens to be. That, I think, moves beyond what I understand as freedom of speech and expression.
298. When someone comes to us and asks, “Is this discrimination?”, we do not make that call. That is for the courts or tribunal to make. We cannot say whether something is or is not covered by freedom of speech because, in fact, that is the job of the International Court of Justice. Even our colleagues in the Human Rights Commission are

- looking for guidance from the UN on what, in the current position, constitutes freedom of speech. I think that you will have to struggle with this. For us, the big principle is always this: do no harm and cause no offence. You do not have the right not to be offended, and make that clear. However, just because you can say something to offend does not mean that you should. If you say, “Here is our set of principles, regulations or rules that set out the things that you can and cannot say”, it allows the match to go on in the middle. You could have a three-dimensional architecture, which says, “The other things that guide me are these questions: am I, by doing this, simply expressing freedom? Or am I, in some shape or form, damaging good relations or equality in the bigger sphere, not to do with the rules and regulations but to do with building a better community?”. I think that that is one of the balancing acts that I have all the time, as do you.
299. Sometimes, we say things, casually, that we do not mean, and then we apologise for them. At other times, we say something because it will push people’s buttons. This debate is around what that discussion would look like so that I am not closing down your right to freely express what you believe by saying, “Hold on; you’re going to offend me”. That is the place to get to.
300. As Roisin said, whatever you do in defining this, make sure that the cornerstones are around proportionality and that international human rights law is there as your foundation. However, that should not be seen as some sort of straitjacket. Heaven help us if we cannot have robust discussion. There is something here about how that is done. I know that you have the cut and thrust up here that would be very different if you were outside. That is fine, but, sometimes, when that transfers itself outside, you should not do something simply because you can. That is the modelling that I was talking about. I would hate it to be, “Here is a definitive forensic definition of freedom of speech”, and we have to keep going back to it to see if it has been broken. This is the difference between regulations and principles.
301. **Mr I McCrea:** My question goes back to part of the question that you referred to, Chair, around the enforceable rules. I believe that there should be things within the code that Members have to accept. The Chair referred to issues that are currently within the law. I am not sure that we should restate those, other than to reference certain aspects of certain laws. You gave the example of Wales using the enforceable rule of discrimination. Other than that, do you have any examples of places where enforceable rules are used in respect of discrimination and good relations and equality?
302. **Dr Wardlow:** Does the new district council code have it?
303. **Mrs Mallon:** No, not at the minute.
304. **Dr Wardlow:** It was being discussed there.
305. **Mrs Mallon:** We have responded to the DOE code of conduct for councillors and recommended changes to the wording on equality and good relations, because, clearly, there is a crossover in clauses. We have raised concerns with them in relation to that.
306. **Mr I McCrea:** In essence, it is a Northern Ireland thing because it is a good relations thing.
307. **Dr Wardlow:** No, I understood; I just wanted to make sure if something had been said in the DOE debate, which is exactly on that line.
308. **Mr I McCrea:** Do not worry; I am on the Committee for the Environment, so I will get that.
309. **Mrs Mallon:** If you are talking about a code, the only one that I am aware of is at the House of Commons. Its code has the statement, “they must not discriminate”. The only other one that I am aware of, which is in the paper, is in Wales. Its local government code makes it clear that there is a duty not to discriminate.

310. **Dr Wardlow:** Ian, is your concern about restating? Regardless of whether they are there, restated or not, they are there, if you know what I mean, and colleagues will know. Our point is that, by being there, they are a reminder and a reinforcement. It is not adding anything extra to people's responsibilities. Is your concern about —
311. **Mr I McCrea:** My focus, which, I think, is that of most members, is that we are trying to reduce the code in size and take out some of the unnecessary stuff, certainly those things that are already in law. Do we need to have them restated? As the Chair said, if something is already in law, why should we restate it in our document? Anybody who has a query around whether we have lived up to those will have their opportunity to test that through the court. Why do we always have to add more? Some people suggest that less is more. My concern is probably more so around that.
312. **Dr Wardlow:** I am not a lawyer and not technical, so let us imagine that someone is referred because they breached the code. At the minute, that breach is held against a regulation, as I understand it, or criminal law, if it happens to be that.
313. **Mrs Mallon:** It can be manifestly in conflict with the principles as well as the conduct.
314. **Dr Wardlow:** If you did not have the regulations and someone was referred, the point they would take as a baseline would, presumably, be the law as it exists. I do not know if that diminishes the ability to test whether someone has breached something if it is not stated there. If you are saying that this is about brevity, we are simply saying that nowadays, with electronic stuff, most people are going to have this on something that is electronic or a PDF or something. We have said why we think that it should be there. It is up to you if you want to reduce that for brevity, as long as it does not diminish your ability, if it comes to the test, to see whether or not someone has breached. That is the bit for me.
315. **Mrs Mallon:** Part of the reason is that the Committee itself said that if you are going to have a principle, you should have an enforceable rule linked to it, so we are saying that, clearly, you should have equality and good relations principles and, therefore, should have corresponding rules. The Committee has recognised a need to link rules with principles.
316. **The Chairperson:** For clarity, I do not think that we have said that if you have a principle, you have to have a corresponding rule. What we have said as a Committee is that we want to see perhaps a separation between principles and rules. The principles would be potentially aspirational, and we recognise them as aspirational, but the rules are the enforceable bits. That is where the Committee is coming from. We have had a number of discussions over a long time about how we want a simple and straightforward code. That is maybe why some members feel that things should not necessarily be restated if they are already in law.
317. There is also the case that if we were to go beyond the legal position, that is challengeable in the courts. We know that from other places in the United Kingdom where Members were found to have breached a code of conduct but took that to court and the decision was overturned because they did not break any laws. We are cognisant of that as well.
318. **Dr Wardlow:** What we were saying, Alastair, is that you are already doing that signing the Nolan principles, because Nolan principles are not legally binding but you still assent to them that in some way that is the direction of travel. We are saying that these aspirations are, in the same way, taking you beyond the law.
319. No one is saying that you say something and, "Oh, we need a regulation to tie that down — that he or she has breached a regulation on good relations by doing x". That is back to this simply being a set of rules as opposed to being, of course, a rule book but, more

- than that, an aspirational manual. I think that you are saying that you are going to leave the regulations out for brevity. That is your call as long as you are not limiting how you are able to hold someone to account for breach. Some legal view will have to be taken from your end on that one.
320. **Mr Boylan:** Thank you very much for your presentation. I suppose that the first question to ask is whether you can give me the definition of “good relations” and start from there. I do not think that it is brevity. We want a clear and precise code because we have noticed, especially over the past number of weeks, the types of complaints that are coming in and being investigated.
321. You keep mentioning equality and good relations. I do not want to use a specific case, but I will refer to an issue where a public representative goes out and acts in a manner to protect their community. In essence, you could look at it as an equality issue, because they are representing those people. The situation then turns around, and it gets them into a wee bit of trouble.
322. We should look at it in those terms. We need to strike a balance between protecting a Member and what they are trying to do. We will not get into the law, because law is about meanings and is a minefield. I want to leave that aside because —
323. **Dr Wardlow:** Cathal, to be clear on the first bit, there is a very simple definition in the 2010 Act in Britain, which says, basically, that it is tackling prejudice and promoting understanding. One of the things that we have said about T:BUC is that you could do worse than just take that as a very simple definition. That is saying actively tackle prejudice and actively promote tolerance. I know that you were playing with us.
324. **Mr Boylan:** No, I am familiar with it, and we will get there in the end, but it is key. I appreciate today’s presentation because it has opened up another minefield for us in what way we want to go with this. Everybody mentioned enforceable rules. You mentioned them in terms of equality and good relations. Are there any other enforceable rules that, you think, we may need to introduce? Have you responded on that?
325. **Dr Wardlow:** Other than what is already in the code?
326. **Mr Boylan:** Yes. Have a wee think about that.
327. The other question I want to bring up is about the issue of personal and private life. In what circumstances is there a public interest to justify such an intrusion into a Member’s personal life?
328. **Dr Wardlow:** We dealt with this in quite significant detail, so I will be as brief as I can. I am a public representative, too. As soon as I tweet or go on my Facebook, I am Michael Wardlow, the chief commissioner of the Equality Commission, no matter whether it is private or not. I always take the view that, whenever I do anything in the public domain, people will confuse me. I am very nervous about that, so that is the rule I take. We said in the paper that you have two circles and, in the middle, there is an intersection. This is me, and I have a public and a private life. The bit in the middle is hugely grey. We are saying that your private life does not start the minute you walk out of the Assembly Building. Also, we are not saying that every time you say something, you are a public representative. There are ways in which that grey area in the middle can be tested, whether you use reasonableness, presumption or perceptions. We have advanced some of those things. If you are moving into the area of private life, it is not enough for somebody to say, “That’s private; leave it alone” or for somebody else to say, “Everything you say is public”. There is some negotiation in the middle of that.
329. If you are going into someone’s private life, it needs to be proportionate and needs to have the benefit of public good. It also needs to be clear that it holds up and is held up by international human rights standards. You have, if

- you like, a field that is fenced in. If you want to go into that place called private, you need to be sure that there is a good reason and just cause to do so. It also needs to be in the public interest. You must not interfere unnecessarily or with the international human rights standards. Most importantly, it must be proportionate. That is a well-accepted standard, but that is not saying that you should not do it.
330. In Westminster, they have a comment that says that you should not investigate personal conduct:
- “unless such conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its Members generally.”*
331. That is almost nuclear. Let us say that somebody goes on ‘Celebrity Big Brother’ and says something really stupid about the House of Commons. You could see how, arguably, that may well be them invoking the code. They have a determinant of what might constitute private intervention. We are saying that, first, you must ask what private is. That is something you need to look at. Is it reasonable? Is it presumption? Is it perception? Secondly, if you are going to go in there, make sure that what you do has sound legal advice, proportionality and the public interest in it. Make sure also that it is superintended and is held up by international human rights standards.
332. **The Chairperson:** I listened to your point about there being a grey area. In everything in life, there is a grey area. Those who do not see grey areas probably do not quite understand the challenges we face. The grey area is covered by someone bringing the House into disrepute. Again, what does that actually mean? The whole idea of the principles is about what they look like in the real world. Ultimately, the commissioner will decide whether somebody has breached the code of conduct. Where is the test for the whole idea of bringing the House into disrepute?
333. **Dr Wardlow:** That is what we have said about the guidance. We are happy to work with you. In other places, we have given examples of what might promote a good and harmonious workplace and what would not. We help people to develop worked examples. People learn from the examples. We, and others, I am sure, would be very happy to work along with you to say, “Look, this is the sort of stuff that might, arguably, bring you into disrepute or cause problems, so avoid it; don’t go fishing here”. That is one way of doing it. Along with the regulations and your code, you have a guidebook, but that would need to involve training or induction at least and continuing professional development (CPD), because rules change. I might say something in a tweet and then withdraw it, and suddenly, my tweet is still all over the place. We have seen that.
334. The other thing is that the rules have moved from what you did in 2008. Social media have moved on dramatically since then. You have everything from pictures to the spoken word to innuendo. You cannot say for all time forensically, “This is what brings it into disrepute”. It is possible, through training, guidance and working with us and others, that, together, we could help you to look at that so that it would not be just so grey.
335. **Mr Boylan:** Chair, with your indulgence, I have another point. You mentioned that you responded on the councillors’ code of conduct. There is a good opportunity through the community planning element to look at that. We should not miss that. We have not really got down to the bones of it in terms of the public view. The public expectation is that we should represent them and act in such a manner. I am wondering about your views. Maybe there is a case study that we can look at that will help us to develop a good code. Is there anything that we can incorporate in the code from how you have dealt with public cases?
336. **Dr Wardlow:** It is fascinating. We have over 3,000 phone calls every year and, of those, we have about 300 applications for support. We

support about 100, and the top three consistently are race, gender and disability. When you talk to people, you find that it is not just about the law but about how people actively promote good working relations. Reasonable adjustment is one of the biggest ones for disabled people. It could be a chair. It is about talking to people about what they would like and expect. So, I think that what you are saying is right. I think that there is an engagement process here, because you will get 27,000 different views on what you should be doing, but there are some key things that people expect from public elected representatives, and the guide may well help with that. It is useful to engage with and work through some examples, and we have done that in a lot of other areas. Employers do that regularly with us and test stuff out with us.

337. **Mrs Mallon:** We have also done it with public bodies. We have our guide on promoting good relations for public bodies, and we outlined the type of things that they can do to promote good relations. We have given clear guidance.
338. **Dr Wardlow:** That is feedback, by the way. That is evidence-based; it is not just us thinking that. That is when people come forward and say, "I went to that district council and look what it did to me". Everything that we are trying to put forward will be evidence-based, and, if you want, we will be very happy to work with you to develop that. It will not be a forensic guide, but it will certainly help you to say, "This is the type of stuff". That is a growing thing. As it grows, it will build more, not just where you are but with the new public bodies as well.
339. **Mr Agnew:** What would you say is the role of this Committee?
340. **Dr Wardlow:** Today or in future?
341. **Mr Agnew:** I suppose that we are looking at the future. What should the role be?
342. **Dr Wardlow:** You could end up almost as a judiciary. It is a bit like the internal reviews in the police or something

else. Of course, you have that sort of role, but there is something about the aspirations and the drawing up. You are able to set a code and contact that says, "This is what, we think, leadership in this new place that we call home, or however we refer to it, looks like". If, as a mature society, we are building a united community and are signed up to that, this is what we would expect of our leaders, and we are going to help model that. So, of course, you have the forensic nature of calling people to account, but if you were able to say that this is important enough to have continuing professional development and that people should be required to have a top-up on an annual basis, lots of people would help with that. You are then building up the residue of having a challenge function, drawing people on and helping to say, "Here is what the principles are".

343. The other thing is to commend good practice. I do not think that there is enough of that. We could do well in commending. One thing that we do more and more is to commend good practice. We have just published a guide of best practice in the area of disability, and people opened it up and said, "I did not realise that by doing this, I could —". It is the best kept secret. There are some brilliant examples of good practice in what you do in the Assembly. There is absolutely brilliant stuff where you have worked together and it has not been orange and green but has been a common cause. Disability is one that I can think of. There are others, and I think that those are brilliant exemplars. The members of the public need to know that. You maybe have a job in doing a good bit of PR there. The other thing is listening. You can listen to what you said, Cathal, about what the great unwashed are saying or what they expect. So, in a sense, you are also able to be eyes and ears. That allows you to be like the heartbeat.
344. **Mrs Mallon:** This is a significant role of the Committee in bringing forward a robust code. We see it as absolutely key and extremely important. It is a clear

- task, and, of course, you have a role in investigating complaints. I have looked through a number of the outcomes of some of the complaints, and it has struck me that, sometimes, you even say, "Although this is not a breach, the Member needs to be cautious and act in a reasonable way". You have not just said that it is not a breach but have gone further. That has been really helpful, as have your views on a particular complaint. As Michael said, highlighting good practice is another role that could be enhanced.
345. **Dr Wardlow:** You have done. This is beyond party politics. I am not hearing, and have never really heard, party politics in this. If this happens, it sends a signal that, whether we are orange, green or all colours in between, we can pull together for the greater good. That is a huge thing; we need that. You have shown leadership. The problem is that it does not leak outside these walls; it does not get out.
346. **Mr Agnew:** You mention leadership a lot. I am trying to understand — we, as a Committee, struggle with this sometimes — where the role is for us as a Committee in enforcing standards and the code-setting standards. How much is that the role of the electorate? You talked about promoting equality. Absolutely. We also talked about prejudice. The views of some parties are prejudiced by their nature. It is not our role to direct parties' policies; that is for the electorate. We can set aspirations, but how far do we go in promoting things that we think are good? Even T:BUC is a political policy, albeit an agreed one, by and large. I have certain issues with it. Perhaps the best way of putting it is that it is a consensus policy. It is a political decision. The Committee should be apolitical. Do you not have concerns that, in some of the things that you outlined, we are starting to take on —
347. **Dr Wardlow:** I do not think so. Let me give you an analogy from a previous life. In integrated education, when a new school was set up, six foundation governors were elected. In fact, they were not elected; they were the foundation governors who set the school up. Twenty-five or 30 years on, Lagan College still has six foundation governors. They retain the right to challenge the others on the foundational principles on which the school was set up. They, in a sense, are the ethos at the core. I see a similar role for the Committee. You should embody, through the code, the ethos of what makes this place work, as well as the core and the raising standards that others have talked about. These are common. The Nolan principles pick off the seven, but there are others as well that we can add. If, somehow, you draw people back to those apolitical common-good principles, you will not go far wrong.
348. People sometimes say, "Will you ever tell us whether we should do this or that?". We say, "No, we don't make decisions for you. We give you parameters within which you make the decision, and then the democratic process takes over". You know that better than I do. You can help to add value only by your comments and by showing good practice. You cannot superintend or override the democratic process. It is not easy. We, and other bodies, are happy to help how we can. If we have to be the bad cop or the good cop, we are happy to do that. That is a good working relationship that we would look forward to.
349. **Mrs Mallon:** Our views on the principles of equality of good relations — Michael mentioned this earlier — are that they are consistent with section 75 duties, which the Assembly agreed that public authorities must have. By asking members to promote equality and good relations, we are saying that this is consistent with an Assembly that has already placed a duty on all public bodies to have due regard to the need to promote equality and good relations. That is why we say that it is not a big leap to ask members to promote equality and good relations when the Assembly has already passed a law saying that public bodies must regard —
350. **Dr Wardlow:** The difference, and where people get confused, is that there are three, six and nine protected groups, if I

- can use the shorthand. There are three groups in section 75. Section 75(1) has nine groups, and the anti-discrimination legislation covers six. When we are talking about promoting good relations, the anti-discrimination legislation that we talked about earlier covers the six groups. Some may ask about the nine groups under section 75(1), which includes marital status and dependants. There is a third that I cannot remember. Although there are no protections under the anti-discrimination legislation, we expect that you would do that. That is an example of law-plus that I was struggling for earlier. There is no reason why you would not have wanted that in there. We have signed up to it under section 75(1). That is the sort of stuff that we are saying to remind people. If you think that it is important enough to profile, you should be trained in it, and there should be a guide. You should consistently be trying to feed-in good examples. There is a political thing in this, too. In your party there is a good example of a worked way in which good leadership has been shown. There is no reason why that does not travel. It does not have to be so apolitical that it is only the lowest common denominator. You have some really good stuff going on here, but it needs to get out there.
351. **Mr Agnew:** You said that there is no right not to be offended, but challenging political views will sometimes, by its very nature, be almost offensive. I think of issues such as flags, where if you come down strongly in any one way, someone will be offended even if you have not expressed yourself in an offensive way. How far is that for us to judge as a Committee and how much is it for the electorate to judge, if it is within the law, obviously?
352. We have even had examples of one Member calling another a juvenile name. That is offensive. Some say that is the cut and thrust of political debate, but how far do we go? If that is poor leadership and representation, it is up to the electorate not to re-elect those people. It is not for us to say.
353. **Dr Wardlow:** Ultimately, you are right — the electorate will have its say. Let me give you a personal example. I grew up in a cross-community tradition, so I had lots of friends. I happened to be perceived as Protestant, so I grew up with a lot of people who were Catholic. My Catholic friends constantly referred to me as a non-Catholic until once I took one aside and said, “I am not a non-Catholic”. That is a bit like an atheist saying, “There is somebody who does not believe in God”, and my atheist friends say, “Do not call me that; call me something different”.
354. Was I offended or not? I dealt with it with that individual, but he says, “Hold on, you’re a Prod, and sometimes your people say the Pope’s the Antichrist”. We got into a debate about what was offensive. It was fascinating because in our 20 years of friendship we had never talked about this stuff. Part of it is opening up discussion because I genuinely think that people sometimes offend and do not mean to, and that is not me defending. There is something that we said to open a discussion about free speech.
355. The other thing is the challenge function of thinking before you speak. Does it add value; is it a good thing to do; is it promoting the common good? Those are the high-level principles that we are talking about in a society emerging from what we have come out of. That will be an increasingly hard one for us to struggle with, Steven.
356. You cannot have a litmus test for when somebody says something — it goes blue when they have transgressed. Surely the important thing is that you have a debate about how it could be done differently. The only remedy, presumably, is not that he or she has breached the code but about having a discussion about how we might avoid it next time.
357. **The Chairperson:** With respect, that is exactly what we are asked to do: we are asked to determine whether or not somebody has breached the code.

358. **Dr Wardlow:** I know that.
359. **The Chairperson:** In an ideal world, the scenario that Steven outlined about somebody showing a lack of respect to somebody else, whether through actions or language, it is not the Committee's role to bring those people together for dialogue. We have to determine whether there was a breach of the code.
360. **Dr Wardlow:** Alastair, I am not saying that you act as mediator. What I am saying is that, if this comes in and you act as judge and jury and say that someone did or did not breach the code, that is a forensic determination. That does not say whether it caused harm in the public domain or infringed the principle of equality, so there needs to be something. That is why I am saying that you are not the answer to everything. The next stage is how you have an open conversation around, "This shouldn't happen again. What do we do to stop it getting here again? How to we promote good, proper, strong principles of leadership?"
361. This is outwith what you do. However, if you are setting the standards for talking about the principles and how you draw people on, it feeds to somewhere else now where that debate and discussion take place. The electorate has its say, but I would hate to think that it was the final one.
362. **Mr Agnew:** It is back to the MLA, public and private. You outlined principles, and I want to press you on some practical applications. I believe that an MLA who speaks on Twitter is acting in a public capacity, particularly if they have "I am MLA for wherever" as a part of their description. I am interested in your view on that.
363. Take another example — the political rally. I attend a lot of trade union marches. As far as I am concerned, I do that as an MLA, not because it is my job to do so. I do not think that I am required to, but it is a political act and I am elected in a political capacity. I very much feel that that should be the scope of the code. I am interested to know to what degree attending such a march is reasonably perceived as acting as an MLA.
364. **Dr Wardlow:** Let me say something strategically on that. I have heard arguments recently that there should be an agreed code governing the use of social media, and that it should be established whether it is in the public domain. That is for the Committee. We would not say whether there should or should not be one. However, the longer it remains a grey area, the longer you will run into difficulties. Very few people have two accounts. When I tweet, I have only one account, and, therefore, I am very careful about what I say.
365. The bigger issue about presumption or reasonableness is that you need to come to an understanding about how you determine what is and what is not said in the private realm. We have said some stuff there, Roisin.
366. **Mrs Mallon:** In the paper we say that there is a range of tests: there is the test of being "reasonably presumed"; the DOE code, which talks about "giving the impression" which is another test; and then there is the House of Commons code, which talks about damaging the reputation and integrity. We have not chosen one. We have just said that there are advantages and disadvantages to each, but we have not specifically said which one we feel is right. However, whatever one you pick, it has to be compliant with human rights, and if you are going to intrude into Members' lives, it has to be proportionate and it has to clear the public interest hurdle.
367. **Dr Wardlow:** The bit before that is this. In a rally I say, "Joe Bloggs is an idiot". The first question, when someone hears that, is whether they presume that I am speaking as a public rep. Once it is established that I am, the code applies. However, if that is not established, the second question is whether, even if it is in private, it is a significant event.
368. There are two things. First, you need to have something determinate. I

- suggest that the test should be the same for councils as for the Assembly. If councils have a different test from the Assembly, we will run into problems. Whatever you decide, the test should apply to both. Secondly, once you make that determination — whether it is presumption, reasonableness or whatever — you need to be sure that when you go into someone's private life it should be all the things that we said: proportionate and so on.
369. Perhaps it would be nicer if we said that one is better than the other. However, it should be the one that is clearest for you, and, whether it is the test of presumption, perception or reasonableness, you really need to have it across the two. The test of reasonableness has a lot of precedents in law. There is a legal precedent, in the *Wednesbury* case, for a definition of reasonableness. There is an argument for that. Another argument runs: "Leaving that aside, I assumed that he or she was acting as an MLA"; but then that means that the offence is perceived a bit like a hate crime. It depends on the route that you want to go down.
370. **Mrs Mallon:** Whatever test you ultimately come up with, we agree that there should be guidance on it, and you should provide indicative examples of types of conduct so that people are clear.
371. **Dr Wardlow:** Yes. This is the guidance that we talked about earlier.
372. **Mrs Mallon:** There can be inflammatory language and behaviour by Members that does not breach the code. Therefore we make it absolutely clear that, in the guidance, you remind Members that their inflammatory behaviour and language may not breach the code, but it can have a significant impact so that Members are aware of that.
373. **Dr Wardlow:** That is the bit that we said earlier. It is not that the Committee is the court, but it is trying to promote the principles actively. You cannot hold people to account if they breach the principles, but at least you can actively promote them.
374. **Mr F McCann:** Most of the questions that I was going to ask have been asked already. Steven raised an interesting point about when he goes to a trade union march. On those occasions, he goes as an MLA, but what is the perception of the crowd? I am a trade unionist and have been going to trade union marches since before I was an MLA. You have to work out that difference. I use a Twitter account, but I do not use an MLA account.
375. **Dr Wardlow:** However, if you tweeted something about the Assembly, Fra, such as: "Why don't they get on with X?" The perception is likely to be, since you are an elected MLA, that you are speaking about this place.
376. **Mr F McCann:** I accept that, but I also tweet about a lot of things that have nothing to do—
377. **Dr Wardlow:** Absolutely.
378. **Mr F McCann:** — with it and people may perceive me as tweeting them as an MLA.
379. **Dr Wardlow:** That is where perception falls down.
380. **Mr F McCann:** Much of this has to do with people's perceptions and expectations. Go back to the private/public aspect; you can get into debates and arguments with people who believe that once you put yourself up for election you are public property and you have no private life. It is difficult; it is a problem. You try to explain to people who have that perception why you do that, but they say, "No, you have put yourselves up for election." Some of this stuff will probably end up, like most stuff, being challengeable until a point of law is set against it with a description of it. That might be the only way of —
381. **Dr Wardlow:** The other thing that I strongly advocate is that there should be curricular possibilities to do that in schools. I know from my background in youth work that young people learn about civic democracy. We should

- introduce young people to the notion of free speech early in the curriculum. We have a generation of young people now who get this because they have been through civics at school; they get some of this stuff more than we would have done. That is very clearly one or the other. I am very hopeful. However, there may be something in looking at social media and their use. You might decide that all social media are fair game if you have your name to them. I do not know, but it is worth looking at.
382. **Mr Storey:** Michael and Roisin, you are very welcome. You talked earlier about forensic guidance. There has been a lot of talk about being definitive in what you want to describe. We all live in the real world and deal with flawed humanity, so mistakes will happen. In the past, even your own organisation has had to admit to procedures and practices that were not seen as fair and equitable. How do you have a prescriptive definition of actively tackling prejudice? I listened earlier, Michael, when you talked about actively tackling and challenging prejudices — Steven made reference to it — but prejudice is defined in different ways, such as unfavourable opinion or unjustified or incorrect attitudes. However, for the person making that statement, it is something that they genuinely believe. You alluded to one earlier, which I will not go into the detail of, but I may hold the same view on a particular issue. Should I be challenged or pursued because that is a prejudice or because it is something that I genuinely believe but that the way in which I express it should not in any way be seen as being offensive to any other individual?
383. **Dr Wardlow:** Mervyn, you make a good point. This is not about the thought police or about challenging people's political or public or private opinion, whether theological or not. The question is how you act on it and how you use and choose your words. Some people say that it is a preference or a choice rather than a prejudice. At present, we do not have a definition of good relations, whereas we have definitions of equality. That is why I am saying that the law is clear on those things.
384. **As we move into T:BUC,** we will actively seek a definition of good relations in the legislation. At least then we will know what it means. Once it is there, there is at least something to hold it against. We are not saying that there should be 27 rules or regulations written in to define how you promote or attack prejudice. They would be part of the operating principles that you are trying to draw people towards. The exemplars in the guidance are things such as, "You may hold this view, but to express it in this way or in that context would not be the most helpful thing in the world". It is about behaviour. Laws change people's behaviour; they do not change attitudes. This is not necessarily about wanting everybody to come off the same production line. However, laws are sometimes necessary to make sure that behaviour is modified in certain circumstances. More important, it is to help people's attitudes to learn from the other. That is what the principles do. They try to help people in their attitudes, not change or challenge beliefs. This is about how we might be able to express ourselves to help this place move on. Heaven help us if we close down such conversation or say, "You are not allowed to hold that belief"; I would not want to live in that universe. That is certainly not what we are advocating.
385. **Mr F McCann:** We have had this debate a number of times, and all of us have said in the Committee at one time or another that we defend the right of people to have free speech, but it is how you determine when it is grossly offensive to sections of the population. That is where the problem is.
386. **Dr Wardlow:** There needs to be a test. Discrimination is not always unlawful. You could give free eyesight tests to people over 60: that is discrimination. You can give young people who are unemployed preference in jobs: that is OK. We need to move away from discrimination being a dirty word and that it cannot happen. It is the type of discrimination that we have lived with.

Therefore, we are saying that, of course, you need to have some test and, of course, that is necessary. It is an art and a science. You are defining the science through the code , and we are saying that that science should have some art in it that allows you to move. That is why it is three dimensional rather than a flat structure. We are around lots of people like ourselves who have worked with this stuff, and part of the role is to try to do this together. We are more than happy to come back to help with guidance or whatever. That is one of the reasons why we are here.

387. I commend you. What you are doing is not easy, but you have a good opportunity to send a big signal. The race strategy is another opportunity for people to come back, and when T:BUC is launched, we will come back and talk on that.

388. **The Chairperson:** OK. Thank you very much. We appreciate your time.

15 October 2014

Members present for all or part of the proceedings:

Mr Alastair Ross (Chairperson)
 Mr Steven Agnew
 Mr Colum Eastwood
 Mr David Hilditch
 Mr Fra McCann
 Mr Ian McCrea
 Mr Robin Newton

Witnesses:

Mr Trevor Reaney *Northern Ireland*
 Mr Richard Stewart *Assembly Commission*

389. **The Chairperson (Mr Ross):** I welcome Trevor Reaney and Richard Stewart, who are here on behalf of the Commission. Whenever you are ready, if you want to give us some brief introductory comments, we will then open it up for questions.
390. **Mr Trevor Reaney (Northern Ireland Assembly Commission):** Thank you very much indeed for the invitation for the Assembly Commission to contribute to the review of the code and for the invitation to attend today. To be very clear, I will say at the beginning that the Commission shares your Committee's desire to continually improve the Assembly's overall governance framework, of which the code is a very important element. We have a shared aim of achieving the highest standards of conduct and governance in our respective responsibilities, and it is important that our respective responsibilities are properly coordinated and complementary.
391. It would be fair to say that — as you and the Commission have wrestled with in recent times — the expenses scandal at Westminster has driven a lot of change in the world of the expenses, the conduct and the professionalism of parliamentary institutions and their Members. Many recommendations have emerged and continue to emerge, internationally and in the other

institutions in these islands, which will no doubt assist your Committee, as it looks at the issue, and help us improve the arrangements in the Northern Ireland Assembly.

392. One significant development that members will be aware of in Northern Ireland has been the establishment of the independent financial review panel (IFRP) to provide an independent method of making decisions around resources that are made available to support Members in their Assembly duties. No doubt you will seek the views of the independent panel as part of your review.
393. An academic from the University of Sheffield, Professor Matthew Flinders, talks about the corrosive cynicism that there is in the media and amongst commentators and the public in respect of politicians and political institutions. I think that the phrase “corrosive cynicism” is a valuable one to think about and reflect on. While not a panacea in itself, sound arrangements around ethics and conduct, including the use of financial resources provided from the public purse, can have a positive impact, or perhaps, more importantly, reduce the decline in public confidence in public institutions and their Members.
394. In that regard, I was interested to note the Hansard Society's recent audit of public engagement for 2014. There were two questions relevant to this work. One was in relation to the question of whether politicians should be expected to act according to a set of guidelines about their behaviour, to which 86% of the responses were affirmative. The second was that politicians should have to undertake regular ethics and standards training, and 77% supported that statement. So, those issues remain high in the public mind. One personal reflection is that I am puzzled as to

- why the results were not 100% for both questions.
395. The Commission has responded on three broad points. I am happy to elaborate on those responses and, indeed, to answer questions, but perhaps I might provide clarification on one point that I was reflecting on as I prepared for the meeting. There is a reference to identifying the guidance and instructions falling under the rule and determining in which cases non-compliance should amount to a breach of the code. In its response, the Commission was perhaps not explicit that its view was that all policy, guidance and instructions issued by the Commission would be covered. The second point in relation to its response was around those who make the judgements as to whether there has been a breach of the code. The Commission is very clear that that is a role not for the Commission but for the commissioner and this Committee, but perhaps that is an issue that we might explore as we go through the questions.
396. I will also mention one other change in this area of work that the Commission has introduced in recent times; that is, that it has extended the Carecall welfare service to Members and Members' staff. That is as a result of developments that have taken place not only in other institutions but locally. I think that that has been a positive development that helps to contribute to this.
397. Perhaps this is where, with my accounting officer hat on, I have to be a little bit cautionary. Collectively, this Committee, the independent panel and the Commission need to be careful in terms of any resource implications that arise from recommendations going forward. Some other institutions are significantly better resourced than the Northern Ireland Assembly to deal with these sorts of issues. It is not so at the moment in the Assembly here, and it is also less likely to be the case going forward, so I just sound a cautionary note in that respect.
398. I think that that is enough for me to say at the beginning. I am very happy to engage in questions and also to go back to the Commission if there are issues on which you wish to seek further input or clarification from the Commission. The Commission meets next week, so we can come back to you relatively speedily with a response.
399. **The Chairperson (Mr Ross):** That is great. Thank you. We have a number of questions subdivided into different areas of your response. First, it might be useful if you could give us some examples of the instructions or guidance that the Assembly Commission issues that applies to Members. As a supplementary question to that, how often has there been a problem with Members not abiding by the instructions that have been issued from the Commission?
400. **Mr Reaney:** One of the main instructions that members will be very familiar with is the Members' financial services handbook. That is the handbook related to the administration of Members' office cost expenditure (OCE). That is probably the most significant and the most well appreciated one, but there is a range of other issues. The Speaker has set out some of those in his response to the Committee. Those are to do with how events are organised in the Building, the actual use of the Building, the use of IT resources, health and safety, security policy in the Building, conduct and visitor behaviour policy and media policy. There is a range of policies that govern not just Members in the Building but all users of the Building. Those are some examples but not an exhaustive list.
401. On your second question about how well Members comply with them, I have to say that, generally, they comply very well. There are, from time to time, what I could perhaps describe as minor breaches, but they are generally and most frequently resolved informally, and, when something is pointed out to a Member, they usually understand and accept that position and comply. There are very few occasions when some breach of policy comes to my desk or

- to the Speaker's desk. I think that that is an indicator of Members seeking to behave in an appropriate way. So, the issue of breach is not a very significant one.
402. **Mr Agnew:** The current rule provides 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."*
403. That is quite broad, and I suppose that a lot of what we have been looking at is a review to see how we can simplify our code. Are you clear about what the rule means and what its limits and scope are?
404. **Mr Reaney:** As I indicated in my opening remarks, the Commission's view, in effect, is that everything that is a policy, a guidance or an instruction coming from the Commission or, indeed, from any official acting on behalf of the Commission is covered. In its current wording, the rule is a very broad and all-encompassing one. I have no difficulty in saying that the Commission is happy to look at or suggest a different wording but that it is concerned that that would dilute the intent of the rule. If we narrow things down to a very small number of significant policies, there may be something else that sits outside that which becomes a problem.
405. I will give an example, and this is one that I was teasing out with somebody in another arrangement earlier on today. It is as simple as the car-parking policy. Members are required to park within the white lines, and that is a sensible and reasonable thing. If somebody parks over the white line, does that represent a breach of the code? I think that common sense says that it does not, both in terms of anyone wishing to make a complaint or our handling or the commissioner's handling. However, if a Member were so flagrant in their parking of the car that they caused an accident and somebody was injured, something that can be very simple could, in a very rare circumstance, become a problem.
- That is why I was saying in the beginning that the Commission would have difficulty in delineating within its policy a specific policy that is significant or trivial in its application. That is perhaps more for the commissioner to deal with in his judgements. It is about reasonableness in application and reasonableness in interpretation. I think that that has to come into play. I have no doubt that the Commission would be happy to look at the wording of that. For example, I notice that the wording does not cover "policy" but talks about "guidance", so there is a word there that might be usefully incorporated to be a bit more explicit.
406. **Mr Agnew:** The rule extends to guidance or instructions issued by Assembly directorates when acting on behalf of or with the Commission's authority. What does that mean, and what are the types of examples of when it would be the case that the directorate would be acting on the Commission's authority?
407. **Mr Reaney:** It is always difficult to think of examples. I can think of one example of a circumstance where an official would issue an instruction to a Member that may not be adhered to. On a sitting-day Tuesday, the Chamber is restricted at lunchtime: in other words, during that lunch break, the doors are secured and no one — officials or guests — is allowed to enter. There have been occasions when a Member has wished to go into the Chamber with a visitor or a group that is visiting. In those cases, the officials and the ushers have to say to the Member, "I am sorry, but the doors are secured. We can arrange for you to come back at a later time." That is an example of an official, acting under a policy, issuing an instruction to a Member that is contrary to what the Member wishes to do. That is an example of a directorate or a member of staff within a directorate seeking to apply a Commission policy.
408. **Mr Agnew:** It includes the secretariat staff.
409. **Mr Reaney:** Yes, it does. However, to be clear, in my example, the member of staff is acting under a policy or an

- instruction that the Commission has issued and is seeking to apply the Commission's authority in that situation.
410. **Mr Hilditch:** Does the Assembly Commission think that the existing rule in the code should be amended? If so, how could it be amended?
411. **Mr Reaney:** I have already touched on the issue of the wording. Aside from the specific wording and the suggestion that the inclusion of the word "policy" might be helpful, the broad principle is that the wording is all-encompassing, and it would be very helpful if that principle were continued by the Committee. Having a broad and all-encompassing one is a better position to be in. We can certainly look at the wording with the Committee to amend it in a way that might be helpful or suggest alternative wording. The one amendment that comes to mind is the explicit inclusion of the word "policy".
412. **Mr Hilditch:** Thank you. What do you think of the commissioner's suggestion that the code could set out a rule to the effect that all Members shall comply with all guidance or instructions issued under the authority of the Commission and, in the event of a complaint of a minor or technical breach, the commissioner could decide that it was inadmissible on the grounds of triviality? Alternatively, he suggested that the code could list, potentially in an annex, all the particular provisions or guidance in relation to which non-compliance would constitute a breach.
413. **Mr Reaney:** There are obviously different approaches, and other institutions have taken differing approaches to that. There is a difficulty in having such a bland or all-encompassing phraseology in that it might prove meaningless. I can understand the question, and other places have tried to provide, either by way of an annex within the code or a cross reference with some other document or website, a way of explaining that.
414. The difficulty from my point of view, and, I would imagine, from the Committee's,
- is that the policies and the guidance from the Commission is a regularly changing thing. If something was so explicit in the code that every time the Commission changed the title of a policy or added a policy it resulted in an amendment to the code, that would not be a sensible administrative approach. Either leaving it all-encompassing with an appropriate form of words or cross-linking to another document or page on the website, where the policies are listed, is a possible option. The difficulty with that is maintaining the list in an up-to-date manner and not leaving a gap. For example, if a policy is not in the current version, that could become a loophole that is used to avoid scrutiny by the commissioner.
415. So, I think that it is fair to say that the Commission is of the view that it should be a general, all-encompassing one, with the actual wording of that to be discussed.
416. **The Chairperson (Mr Ross):** The issue of staff conduct is one that we have wrestled with, including whether Members should be held responsible for the conduct of their staff and things like that. How does the Commission deal with allegations of misconduct by Members' staff? Would you draw a distinction between allegations that relate to a member of staff acting on behalf of the Member and other allegations?
417. **Mr Reaney:** The very simple view that the Commission has taken over the years is that the employment relationship is between the Member and their member of staff. While the Commission may provide guidance and may provide the funding to employ that person, the employment relationship is between the Member and their member of staff. So, the simple answer is that it is for the Member and their member of staff to work out how those issues are handled. From time to time, we provide informal advice or point Members to something. Should there be a complaint by a member of staff against a Member that may result in the need for professional advice or, indeed, lead to

- defending something at a tribunal, one of the obvious issues is to ensure that the Member has resources within OCE to take that on.
418. The Commission has, very clearly, not sought to get involved nor does it feel appropriate that it get involved in that relationship. Other institutions' approaches differ. Certainly, were the Committee to be looking at having something different in the code, the Commission would have to look at that and reflect on how its approach is consistent with the code.
419. **The Chairperson (Mr Ross):** Steven has indicated that he wants to come in on this. Before he does, I will ask this: where a complaint by a member of staff is against the Member who employs them, are arrangements in place if that member of staff does not feel comfortable staying in their position of employment? Are they able to take a break if they are still being paid and still have their arrangements of employment but are not working alongside that Member until the issue is resolved?
420. **Mr Reaney:** One of the routes that a member of staff in that situation has is through the grievance procedure, which is part of the statement of particulars. Members are provided with a model form. So, a grievance process is set out. Again, the Commission does not have any specific arrangements in place to state that a member of staff who has an issue with the Member who employs them can be moved somewhere else for the duration of the investigation. That would be problematic, and I think that you can understand why. It would be like, for example, someone in this organisation having a problem with me and then moving to work in the Civil Service while it is being investigated. It is easier to do in a large organisation but difficult in a one-to-one relationship. It is certainly not something that the Commission has given any consideration to, but I can immediately see difficulties around it. That is not to say that it does not merit consideration.
421. **Mr Agnew:** You say that the employment relationship is between the Member and their member of staff. It is a grey area. Obviously, the pay etc is administered and funded by the Assembly, but you mentioned Carecall, and I was also thinking of pension provisions. It seems to me, as a Member, that there is a grey area. There are not two employers, but there are two parties involved in the employment relationship. I welcome the Carecall provision; it is something that I argued for. I would also argue for things like the childcare payments — just while I am here. Is there a growing role for the Assembly, over time — I am a relatively new Member — or has it decreased?
422. **Mr Reaney:** Richard may come in on the detail, because he has more corporate knowledge around this about the past than I have. However, in my time here, I think that the introduction of the Carecall service is the only enhancement that we have provided. That was something, for example, that Westminster — the House of Commons — introduced recently off the back of some complaints there. That prompted the Commission to look on it as something that we should be doing as well. The other parliamentary institutions in the UK — Scotland and Wales — already had that in place, so that prompted us to address it.
423. **From the Commission's point of view, there is no grey area:** the employment relationship is between the Member and the member of staff. There is financial support to the Member in respect of that, but the employment relationship is there. Of the other institutions, Wales, I think, is the most proactive in this regard. Looking at the continuum between no involvement at all by the institution in the relationship and a joint employment relationship, the Northern Ireland Assembly would be towards one end and Wales, which takes a different approach, would probably be somewhere in the middle. Do you want to add anything, Richard, by way of background on that?
424. **Mr Richard Stewart (Northern Ireland Assembly Commission):** Just on

- that final point, the funding that is made available to Members does not have to be spent on employing staff. Invariably, every Member will employ staff, but the nature of the funding that is made available through IFRP and the Commission is for Members for the purposes set out within the relevant determination. As Trevor said, grey is just a shade of black or white, but I think that the Commission would take the view that it is black and white: the employer is most definitely the Member, and the Commission has no role in that employment relationship. That is not to say that the Commission cannot provide advice, support and guidance to Members in general to carry out their employment role, but I think that the Commission would be loath to get involved in the day-to-day line management of staff on behalf of a Member.
425. **Mr F McCann:** I will follow on from that. Are there any examples where there has been a breakdown in the relationship between the Member and a member of staff? If so, how has it been handled?
426. **Mr Reaney:** There is always speculation or rumour about such things, but I am aware of at least one case where a Member used their OCE resources to defend an industrial tribunal, in a sense. That was admissible expenditure under OCE, and the Member was able to do that. Inevitably, there was a breakdown in the relationship if that funding had to be used in that way. Richard, do you have anything to add?
427. **Mr Stewart:** The example that Trevor used is probably the main one that comes to mind. I should point out that the use of OCE was in the proper management of the employment relationship to defend the claim at the tribunal. If, for example, the tribunal had made an award against the Member, it would not have been a valid claim against OCE. That is probably the starkest example of that breakdown in the relationship.
428. **Mr F McCann:** The Committee is considering the possibility of requiring Members to take reasonable care to ensure that their staff do not act improperly when acting on a Member's behalf. The Commission has told us that the OCE can be used to provide Members with advice or guidance on all aspects of managing employees and that that is the most appropriate mechanism for the provision of support to Members. Can you explain how Members might use their OCE to ensure that staff do not act improperly?
429. **Mr Stewart:** There is a very broad definition of what OCE can be used for. It talks about secretarial services, research and support to Members. Interestingly, the definition of OCE does not mention anything about a constituency office. Generally, the majority of OCE is used to pay for staff salaries. A Member can choose to invest or spend his or her OCE on training on ethics or behaviours, as has been mentioned, or training in how to run an office and how to deal with casework. The Member can also buy advice and support from a legal adviser, an HR adviser or someone who has perhaps more knowledge than he or she might have on the particular issue that you are dealing with for staff management issues. So, Members can purchase services from third parties to help them with line management or staff management problems.
430. **Mr F McCann:** On that point, is there a restriction on the amount that you can spend on seeking advice or bringing people in for training?
431. **Mr Stewart:** There is no restriction on the amount. The restraining factor is that OCE is limited. So, the amount of OCE that Members have available is more of a restraining factor. If a Member was seeking to spend £15,000 — I just picked a number — on advice and support on a staff management issue, yet the cost per year of the salary was £20,000, there might be a degree of reasonableness about that, but there is no set limit that says that you can only spend x per cent of your OCE or a certain value on that level of support.

432. **Mr F McCann:** The Commission previously produced guidance for Assembly Members who may be recruiting support staff. Could that guidance be amended to deal with the issue of managing staff conduct?
433. **Mr Reaney:** There are probably a couple of normal or traditional aspects that relate to that. One is a disciplinary procedure and the other is a grievance procedure. Those procedures are fairly standard in employment relationships. There is advice in the guidance that the Commission offers to Members in respect of those two issues. Is there merit in extending that into further guidance? Some organisations and, I think, some other institutions have a code of conduct or a model code of conduct for Members' staff. In essence, that is an extrapolation of what is expected in implied terms and conditions of employment in that an employee should behave reasonably and with good conduct. There is something in that, Chair, and if the Committee is of a mind, we could ask the Commission to have a look at that and see whether the arrangements in that guidance could be developed in that way. So, we are open to that, but it is primarily through the grievance and disciplinary procedure that that guidance would be covered.
434. **Mr I McCrea:** As part of our evidence, the Committee on Standards in Public Life told the Committee that there should be appropriate training and HR support for Members in relation to employment of staff and ethical issues. You mentioned the advice and whatnot that could be available. Do you think that there is a role for the Assembly Commission to provide that training in those areas or would it be down to the Member to use his office costs for that? Some people argue that you have enough to spend when you are trying to run offices and whatnot, but could the Commission play that role and provide that training?
435. **Mr Reaney:** There are probably two dimensions to this. One is about what a Member can purchase directly themselves out of their office cost expenditure, and the second is about whether anything can be provided centrally in terms of training and professional development around that area. Members will be familiar with the Members' development programme, the Politics Plus programme and initiative. One of the elements that has been talked about within that is the general running of a business, because a constituency office is, in essence, a small business. We could certainly explore and feed into that to see whether a module or something could be developed that covers that aspect of managing an office and staff. It certainly merits consideration.
436. **Mr I McCrea:** The National Assembly for Wales requires Assembly Member support staff to sign a code of conduct, which forms part of their conditions of employment. Do you think that there is merit in this Assembly considering that type of approach?
437. **Mr Reaney:** Yes, I think that there is merit in that. As I touched on earlier, the good conduct of an employee is implicit in their contract of employment, and it is implicit in our guidance from the Commission to Members. It is not explicit. There is no reason why that could not be amended or altered to include a code of conduct, which would have to be carefully worded, reasonable, etc. As you say, there is a model in Wales, and it is worth looking at.
438. **Mr I McCrea:** Is there anything that you can think of that should be included within that?
439. **Mr Reaney:** In a sense, through the Members' code of conduct, we have the Nolan principles, for example, and those are things that very obviously apply to all public servants. If we class an employee of a Member as a public servant, that could be incorporated. There are some very general and well-worn principles that can be incorporated into that, and I am sure that, with some other thought, we could develop it in a way that is specific to the Northern Ireland Assembly and its Members.

440. **The Chairperson (Mr Ross):** We had quite a debate about the Nolan principles and principles versus rules, so I will not get into that now.
441. **Mr Newton:** I will pick up on where Ian was coming from. If a code of conduct was to be implemented, that would be a change of conditions of employment, would it not?
442. **Mr Reaney:** I will ask Richard to come in in more detail, but, in general, I have said that what a code of conduct would require is something that is reasonable; it is not unreasonable. It obviously depends on the actual wording and the requirements of the code, but a code of conduct and good conduct is implicit in the contract of employment. Making it explicit is probably not such a big issue in terms of contract of employment. Richard, can you add something on that?
443. **Mr Stewart:** If you take the Welsh document as a template, you see that there is nothing in that document that, as an MLA, you would not expect your staff member to live up to every day, I would suggest. It really just sets out, over a number of pages, what you would like your member of staff to do every day. As Trevor said, any contract that a Member has with their member of staff will automatically assume that that member of staff will behave in an appropriate way. Appending this document to a contract of employment could be looked at as a change to the contract of employment, and the employee may say, "Well, I don't agree to that change". Or, it could be looked at as making clearer to the employee the actual responsibilities that you have already set for them. That latter approach would probably be the way to go. There is nothing in the Welsh document, for instance, that a reasonable employee engaged by a Member should have any problem with. You would probably be more worried if they did have some problem with it.
444. **Mr Reaney:** We would need to explore it with our legal experts to make sure that there was not something. On face value, it seems a not unreasonable change, and therefore it may not create a problem, but it would have to be explored in more detail.
445. **Mr Newton:** If it did not happen and there was a refusal, would the independent review panel take an interest in it in terms of allowances?
446. **Mr Reaney:** It may do, but we need to be careful that the independent panel sets the framework for these things, and then there is the operational level, which is the responsibility of the Commission. I see that probably more properly falling into the Commission's area of responsibility than the panel's.
447. **Mr Newton:** Some might think that you were imposing a code of conduct. If an employee had been behaving in all forms of reasonableness, that imposition may raise some issues. Do you see any of those potential practical difficulties?
448. **Mr Reaney:** I suppose the question is this: what would a reasonable person do and say? We may all find in life that there are unreasonable people who take unreasonable positions. Richard outlined that, what is in the code of conduct in the Welsh model, for example, is what would be reasonably expected under a normal contract employment relationship. Putting it in a way that ensures that a Member is protected from any challenge is something that we will have to carefully examine. Again, it comes down to the fact that, whatever the Commission provides as guidance to Members, it is for the Member to relate to their individual employee. If there was difficulty, it is something that we would have to explore and assist Members with.
449. **The Chairperson (Mr Ross):** We discussed the Welsh model a few times. Obviously, we have kept an eye on that and discussed with various other jurisdictions changes that they have had. One of the issues that we noted was the House of Commons respect policy and how the Commissioner for Standards has a defined role in relation

- to it. Currently, the Assembly secretariat staff member protocol is not formally integrated into our code with a role for the commissioner. What are your views on how and when the commissioner should deal with complaints in that area?
450. **Mr Reaney:** To be clear, the member of staff protocol has a purpose, which is to try to resolve conflict in relationships. It is more of a voluntary mediation process to try to resolve that breakdown in a relationship. That is perhaps a different purpose from the Members' code, which is there to set the standards, to provide a mechanism for investigating and, indeed, to have sanctions if there is a breach.
451. Anything that the code can do to provide more protection for staff of the Assembly from inappropriate behaviour by Members is something that I would certainly welcome. However, I want to be clear that the protocol is a slightly different document with a different purpose and intent. Finding a way of linking the two is certainly worth considering. One of the things around the protocol is that there is currently no requirement for the Member or the member of staff to use the protocol; it is voluntary. One may wish to use that as a way of addressing a concern, but the other party may not. Perhaps putting a provision in the code, for example, that requires Members to participate in the protocol and use it would be helpful, but I caution that we cannot guarantee full engagement or any constructive outcome. The code, obviously, cannot legislate for that. Doing so in a way that encourages Members to play their part and use the protocol would be helpful.
452. Very few cases have been dealt with under the protocol as yet. It is still, perhaps, in the testing stage. We will probably need a few more cases to go through, and the Commission might want to refine and review it in light of experience. Perhaps it is a good thing that there have been very few cases through it.
453. **The Chairperson (Mr Ross):** Absolutely. That is something we will probably look at again.
454. **Mr Eastwood:** The protocol talks about some examples around improper treatment by MLAs and talks about ridiculing or demeaning a member of staff, making abusive, threatening remarks or seeking to coerce a member of staff to provide services. So, do you think that those specific things, or anything else, should fall within the code itself and kind of mirror the protocol?
455. **Mr Reaney:** Anything that you are able to incorporate within the code that would be helpful in protecting staff. I am speaking from the point of view of staff here. Equally, there is a need to protect Members on the other side, but I appreciate that the code is regulating Members' conduct rather than staff conduct.
456. There is, I suppose, a dichotomy in this. The Committee and the commissioner have some role with respect to Members but not secretariat staff. The Commission has some role in respect of secretariat staff but not Members of the Assembly. So, there is a difficulty in mirroring the two and matching them up in that regard. But yes, if there was something that could be incorporated that gave strength to the principle of what the protocol is seeking to achieve, that would be welcome. There would need to be careful wording and consideration of that, but it does merit consideration.
457. **Mr Eastwood:** I think we are minded to revise the code so that current principles, including the principle of respect, become aspirational. A complaint could only be investigated if it was alleged that a specific rule had been breached. There are issues around any rule in relation to respect that would be included in the new code taking into account conduct that is protected as a Member's right to free speech. We have been through quite a bit of debate around that, given that we are all politicians. Do you see that causing any difficulties for the Commission if it

- was more limited in terms of having to breach a specific rule?
458. **Mr Reaney:** Going back to the Commission's position on other matters, I think it would favour something that is more encompassing rather than restrictive. In that regard, if the respect principle is narrowed to the extent that it only applies in a very few cases, perhaps that undermines the purpose of it.
459. The point in the code that I would most point to in regard to this is the good working relationships between Members and Assembly staff. That reference is to professional courtesy based on mutual respect. If you embrace that as part of how respect is shown, that merits specific mention rather than perhaps restricting it in any way.
460. **The Chairperson (Mr Ross):** Ian asked a question about training or the help there would be for staff. A theme has emerged from the evidence that we have heard. We had a useful session with Tom Walker from the ethics department at Queen's University in terms of planning our review of the code and, indeed, in a formal evidence session. We also heard about the need to have training for Members. He talked about the need to train Members in good ethical standards and continuing to do that. We heard something similar from the Committee on Standards in Public Life, the Equality Commission and the Assembly Ombudsman in terms of that continuing development. You mentioned before that it is something that you are going to look at. In my view, and probably in the Committee's view, it would be useful if that sort of support was given to Members, perhaps at the beginning of a mandate: that there is training in ethical standards and what standards Members should live up to. That would also take away some of the excuses that Members perhaps will use about not being aware of a certain rule or particular standard. That would help in reinforcing the code that we will ultimately come up with and some of the ethical standards. It would be useful if that was given serious consideration.
- I do not know if you want to make any comment on that.
461. **Mr Reaney:** Certainly, Chair. You mentioned the induction. We will be looking again in the months ahead and preparing for our next election, whenever that comes.
462. **A Member:** If it comes.
463. **Mr Reaney:** It is certainly something that we can build into the induction programme. A second issue related to that is communication. I mentioned, and the Speaker's response to the Committee mentioned, a number of policies, some of which, or maybe all of which, Members are not fully aware of. Therefore, if we were to list policies, we would need to clearly communicate those and give Members the opportunity to be briefed on their content so that they understood them. There are those two elements. There is the induction, which I fully take on board, and the ongoing training that we have referred to in relation to managing staff and managing an office, and then there is just general communication and awareness of what that actually means in practice in terms of the code and compliance with Commission policies, guidance etc.
464. **The Chairperson (Mr Ross):** It is important to say that the Clerk of this Committee has been very good at going to Assembly groups at the beginning of a mandate and explaining the code and has always been there to answer questions. That is to be noted as well, but perhaps a more formal arrangement would be useful.
465. Nobody else has indicated that they want to come in again. Are you all content? OK, thank you very much.
466. **Mr Reaney:** Not at all; thank you, Chair. If there is anything further you need from the Commission, please let us know.

18 February 2015

Members present for all or part of the proceedings:

Mr Jimmy Spratt (Chairperson)
 Ms Anna Lo (Deputy Chairperson)
 Mr Steven Agnew
 Mr Cathal Boylan
 Mr Sammy Douglas
 Mr Colum Eastwood
 Mr David Hilditch
 Mr Declan McAleer
 Mr Fra McCann
 Mrs Sandra Overend

Witnesses:

Dr Henrietta Campbell	Dr	<i>Independent</i>
Mr Patrick McCartan		<i>Financial Review</i>
Mr Alan McQuillan		<i>Panel</i>

467. **The Chairperson (Mr Spratt):** I welcome Pat McCartan, the chairperson of the Independent Financial Review Panel (IFRP), and Dr Henrietta Campbell and Alan McQuillan, who are members of the independent panel. Before I call you to speak, Pat, I point out that the Committee wrote to the panel on two issues. One was to seek an update on what steps the panel was taking following the allegations made in the 'Spotlight' programmes broadcast in November. The other was in relation to the panel's interest in the Register of Members' Interests, which the Committee is looking at as part of its review of the code of conduct.

468. I remind you that, in line with the Committee's usual practice of avoiding public discussion about the conduct of individual Members, you should not address any specific allegations in relation to any particular Member or Members. Equally, that applies to members of the Committee. If that happens, I will step in and stop the discussion at that point.

469. I will hand over to you, Pat, to make your statement, and then all of you can leave yourselves open for questions.

470. **Mr Patrick McCartan (Independent Financial Review Panel):** Thank you very much for your kind invitation. We are delighted to come to put some views in front of you on issues that are of mutual interest. We are very glad to attend the Committee today. You know my two members. Together, we make up the Independent Financial Review Panel for the Northern Ireland Assembly. We are glad to attend the Committee to assist in its deliberations and to foster mutual understanding between us.

471. I will begin by briefly describing our role. We were established by the Assembly through the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011. That Act has two parts. The first part was sponsored by the Assembly Commission and deals with the panel, and the second part was sponsored by this Committee and deals with the Commissioner for Standards.

472. The Act, together with the Northern Ireland Act 1998, sets clear roles for each element in one complex governance regime. We are only one such element. The Assembly, the Committee, the commissioner and the Assembly Commission are other elements. Each of those has its role, and each role we fully respect. Our main role is to make determinations as to the salaries, allowances and pensions payable to Members of the Assembly. Prior to our establishment, that role was taken on by the Assembly.

473. The Assembly requires us to exercise that function with a view to achieving the objectives of ensuring probity, accountability and value for money with respect to the expenditure of public funds; securing for Members of the Assembly a level of remuneration, which fairly reflects the complexity and importance of the job, and does not, on financial grounds, deter people from

- seeking election to the Assembly; and for securing for Members adequate resources to enable them to do their jobs. We make determinations that are intended to achieve those objectives. That is by no means an easy task. It requires fairly careful balancing of those three statutory objectives. It is important to emphasise that the Assembly created the panel as an independent body not subject to the direction by the Assembly or the Commission.
474. We seek to engage fully and cooperatively with the other parts of the governance regime. For example, it is for the Commission to administer our determinations. We have no role whatsoever in that, nor do we have any role in investigating any individual breach of the rules, but if we become aware of such a breach, it is incumbent on us to decide whether our determination should be changed so as to prevent it happening again. We are expressly required by section 2(3) of the Act to keep under review the extent to which our determinations appear to be achieving the three statutory objectives. In some cases, the Committee may report on such a breach if it also comprises a breach of the code.
475. The Committee has invited us to address two matters. The first is to provide an update on actions that we are taking arising from the media broadcasts late last year. Some of the issues raised are similar to matters that we have already addressed. In our exceptional determination of December 2012, we dealt with staff pooling arrangements and contracts for services. Some of the issues raised are similar to matters that we were already considering or have consulted on, for example, sizes and cost of constituency offices. We are minded to address such matters in our determination for the fifth Assembly.
476. In relation, however, to direct or indirect benefit from office cost expenditure (OCE) payments going to persons associated with Members, we have, in recent months, considered the matter in some detail. We have not quite finalised our position on that, but the panel is minded to make another exceptional determination in the near future. Our thinking is that the new rule would require that, before any such payments can be claimed from OCE, prior disclosure must be made as to the identity of the person and the nature of the association. By that, we mean a transparency disclosure, which would have to be made before claiming office cost expenses. If it is not made, the office cost expense would not be payable.
477. In relation to the nature of the associations that must be disclosed, we are thinking of a fairly wide circle. It might include, for example, family members, elected representatives, political parties, their officers and employees, and employees of Departments or councils. If the payment is made to a company, partnership or trust, the association to be disclosed would include relevant directors, shareholders, trustees, beneficiaries, partners and so on. We expect to consult all Members and, indeed, your Committee on this matter shortly.
478. The second issue is that the Committee invited us to address its current inquiry into the code of conduct. First, I will say a word about our consultation on the employment of Assembly Members' staff. It addressed the issue of lobbyists being paid for with office cost expenses. It was not our intention in that consultation paper to suggest that our determination would cross the line into the proper field of the code of conduct or the Register of Members' Interests. Clearly, those are matters for the exclusive cognisance of the Committee and the Assembly.
479. As indicated, we fully respect the role of other parts of the governance regime. I apologise if the consultation paper gave an inaccurate impression. The panel has already moved to amend the consultation paper. What we are particularly interested in and where we have a role is in considering prior disclosure. A prior disclosure in respect of lobbyists and office cost expenses

might be along the following lines: no lobbyist is employed and paid for out of this office cost expense claim or the lobbyists Mrs Smith and Mr Murphy are employed and paid for out of this expense claim. The reference to lobbyists in our consultation paper was intended to elicit people's views on whether such a system of prior disclosure would assist in achieving the statutory objective of ensuring probity, accountability and value for money.

480. In that regard, we think that such a system is close in policy terms to the effect of category 12 of the register, for which we are responsible. We would be grateful for the Committee's views. We also suggest that the Committee might like to consider whether category 12 of the Register of Members' Interests, which currently refers only to family members, could usefully be extended to lobbyists and the wider circle of associated persons that I referred to earlier.
481. Returning to your inquiry, the Committee has specifically raised with us the issue of reducing a salary by 90% for any period during which a Member is imprisoned for up to 12 months. As you are aware from our recent correspondence with the Committee, the panel has considered that and agreed to include in our determination provisions for the fifth Assembly.
482. The Committee has also specifically raised with us the issue of the Committee's power under Standing Orders to recommend sanctions, including the withdrawal of any rights to salary and allowances. The panel, of course, has no role in relation to disciplining any Member who might have breached the code, even if the breach is connected with salary or allowance. The panel is, nonetheless, very supportive, in the interests of probity and transparency, of rigorous and fair enforcement of the code. Therefore, if a reduction of salary or allowances is a sanction that the Committee wished to recommend in any case, the panel would not wish its determinations to be an obstacle. I am therefore happy

to say that, although we have not yet concluded our thinking on salaries and allowances for the next Assembly — the fifth Assembly — we are minded to include in our determination provisions dealing with that matter. I expect that some liaison may be necessary with the Committee Clerk and the Finance Office in order to arrange the details of a suitable mechanism.

483. I understand that the Committee is also interested in our views on any other of the various matters raised in the issues paper provided to the Committee. We are content for the moment that, beyond the points that we have addressed today, we have nothing more useful to add. The panel has only limited resources and intends to make its main determination for the fifth Assembly in the near future. If, in so doing, any further issues arise, we would be happy to communicate them to the Committee.
484. Finally, we are in our own consultation mode. If the Committee has any views on the structure or content of the regime for salaries, allowances or pensions for the fifth Assembly, we would be very happy to hear of them and to discuss them today or in the future. For example, we note that your predecessor Committee recommended in a 2009 report that the Assembly Commission publish standard job descriptions and salary bands for all staff who are employed under the office cost allowance. The Committee may be pleased to note that our consultation proposes that Members' staff should have standardised job descriptions and salary bands. If the Committee has any other views, we would be very grateful to hear them.
485. That is all that I will say by way of an opening statement, Chairman, but I am interested to hear from you and from members how you think we may help.
486. **The Chairperson (Mr Spratt):** Thank you very much, Pat, for that briefing to the Committee. Members are interested.
487. You mentioned lobbyists. Do you have a definition that you can share with

- the Committee? Is the panel clear that the Assembly has in place robust mechanisms for investigating alleged breaches of the rules in relation to expenses? I would like to hear whether you think the actual procedures are robust enough. It is a different issue if they are breached. That is a matter for us, but, on the issue of the rules that are in place presently, does the panel have any views on that?
488. **Mr McCartan:** On the first issue that you mentioned, I read a recent definition of what a lobbyist is; I think that it was in connection with the House of Commons. It is someone who seeks to influence the body politic or the politicians of an elected body. I think that definition is fairly clear. Our concern is about whether it would be appropriate to have such a person on the payroll for an MLA when that payroll is intended to work for the MLA or his or her constituency office as distinct from being used for the body politic or to influence politics.
489. **The Chairperson (Mr Spratt):** What happens if it is being used for the good of constituents?
490. **Mr McCartan:** That may or may not be a lobbyist under the definition.
491. **The Chairperson (Mr Spratt):** We find lobbyists up here every day of the week. Most of us have probably had encounters this week, last week and the week before, but, in terms of paying, that is helpful.
492. The other issue is about the rules that are in place. What is your view on them?
493. **Mr McCartan:** The current issue for us is to ensure that the administration of the current determination is robust. In that respect, we meet frequently with the Director General and staff. We are responsible for the ongoing responsibility to ensure compliance with our determination. A large part of our work is to ensure that there are robust systems in place and that they are working. If we hear of something that gives us cause for concern, we will raise that matter with the Director General and/or his finance staff and others.
494. **The Chairperson (Mr Spratt):** In relation to the 'Spotlight' programme, some comment was made in relation to the Director General. I am not sure whether it was by you or Mr McQuillan. I think that the staff might have had some concerns about it.
495. **Mr McCartan:** Do you mean the staff of the Assembly?
496. **The Chairperson (Mr Spratt):** The Director General's office.
497. **Mr McCartan:** The Director General and I have had a number of robust discussions about such issues. I have reported them fully to the panel. It is healthy that we have such a relationship. I am not aware of any other concern that you might have.
498. **The Chairperson (Mr Spratt):** I specifically asked you in relation to the recent 'Spotlight' programme and the follow-up radio programmes that you and Mr McQuillan went on. I do not think that Dr Campbell did any public interviews. There certainly appeared to be criticism of the Director General and some of his staff. Has he raised that with you, and have you anything to say in response?
499. **Mr McCartan:** He has not raised that with us, as a panel, or with me individually. We are meeting him next week. We have met him several times since the 'Spotlight' programme that you refer to. The consequences of it were aired. I am not aware of him having raised such a concern. Indeed, all of us have expressed concern about staff who are often in the invidious position of trying to ensure that there is compliance with our determinations, and trying to deal with the number of claims and the way in which they receive claims. We have a great deal of sympathy for the situation that that places them in, particularly where there might be some sort of ambiguity around, for example, an associated person or some sort of prior disclosure not being made. That is the area that we are now addressing in our determination. The reason is to

- make it explicit, or as explicit as we possibly can, for the good of staff and Members.
500. **The Chairperson (Mr Spratt):** Issues certainly have not been raised with this Committee. You talked about the position that staff have been put in. I assume that those issues have been clarified by Members, if necessary. Is that the case?
501. **Mr McCartan:** I assume that the relationships are OK and that they are working effectively. I am not aware of any problem in that regard. It has not been brought to our attention by the Director General.
502. **The Chairperson (Mr Spratt):** So, there are no issues that you or other panel members can tell us about.
503. **Mr McCartan:** I do not think so.
504. **Mr Boylan:** Thank you very much for your presentation. You are very welcome. I have a couple of points of clarity in light of the programme. There seems to be a perception out there that maybe you have strayed into the role of the Committee in terms of the Register of Members' Interests. I would like some clarity on that to ensure that, whatever your role is going to be, it will not interfere with the Committee and that you will do it independently.
505. **Mr McCartan:** I am very grateful for you raising that because there is considerable scope for confusion over the role of the Committee and the role of the panel. We do not have an enforcement role, for example. The question is about whether there is confusion between the disclosure required for drawing down office cost expenses and your requirement for the full register of interests and maintaining that register of interests. Indeed, it is part of your current review to look at all that. We are very anxious not to stray into your area, but we are also very anxious that, when, for example, we look at ways of defining what is required in a prior disclosure, you might usefully take that on board and look at it in relation to your register of interests.
- There may be scope for a series of tight definitions of what an interest might be that should be, in our case, prior disclosed to drawing down moneys, and, in your case, might be something that a Member should register in any event in the public interest. When you see the consultative document that we will issue shortly on the area of prior disclosure, which has been prompted by the media blitz last November, you may well find it helpful in relation to reviewing your code of conduct.
506. **Mr Boylan:** That is fine, but, clearly, from a media point of view — you mentioned the media blitz — the perception was that we have to define what code is what and what responsibilities are what. There is a wee bit of a concern about that, but, clearly, you have answered the question. We need to ensure that that does not happen again. We certainly await your report in relation to that.
507. **Mr McCartan:** We have written to the Chairman —
508. **Mr Boylan:** I understand. I was only looking for clarity on that issue. Thank you.
509. On the other issue, you mentioned category 12 in relation to the Register of Members' Interests. The Chair spoke about lobbying earlier. Does that happen in any other legislature?
510. **Mr McCartan:** My understanding is that something in Westminster is very tight on it.
511. **Dr Henrietta Campbell (Independent Financial Review Panel):** Our understanding of Westminster is that they are very aware of the issue of lobbyists. It is quite important that we work together on what that might mean for the use of office expenditure. I do not see any conflict in us working together on this.
512. In general, when you talk about the register, I do not think that the panel sees any conflict between what we do and what you do. We are all in the business of openness and transparency. That is what you are about in the code

- and what we are about. It is about the use of public money. I do not see any conflict. The more that we talk to each other on these issues and understand what each other's roles are, there should not be an issue.
513. **Mr Boylan:** I respect that. We are in the middle of reviewing the code. We want to tighten it before we bring final code of conduct about. We do not want anything interfering in the *[Inaudible.]* You are right: we will certainly work together in terms of bringing that forward.
514. **Mr Douglas:** Thank you for your presentation. In your consultation document, you refer to Members having to register connected parties. You mentioned that earlier. Do you now accept that Members already have to register in the Register of Members' Interests family members who benefit directly or indirectly in any way from office cost expenditure?
515. **Mr McCartan:** I do. I accept that it could be better defined. We are attempting to do that in relation to prior disclosure. You may well find some advantage in looking at what we do and whether or not parts of it could be brought into your code. In the mind of the general public, that might be a very good thing to do.
516. **Mr Douglas:** On 12 December on 'The Stephen Nolan Show', you talked about Members' expenses and family members being employed by MLAs. You said to Nolan that, if someone was going to employ only one family member but had two, "I might employ your other one and, by the way, you might employ one of mine". Do you regret saying that? To me, that was a very flippant remark and is actually untrue.
517. **Mr McCartan:** I am sorry that you found it a flippant remark. It actually reflects some practice, where there is or may be reciprocation between one Member and another.
518. **Mr Douglas:** Surely, you are saying now that you accept that Members do register. Yet, you talk about —
519. **Mr McCartan:** Thank you for reminding me of the context of the remark. The interviewer raised the issue of the register of interests. I certainly mentioned disclosure in my reply. I am interested in disclosure for the drawdown of expenses, which is properly our approach. I have read the transcript, and that is what was said.
520. **Mr Douglas:** I heard the interview.
521. **Mr McCartan:** And I have no doubt that you had the impression, as given by the interviewer, that it was about the issue that is properly appropriate to your Committee. My response was properly appropriate to prior disclosure for office cost expenses.
522. **Mr Douglas:** Have you no regrets about saying it?
523. **Mr McCartan:** I think that it was a fair remark in the context.
524. **Mr Douglas:** To be honest, it came across as though you were, as they say on the Newtownards Road, doing a bit of showboating and feeding into the media hype. I accept things about the Assembly and know what is out there in the public, but those sorts of comments, which I certainly believe to be flippant, feed into that frenzy.
525. **Mr McCartan:** The direction of the interview was not in my control. I think that I dealt with it fairly and without compromising the situation, reflecting something of current practice.
526. **Mr Douglas:** If you were asked the same question again, is that the answer that you would give?
527. **Mr McCartan:** No. I would make it very clear that there is a difference between the register of interests, which is properly the business of this Committee, and what our interest relates to, which is solely office costs expenses. That is the difference that I would make.
528. **The Chairperson (Mr Spratt):** Just to clarify, Mr McCartan: you said that the question was about family members and that it could be better defined.

529. **Mr McCartan:** It might be a wider list.
530. **The Chairperson (Mr Spratt):** You made that statement. Maybe you will give us some insight into what that wider list might be.
531. **Mr McCartan:** I am happy to do that. There are two ways in which we will do it. We will do it very shortly in the consultative document, which we will issue regarding our next determination —
532. **The Chairperson (Mr Spratt):** I just want clarification. You said that it could be better defined. In other words, you do not think that it is properly defined as it stands at the moment on the register of interests. Is that right?
533. **Mr McCartan:** No, the register of interests is a matter for you. However, you might find it useful to look at some of the lists in the 2011 Act in relation to, for example, the disqualification from membership of this panel or the disqualification of being the Commissioner for Complaints. The list, in family terms, is quite extensive.
534. Our real concern is not just family, because we have made provision for the employment of one family member, as you know, and that is obviously under review for the next determination. Our concern is much more about connected parties or associated persons. In the immediate future, we are concentrating on clarifying what is meant by that. Such associated persons would be identified through prior disclosure. I merely suggest to you that the schedules to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 give you a fairly clear picture, to which we have added a number of categories, which we will consult on as soon as we have finalised our determination draft for consultation.
535. **The Chairperson (Mr Spratt):** Family members, who do a very good job in all or most cases, I am sure, feel that they are being criticised for doing a job professionally. They could apply for and get a job in any determination that you make.
536. **Mr McCartan:** Absolutely.
537. **The Chairperson (Mr Spratt):** What happens then?
538. **Mr McCartan:** We do not have a problem with family members; it is up to one per Member.
539. **The Chairperson (Mr Spratt):** That is the case at the minute, but what about your next determination?
540. **Mr McCartan:** It is up for public consultation. It is up to the public, and it is up to you to let us know your views. We are very anxious to hear them.
541. **The Chairperson (Mr Spratt):** You accept that we should not be derogatory toward people who are employed and are professional.
542. **Mr McCartan:** I entirely agree with that. I would be very concerned if anyone took anything from what we say as being derogatory to the families of Members.
543. **Mr Agnew:** Thank you for the presentation. We are talking about the employment of staff through the OCE. As part of your forthcoming open consultation, is there any intention that there be a requirement to employ staff through public and open competition?
544. **Mr McCartan:** That is certainly one of the issues in our current consultative document on support staff. The question is whether the merit principle should be used to determine future employment. That is in the consultative document, and we are very anxious to get people's views, particularly those of MLAs and MLAs' staff, on these issues. We are all familiar with competition for jobs funded from the public purse. We are concerned to ensure that the standard of terms and conditions, as well as pension provision and so on, for those jobs improves. It is about ensuring that you have professional staff and are encouraged in that direction, so that you are strongly supported in your work. That is what we are about. I referred to sample job descriptions, which may be found in our consultative document. We are very interested to hear from people

- about those issues. We have been approaching the merit principle and whether it should apply as a basis for future employment, but we are open to suggestions as to what should be done about jobs that are vacant. These are matters in which you as employers have a strong interest. There is tremendous help available free to everyone from the Labour Relations Agency and the Equality Commission with recruitment and other practices. In the future, I could envisage that, whatever the recruitment arrangements are, there will be strong advice and assistance for MLAs.
545. **Mr Agnew:** That is helpful. Once you have been elected as an MLA, all of a sudden you become an employer — in my case, for the first time. I have tried to do everything by the merit principle and open and fair competition within the limits of my knowledge and experience. You referred to existing staff and also potential salary bands and job descriptions. Would they apply to existing staff or just to new recruits?
546. **Mr McCartan:** I am looking over to Alan and Etta, because we have discussed those issues and are open to views. We are of a mind that there should be an assimilation exercise for those salary bands.
547. **Mr Alan McQuillan (Independent Financial Review Panel):** We have a consultation document out in what is a genuinely open consultation. The response so far, however, has not been encouraging. I think that we have had only had one response from an MLA and one response from an MLA's member of staff, in addition to one response from a third party. On such an important issue, affecting such a large group of staff and employers, we are not getting feedback.
548. In the consultation paper, our profile of the jobs that staff are doing and the salaries that they are paid shows absolutely no evidence of any structure. Let us take personal secretaries, researchers or support staff in Members' offices. They are paid right from the bottom of the pay scale, at minimum wage level, up to £13 or £14 an hour. There appears to be no correlation between the job that the person does and what they are paid. It is radically different. We have suggested that there should be three bands of staff and have tried to benchmark their salaries against the public and private sectors, based on their skills and responsibilities. We have put the proposed salary bands for those staff out to consultation. Potentially, there then needs to be an exercise. We will need feedback on what Members are going to do to assimilate staff into those bands.
549. The consultation document also highlights the significant underpayment, in our view, of a number of support staff, and I take on board the Chair's comments about the skills of staff. Considering their skill profile, they are not well paid for the jobs that they do. In this exercise, we have recommended that the minimum wage for staff should be set at the living wage, meaning that significant numbers would receive a pay rise.
550. These are several of the issues. The consultation paper highlights, however, a number of outliers in the existing pay scales. A significant number of staff, for example, are paid at very much above what we consider the appropriate level for the responsibilities of those posts. We have a couple of staff who are paid more per hour than the MLA who employs them. We find that difficult to understand, and we would welcome any feedback on that. This raises another question: how do you assimilate those staff into this mechanism, whatever it eventually is? Again, we are open to suggestions.
551. **Mr Agnew:** I certainly welcome the move towards sample job descriptions and pay bands. As someone who is still in my first term, that would have been helpful when I was first elected.
552. **Mr McCartan:** I think that Dr Campbell wanted a word as well.
553. **Dr Campbell:** We are interested in making sure that you have the help that

you need to do your job and also, as Alan said, that staff who are working for you are treated fairly. We feel a responsibility for that. We have seen examples of really good recruitment practice by some MLAs. We have to promote that good practice in any way we can and let everyone know that some people are acting in a very equitable and fair way, in line with all the legislation. That way, we make sure that you see what good practice looks like.

554. **Mr Agnew:** I have one final point, Chair. In some of the correspondence we have had to date and in some of the questions today, the point has been made about clarifying our role. Of course we want your input into our consultation, but we think that it is important that the two roles are distinct. Equally, we need to respect your role. You are an independent body. Whilst we should ask you questions and have an input into your consultation, we are a peer body, but you are independent of MLAs and parties, and it is important that our Committee respects your role as much as we ask you to respect ours.
555. **Mr McCartan:** We were going to suggest some way to liaise between us so that we avoid any future confusion, and you can be apprised of the issues that we are considering. We meet the Director General and his staff regularly, and it is for the Director General to determine whether you could be represented at such meetings through your Committee Clerk so that you are fully apprised of what is going on, or you could find another liaison mechanism. We would be quite happy with that. You will be aware that, just as you do not want your role to be compromised in any way, we are anxious not to compromise the independence of the panel. We are also discussing resources for the panel with the Director General, because we have had three secretaries in the past six months, which I think accounts for some of the problems with correspondence. I am not attributing any blame, because there are specific reasons for that.
556. In fact, between now and next year, when our full determination comes

into operation for the next Assembly, a considerable amount of drafting and research work will need to be done as well as responses to the consultative documents. We are, for example, preparing a consultative document on MLAs' salaries and allowances for Ministers, which should be with everyone, including you, shortly. You can imagine that that is fairly substantial work that requires substantial research and so on. Currently, three documents are out to consultation. Another short consultation is about to be issued, and we then have to address the question of pay. We also have all the incidental allowances that go to making up office cost expenses. Those are matters for consultation. We then have to make up our minds and write the determination and/or the rules for it.

557. There is a huge amount of work to do. Our determinations effectively have the power of legislation and are supported by that, so we must be very careful and, therefore, employ staff. We will discuss that issue with the Director General next week, because we are inadequately resourced and part-time. One or two days a week has been the norm up to now. We cannot go on like that. Where all this goes, of course, is ultimately a matter for legislation as to whether you go into the Independent Parliamentary Standards Authority (IPSA) role. It is a matter for you if you wish to extend the independence, the independent secretariat and so on of how these matters in total are administered and governed. It is entirely a matter for the legislature.
558. **The Chairperson (Mr Spratt):** I think that we are hitting on a budget matter.
559. **Mr McCartan:** Everything is hitting a budget these days,
560. **The Chairperson (Mr Spratt):** I think that you need to talk to the Director General about that, because, if you were to talk to staff around here, you will find that they are running between Committees as well, given the cutbacks under austerity over this past number of months. I am afraid that we do not have

- any magic wand for the budget, Pat. You make your case, and, if we hear the case, we might be supportive.
561. **Mr F McCann:** I do not know whether that was a cry of poverty. I am sorry that I am late. I was at a meeting of the Committee for Employment and Learning that overran. On the whole question of registered family members, associated or connected party is also mentioned.
562. **Mr McCartan:** We are going to call it “associated persons”.
563. **Mr F McCann:** What is the definition of that?
564. **Mr McCartan:** I read something on it earlier; it is fairly wide. Ultimately, it will be in your hands as to whether a person is an associated person. If they are a member of a political party that you are a member of, or if they are beneficiaries of the office cost expenses in any way, it is a matter for declaration. You would expect us to ask you to make a prior disclosure of such an interest. That is what it will require. It does not do anything other than require you to make such a statement as to what the connection is, if any. If there is a nil connection, you say that.
565. **Mr F McCann:** It is difficult for me to get my head round it. I can understand the family connection and the need for people to register that, but it is about how wide it goes. It could prohibit people seeking to take up that type of employment, because they will be mentioned in registers.
566. **Mr McCartan:** It is not employment so much as beneficiaries of claims for moneys for rents, for example. If the person who owns the body that is renting a premises to an MLA is an associated person — if there is a connection — the MLA should be required to declare that.
567. **Ms Lo:** I have a couple of questions for you. I want to go back to the salary band. In my eight years as an MLA, I have never recruited anybody without going through advertising. That is the way to go. We should set an example that it is fair employment for everyone. All my staff have been wonderful. All of them are in their positions on merit.
568. **The Chairperson (Mr Spratt):** I think that all of us would say that, Anna.
569. **Ms Lo:** Yes, I am sure; I quite agree. A while ago, I discussed the consultation that you sent to us with my staff, and I will respond to you before the deadline. We were astounded that the salary that you set for constituency office staff is so low. It is almost an AO grade – about £18,000. A lot of MLAs work in Parliament Buildings four days a week. The constituency office is mainly staffed by people who are experts in giving advice and dealing with quite complex social issues; they are almost social workers. To set their salary at an AO grade – £18,000, from recollection – is very, very low. My staff are way above that level. I think that you need to think about that.
570. **Mr McCartan:** I think that we have thought about that, but that will be aided by any submission you might make. That would inform us as to what sort of assimilation exercise we might be involved in. At the outset, I think that the Chairman said that I should not refer to individual Members, so I will not do so, but I am aware of practices, which Etta said earlier are best practice, in MLAs’ offices. We can certainly expect to build on those.
571. **Ms Lo:** I pitched the advice worker staff level with the National Joint Council (NJC). That is the level I set myself when I first recruited.
572. **Mr McCartan:** We would be very interested to receive that in a submission. Is it NJC in local government or in the health and social care system?
573. **Ms Lo:** No. I came from the voluntary sector, so I get it from the likes of the Northern Ireland Council for Voluntary Action (NICVA).
574. **Mr McCartan:** So it is local government.
575. **Ms Lo:** Yes.

576. **Mr Alan McQuillan:** In drawing up those bands, we got researchers to look at comparable bands in government in Northern Ireland, so we looked at the responsibility levels in the job descriptions and tried to map those across. That is where the salary bands came from. If you think that some of that modelling is wrong, it would be very helpful for us to understand what benchmarks you are using to set your salaries, because we can then look at that and find that there are other ways to do it.
577. **Ms Lo:** Advice workers in the voluntary sector are well above £18,000 to start. You would not get anybody who would go into a job as an advice worker at £18,000.
578. **Mr McCartan:** I chaired a health trust that employed 22,000 people, so I have a fair idea of staff in the statutory side and what is a fair and reasonable salary. I am very interested in your views, and we will pay them great attention. You should look at the annual survey of hours and earnings (ASHE), which shows average earnings and salaries in Northern Ireland. I make that point because you should think about whether you should be constrained by Northern Ireland averages in the private and public sectors or whether it should be some other link like the NJC or whatever, which is generally a nationally laid down set of scales. I say that because the current average earnings in Northern Ireland for a full-time worker are £24,020, which is exactly half the salary of an MLA. You can see that, even when we get to MLAs' salaries, which are set out in the consultative document, whether that is the right ratio. Should people in Northern Ireland be paying their MLAs twice the average earnings? I think that that might be easily justified on the basis of the sort of incentive that we need for people to give up careers and go into politics and so on.
579. If you look at others by category, you will see the Northern Ireland averages jumping out at you. It is most important — we have put it in our support staff document — that staff are not paid the minimum wage; the living wage is the backdrop. We will not allow it to drop below that.
580. **Ms Lo:** I agree with you. Some politicians think that a lot of young people would like to apply for jobs to work for MLAs as their starting point coming out of university. That is a bit of exploitation. There are plenty of people who would not want that sort of job as a start to their career. I do not think that it is right that we pay them so little, thinking that there are plenty of people who would want the job.
581. I am not sure, Pat, whether you are aware that, at one stage, I was at the receiving end of what you might call a racist slur.
582. **The Chairperson (Mr Spratt):** Sorry, Anna, I am going to have to stop you there, because you are going into areas that are not what we are here to talk about. It is the Standards and Privileges Committee —
583. **Ms Lo:** No, I am coming to it.
584. **The Chairperson (Mr Spratt):** I gave you quite a bit of leeway with the first issue.
585. **Ms Lo:** If I may come to it, it relates to our Committee and our review of the code of conduct. The Committee agreed that staff should also adhere to a code of conduct. In your determination, would you agree to that? I said that I received this racist slur, and I accepted the apology from the MLA. He did not do it; it was a member of staff —
586. **The Chairperson (Mr Spratt):** Sorry, I am going to have to stop you there, Anna. Get to your question and ask the question that you want to ask.
587. **Ms Lo:** I just wanted to finish my sentence.
588. **Mr McCartan:** I understand the question that is being asked, Chairman. It is about whether there should be a code of ethics or a code of conduct for support staff.
589. **Ms Lo:** A code of conduct for our support staff.

590. **Mr McCartan:** That is an interesting point. I do not know why, but I thought that there was something there already, but if there is not, clearly we should —
591. **Ms Lo:** Would you consider putting it in your determination?
592. **Mr McCartan:** Clearly, we could consider such a matter, and we are happy if it is raised with us. Now that you have mentioned it, I think that we will have a look at it. We all have a vested interest in ensuring that proper codes of conduct apply throughout our working life.
593. **Mr Douglas:** Can I take you back to the connected persons? Is that what you said?
594. **Mr McCartan:** Yes, and I think that we are talking about associated persons now. Persons can include companies and organisations.
595. **Mr Douglas:** It is a different question. For our code of conduct and the issue of connections, have you looked at other jurisdictions? Have you looked at Wales, Scotland, Westminster and, indeed, the European Parliament? If you have, how does our code of conduct measure up?
596. **Mr McCartan:** I wish that I could give you the measure in a league table, but we have not gone into it in that detail. However, we are aware of Wales, Scotland and Westminster and, indeed, our friends in the Oireachtas and the issues with the code of conduct. Whilst we are not responsible for the code of conduct, we could, nonetheless, express some views or determination that might assist the code of conduct. That is why it is important for us to liaise in the future. With the best will in the world, I do not see you coming out with a brand new code of conduct much before the next determination, but I expect that that might be a watershed date. We would be only too glad to feed in or assist. We will not have a situation, I hope, in which our determination is somehow in contrast to or in conflict with your code of conduct.
597. **The Chairperson (Mr Spratt):** Do any other members wish to speak?
598. Pat, Dr Campbell and Alan McQuillan, thank you all very much indeed. Pat, if you have an issue that you want to talk to us about and if it is within our bailiwick, we are happy for you to come along to the Committee at any time.
599. **Mr McCartan:** Thank you for that. We will respect that greatly. I will ensure that we keep in touch with your Committee on our matters as we progress. Similarly, we would be happy to hear from you informally or formally to address certain issues.
600. **The Chairperson (Mr Spratt):** Thank you very much in the meantime.



Northern Ireland
Assembly

Appendix 3

Issues Paper and Written Submissions

Committee on Standards and Privileges

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

Issues Paper

March 2014

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Introduction

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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 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.

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

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 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.

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.*

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

5 *Ibid.*, p.33.

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, 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 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**

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

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*.

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

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.**

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.

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
- 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.

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

¹³ *Ibid.*, p. 7.

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 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:

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

“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.

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

15 *Ibid.*, p.8.

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

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
 - 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.

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

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 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*

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).

*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 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 PPERA 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 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;
- 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:

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

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

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**.

List of Written Submissions

Northern Ireland Assembly Commissioner for Standards
Assembly Ombudsman for Northern Ireland
Director of the Centre for Ethics – Queen’s University Belfast
Attorney General for Northern Ireland
The Northern Ireland Government Affairs Group
The Electoral Commission
Parliamentary Commissioner for Standards - House of Commons
Committee on Standards - House of Commons
House of Lords Commissioner for Standards
Northern Ireland Local Government Association
The Chartered Institute of Public Finance and Accountancy
Commissioner for Standards for the National Assembly of Wales
Ulster Unionist Party
The Speaker of the Northern Ireland Assembly
Committee on Standards in Public Life
Equality Commission for Northern Ireland
Community Relations Council
Dr John Glenn
The Association of Professional Political Consultants
The Northern Ireland Assembly Commission
Sinn Féin
Independent Financial Review Panel

16 April 2014 - Northern Ireland Assembly

Commissioner for Standards

REVIEW OF MEMBERS' CODE OF CONDUCT

SUBMISSION BY

NORTHERN IRELAND ASSEMBLY COMMISSIONER FOR STANDARDS

1. I very much welcome the general approach to the revised Code set out in the issues paper. I believe strongly that the public are entitled to a clear statement of the minimum ethical standards required of their elected representatives: equally Members are entitled to clarity. Some provisions of the current Code are, as pointed out in the issues paper, open to interpretation and so fail to provide the clarity required.
2. I am grateful to the Committee for the opportunity afforded to me prior to this consultation process to contribute informally to its work on the review. In this submission I set out my views only on those issues that I believe would benefit from further consideration by the Committee.

Purpose of the Code of Conduct

3. I believe that the proposed text on the purpose of the Code is too narrow and may give the impression that the Code is there only to assist Members. The Code should also assist the public by informing them of the minimum standards of ethics required of Members. A clear statement of these standards may assist in reducing the number of inadmissible complaints received.
4. I believe that there would be merit in making clear in this part of the Code that the standards set out are the minimum to which Members must perform their duties: It is to be hoped that Members will generally work at a level well above that set out in the Code.

To that end the Committee may wish to consider whether the first two lines of the text on the purpose ('the purpose... at large by') might more appropriately be replaced by text along the following lines –

'The purpose of this Code of Conduct is to set out for the public and for Members the minimum ethical standards required of Members when discharging their obligations to the Assembly, their constituents and to the public at large by'

Acting in the Capacity as a Member

5. I believe that a sound argument can be advanced for the Code applying to the acts or omissions of Members in circumstances in which it could reasonably be presumed that they were acting in their capacity as a Member. Without such a provision there is a real risk of complaints not being upheld when the clear and reasonable perception of the public at large is that the Member was acting in that capacity (even though in fact that was not so). The rejection of such complaints could tend to undermine public confidence in the standards regime and even in the Assembly itself.
6. In most cases it will, of course, be plain whether the Member was or was not acting as a Member or in some other capacity. In other cases, for example where the Member makes a public speech, gives a radio or TV interview or uses social media, the position will often be less clear. I believe it is reasonable to expect Members to be cognisant of this issue and, in such instances to make clear the capacity in which they are acting: some Members already so do.
7. I believe that the Code should apply not only to the acts or omissions of Members whilst acting in their capacity as a Member but also to their acts or omissions when it can be presumed reasonably that they were acting in that capacity. The decision on whether or not such a presumption is reasonable

would be made on the basis of all the available evidence including any clarification that had, or had not, been given by the Member.

8. There will be some occasions on which it is unclear whether an individual is acting as a Member or in some other public capacity such as being a member of the Policing Board. The presumption I have advocated would address the problem that arises in such situations. But if the Committee is not minded to include such a presumption then I suggest that the new scope provision makes clear that the Code applies to acts or omissions whilst acting, in part at least, in his or her capacity as a Member.

Conduct in Committee and in the Chamber

9. Since the start of the consultation process a further three complaints have been received about the conduct of Members in a Committee. In addition two further enquiries about how to make a complaint about such conduct have been received. One of the complaints received alleged a breach of the Code by a Committee Chair.
10. Whilst I accept entirely that members of Committees should not feel inhibited from subjecting witnesses to challenging questions and that Members should not be required to modify their behaviour in Committee in a way that undermines the democratic process, I consider that the Code should make clear that where there is prima facie evidence that the conduct of a Member in Committee has fallen below the ethical standards set out in the Code that Member will, if a complaint is made, be subject to investigation and the risk of sanction. The need for challenging and robust questioning should never be an excuse for gratuitously offensive conduct or deliberately untruthful statements.

Duty to Uphold the Law

11. I agree that the current duty to uphold the law should be replaced by a rule but consider that the proposal made at paragraph 56 of the issues paper requires further consideration.
12. That proposal is based on the concept of 'committing an offence'. That is imprecise and could result in the Commissioner having to conduct a full criminal investigation in a case where there had been no criminal proceedings or no conviction either because of the differing standards of proof or because the PPS had decided that criminal proceedings were not in the public interest. The PPS might have decided not to institute proceedings on the basis that the evidence did not provide a realistic prospect of proof to the criminal standard of proof beyond reasonable doubt: but for Code of Conduct investigations the standard is the lower one of proof on the balance of probabilities.
13. This potential difficulty could be avoided if the rule was based not on committing an offence but on being convicted of an offence. It would be necessary to cover also those situations where the PPS had directed a diversionary disposal rather than prosecution.
14. I would ask the Committee to consider formulating the new rule to cover conduct which resulted in conviction by a criminal court or the acceptance of a formal caution or similar disposal.

Duty to Co-operate with Investigations

15. I consider that both the existing provisions remain necessary and welcome the new third provision on disclosure of information.
16. Whilst the duty to co-operate is to some extent replicated by the offence provisions of the 2011 Act it is important to note that the offence provisions

apply only where the Commissioner has issued a notice under section 28(3) requiring either attendance for interview or the production of documents.

17. In most investigations witnesses attend and produce documents without the need for a requirement under that section. Where that is done no offence would be committed if the Member failed to attend or produce documents. The current Code provisions on failure to co-operate provide a sanction in such circumstances.

Bringing the Assembly into Disrepute

18. Whilst I understand the arguments in favour of a 'catch all' provision of the kind proposed I cannot support it. It would, in many cases, introduce the very uncertainty that the revision of the Code is intended to remove. Particularly in Northern Ireland, conduct which some would regard as undoubtedly bringing the Assembly into disrepute might well be applauded by many others. This difficulty could have arisen in relation to a number of complaints recently before the Committee. Had bringing the Assembly into disrepute been an issue then there can be little doubt that there would have been conflicting entirely credible evidence from the community both that the actions had brought disrepute on the Assembly and that it had not. Taking a decision on such conflicting credible evidence would place the Commissioner, and ultimately the Committee, in an invidious position. Whatever decision was taken would not be accepted by a significant part of our community and might tend to bring the standards regime and even the Assembly itself into disrepute.
19. Furthermore, any such 'catch all' provision would most likely be used to purportedly found spurious complaints that breached no specific provision of the Code.
20. Accordingly, I recommend that rather than including a 'catch all' provision the Committee attempts to identify the conduct, not covered by other proposed

rules, that would be caught by the 'catch all' provision. If any such conduct is identified it should be covered by a specific rule. If no such conduct can be identified then the justification for a 'catch all' provision is greatly diminished.

The Guide

21. I think it important that the new Code does not include any part titled 'the Guide...'. Guides are not mandatory and so following them would not constitute a breach of the Code.
22. As noted in the issues paper there may be room for simplifying the current detailed provisions of the Guide. Once that is done these provisions could either be included as individual rules or put in a schedule to the Code and picked up by a new rule along the lines –

'Members shall comply with the provisions on the registration of interests at Schedule 1 to this Code.'

Language and Formatting

23. Whatever the decisions taken on the matters identified in the issues paper, it is important that adequate consideration is given to the text and formatting of the new Code. The language used should be clear with verbiage that adds nothing to the meaning excluded. That is of particular importance in relation to the rules. The Committee may wish to bear in mind that the language used must be clear not only to Members but to the general public. To that end consideration could perhaps be given to seeking the views of the Plain English Campaign on the final draft of the proposed Code.

24. The provisions of the revised Code should be set out in numbered paragraphs for ease of reference.

Douglas Bain CBE TD Advocate
Northern Ireland Assembly Commissioner for Standards
16 April 2014

30 April 2014 - Assembly Ombudsman for
Northern Ireland

**ASSEMBLY CODE OF CONDUCT AND
GUIDE TO THE RULES RELATING TO
THE CONDUCT OF MEMBERS**

**Briefing Note on Issues from
Assembly Ombudsman for Northern
Ireland
Dr Tom Frawley CBE**

April 2014

1. INTRODUCTION

- 1.1 I welcome the opportunity to respond to the Committee on Standards and Privileges (the Committee) review of the Assembly's Code of Conduct and Guide to Members. I have now had an opportunity to review the issues paper forwarded to me by the Clerk of Standards and to consider the following documents:
- The Committee on Standards in Public Life: Review of best practice in promoting good behaviour in public life ('Standards Matter'); and
 - The GRECO Fourth Round Evaluation Report on the UK: (in particular the section of that report on members of parliament).
- 1.2 The Committee has established a detailed and complete terms of reference to inform the review and I consider that those terms are sufficiently comprehensive to provide a meaningful and robust framework within which to establish a revised Code and Guide for Members.
- 1.3 This paper highlights only those headline issues about which I would intend to comment when I appear before the Committee at the evidence session on Wednesday 30 April 2014. It is also my intention on that occasion to take the opportunity to provide greater detail on these views which I intend to cover in my written response to the Committee's consultation paper, the deadline of which is 16 May 2014. I acknowledge at the outset that there are two schools of thought on the approach that should be adopted to the development of codes of conduct. The approach can either be based on aspirational principles or be rule based. It is my view however that Codes, if they are to be effective, require to be based on both approaches.
- 1.4 There is a one further point I would wish to highlight to the Committee at the outset of my comments. The point is that the current consultation process on the Assembly Code is being undertaken at the same time as the Code of Conduct for Councillors being undertaken by the DOE which is scheduled to close on 30 April. The latter Code of Conduct is significantly based on the current Assembly Code which in turn is informed by the seven Nolan Principles with the addition of the principles of equality, promoting good relations, respect and good working relationships. I would therefore urge the Committee to take into account this 'parallel' code when you are considering the review of the MLA Code so as to ensure as far as possible a consistent approach between both Codes is developed.

2. PURPOSE OF THE ASSEMBLY CODE OF CONDUCT

- 2.1 The current Code of Conduct identifies its purpose as '*to assist members in the discharge of their obligations*' to the Assembly, their constituents and the public at large. I accept that a Code of Conduct should have a purpose which extends beyond 'assistance' or 'guidance' to Members. Ethical Codes comprise rules which must be complied with in order to meet the high ethical standards and accountability mechanisms required of public representatives. I welcome therefore the proposed revised definition of the purpose of the code which describes its purpose as 'establishing the principles of conduct 'expected' of all Members'. I would go further and suggest that the word 'expected' should be replaced by 'required' so that it is clear that the standards outlined in the revised Code must be complied with by Members and where appropriate their staff.
- 2.2 The revised Code will have a number of potential audiences which include Members, their constituents, the Assembly and the Northern Ireland citizen. It may be useful to consider, once a revised Code has been agreed how to ensure that the language used in communicating the Code is clear, unambiguous and accessible, so that all of the relevant audiences can comprehend its content. I have no doubt that the Committee will endeavour to achieve this objective.

3. SCOPE OF THE CODE

- 3.1 It is important to clarify the conduct and actions which the revised Code will cover and importantly those actions or areas which will be outside the scope of the revised Code. This clarity is essential to enable members to regulate their conduct and behaviours to ensure that the provisions of the Code are met.

Acting in the Capacity as a Member

- 3.2 I note the Committee's proposal to endeavour as far as possible to remove subjectivity from judgment of a Members conduct. In particular, the Committee has indicated it wishes to give careful consideration to the issue as to whether the Code should only apply to MLAs when it reasonably could have been presumed that a member was acting in his/her capacity as a Member. My experience in investigating complaints under the current Code would suggest that there can be a number of scenarios when making such a delineation between public and private conduct can be particularly difficult. The Committee may wish to consider the test of 'reasonable bystander' which would involve the Committee asking the hypothetical question 'what would the perception of a member of the public be of this behaviour' and would the behaviour be consistent with the behaviour that would expected of someone elected to a

position of trust. I do appreciate careful judgment is needed when investigating such complaints and that these fine judgements can be very challenging. However I would suggest if public trust and confidence in the work of the Assembly is to be established and maintained, that it is essential the Committee accepts such challenges on behalf of the Assembly and therefore clearly communicates this expectation in the revised Code.

Members' Private Lives

- 3.3 I fully accept that the privacy of a member and his/her family should be respected. In relation to this important consideration, I would commend to the Committee the views of the CSPL in their publication 'Standards Matters' which suggests that any intrusion into a Member's private life must have a clear *public interest* to justify it and also should be *proportionate* to the circumstances detailed in the complaint made against the Member.
- 3.4 The dichotomy between private and public life is a difficult one but a member in undertaking his/her role as an elected representative must anticipate some degree of public scrutiny in areas of their private life. It is important therefore that the highest standards of conduct are required and that any proven illegal or criminal activity on the part of a Member should result in an appropriate sanction such as removal. In this regard, I agree with the approach outlined by the Committee at paragraph 25 of the Issues Paper.

Free Speech

- 3.5 The right to freedom of speech for political office holders under article 10 of the European Convention of Human Rights (ECHR) is recognised and supported by current jurisprudence on this issue. In particular, I am cognisant of the recent decision of the High Court in *Calver*¹, a judgment relating to the Welsh Local Government Code. The Committee will be aware of my decision in a previous complaint involving a complaint about Mrs Iris Robinson's comments which were based on her firmly held religious beliefs. I fully accept and endorse the Committee's proposals that the scope of the revised Code should be clarified to explicitly provide that it does not extend to limiting the expression of *lawful* comment by Members.

Conduct in Committees and Chamber

- 3.6 It is important that members should not feel inhibited in questioning witnesses in a robust manner in Committee Meetings. However this should be balanced against the need to respect individuals and promote good relations in all aspects of Members conducts, including their behaviour at Committee meetings. The balance between challenging questioning and insulting or disrespectful conduct is a matter for both the Chair of an individual Committee,

¹ R(on application of Calver) v Adjudication Panel for Wales [2012] EWHC 1172(Admin)

the Standards Commissioner and Standards Committee to regulate through the effective application of the Code.

4. PRINCIPLES OF CONDUCT

- 4.1 The CSPL review of best practice in promoting good behaviour in public life outlines in detail the requirements for an effective Code of Conduct. It may be helpful for the Committee to note that it is common for ethical standards to be based on principles and values and also to be codified in personalised rules for the individual to follow. I do not intend to repeat these specifications as they are outlined in detail in paragraph 44 of the Committee's issues paper. A key element of the CSPL review however is its approach to the principles underpinning a Code of Conduct. I endorse the CSPL view that behaviour which complies with the basic 'rules' of a Code of Ethics may still result in a 'breach' of the underlying principles. In my view, the conduct a Member's peers or the public will expect of an individual MLA may often go beyond mere rules. I consider that the principles and codified rules of conduct should be complementary and both should be reflected in the revised Code of Conduct.
- 4.2 Therefore, I endorse the Committee's view that a revised Code of Conduct should provide for both principles and rules. However, I depart from the Committee's stance that only a breach of the rules can provide the basis of a complaint to the Assembly Commissioner. Any complaint that is based solely on the allegation that there is a breach of one of the underpinning principles should be supported by evidence of the alleged 'offending' conduct before it can be considered. I note the Committee's belief that in order for principles to be meaningful, there must be rules which explain how the principles apply in certain circumstances. However, it is a difficult, if not almost impossible, task to create rules that capture every circumstance. Ethical Codes must, by their nature, be based on standards and values which 'raise the bar' in terms of behaviour and therefore should clearly also have an 'aspirational' element. It is important, in my view, for Members of a legislature such as the Assembly to be judged against the highest ethical standards. I am mindful also in making this point that that new circumstances and situations can continually arise which raise new issues for consideration against established ethical principles and therefore a level of flexibility is essential if the revised Code is to remain current and relevant for a reasonable period.

Respect and Good Working Relationships

- 4.3 The Committee has agreed that the principles of respect and good working relationships should be redrafted as a single principle. I am concerned that any newly drafted 'rule' properly reflects the need to treat all persons with respect and courtesy so that Members do not engage in rude or offensive behaviour

that can have the potential to undermine good working relationships in the Assembly with other Members and staff. In addressing such issues, I consider context is particularly important. I consider a robust political exchange in the context of deeply felt and argued political debate must be facilitated, whereas offensive or personal remarks to Assembly staff at any time should not be accepted as proper conduct.

Equality and Good Working Relationships

- 4.4 I note the Committee's consideration that the Code of Conduct should not impose additional duties over and above those laid down in statute, particularly in relation to equality and promoting good relations. I would urge caution on the part of the Committee in relation to any approach which simply restates the basic tenet that a Member must be expected to uphold the law. While much has been achieved in the establishment of an infrastructure to support the development of high standards of behaviour, both the GRECO report and the CSPL review record that, despite the establishment of rules/Codes of Conduct, Standards Committees and Independent Commissions, 'public trust in the integrity of parliamentarians remains low'². There is a need to demand more of our elected representatives by way of standards of behaviour than simply 'upholding' the law and/or avoiding criminal activity.

Unauthorised Disclosure of Confidential Information

- 4.5 I wish to commend the Committee's firm stance in relation to the inclusion in a revised Code of Conduct of an explicit rule prohibiting the unauthorised disclosure of Assembly information. I have already expressed my strong views on the damage that 'leaked' information can cause to working relationships in the Assembly between Members and staff in my report on the Unauthorised Disclosure of Information in my investigation of the draft PAC report into governance issues in NI Water (2012).

Confidentiality of Investigations

- 4.6 As highlighted in my legacy report to the Committee in 2012, the disclosure of draft Commissioner investigation reports was a matter of concern for me during my time as Interim Commissioner and I welcome the Committee's position on the need for Members to maintain the confidentiality of an Assembly Commissioner's investigation.

The Register of Interests

- 4.7 I note the Committee's intention to ensure that the twelve categories of registrable interest are to be reviewed and streamlined. This is an area which needs careful drafting to ensure that the Code and Guidance is clear. I accept

² GRECO Report at paragraph 3

that the current Code is somewhat ambiguous. In particular the question as to what is a 'financial' interest needs to be defined explicitly so that Members and the public at large are clear as to when a Member must register or declare an interest. I do consider that the 'when in doubt register' approach should be retained in a revised Code so as to ensure maximum openness and transparency.

- 4.8 Further, in relation to financial thresholds, I concur with the GRECO recommendations that consideration be given to lowering financial thresholds.

5. CONCLUSION

- 5.1 Since completing my term as Interim Commissioner, public dismay at the inappropriate behaviour of the press has been the subject of an extensive inquiry by Lord Justice Leveson who has warned of the importance of independent and robust regulation of standards of behaviour. High ethical behaviours he emphasised in his report should be required of all in leadership positions and that there is no room for complacency. This important concern is also raised in the Francis Report into serious clinical and care failings at Mid Staffordshire Hospital. The Committee faces a challenging task in reviewing the Code and I am pleased to note the comprehensive nature of the review. In concluding my comments, I would remind the Committee of a quote from the CSPL publication, *'High standards of behaviour need to be understood as a matter of personal responsibility, embedded in organisational processes and actively and consistently demonstrated, especially by those in leadership positions'*. Importantly, public trust and confidence, once lost, is difficult to re-establish and our hard earned reputations can be lost so easily and then are extremely difficult if not impossible to recover.

30 April 2014 - Tom Walker, Director of the Centre for Ethics at Queen's University Belfast

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

1. Scope of the Code of Conduct: The scope of the current Code only covers conduct of Members with respect to anything that Members do in their capacity as elected Members of the Assembly. Paragraphs 14 to 16 raise the question of whether this should be expanded to include anything that could reasonably be presumed to have been done in the Members capacity as an MLA. This would make a difference to what is covered by the Code because there are things people might do that are not in their capacity as a Member but which might reasonably be thought to be being done in that capacity. I think that there are good reasons to maintain the restriction as it currently stands. Fairness requires that if enforceable rules are to be applied then the people to whom they apply need to know what is required of them. This would be lost if the Code applied to actions that could reasonably be thought to be being done in a person's capacity as a Member because what someone could reasonably think is necessarily a matter of judgment. If a person is not acting in their capacity as a Member, and knows this, then it is unclear why they should be bound by the Code just because someone else thinks (wrongly) that they are acting in that capacity.

The issue here looks as if it is that there is some uncertainty about what counts as acting in the capacity of a Member. Rather than broaden the scope of the Code I think a better way to deal with this, if it is needed, would be to provide guidance about what is meant by the phrase 'acting in the capacity of a Member' so that people are clearer about when the Code applies and when it does not.

2. Bringing the Assembly into Disrepute: The question is raised in paragraph 99 whether a rule that says that Members shall never undertake any action which would bring the Assembly into disrepute should be included as a rule. I think that there is a possibility that any such general rule could be used to try to bring complaints against a Members private life. As noted in paragraph 22 there are things that a person might do in their private lives that would tend to bring the Assembly into disrepute. If the scope of the Code is designed to exclude these kinds of case, which I agree that it should, then I think that the wording of the rule should reflect that. This would be in line with the proposed rule relating to upholding the law (in paragraph 58) and with other legislatures that have a general rule of this type. For example the House of Commons Code of Conduct has a rule (paragraph 16) that says Members shall never undertake any action that would cause significant damage to the reputation and integrity of the House or its Members, but the following paragraph restricts cases in which matters falling under this rule will be investigated to exclude those relating only to a Member's conduct in their private lives.

I think that something similar will be the case with lawful language. There could be complaints that a person has brought the Assembly into disrepute by the use of certain language even where it is not unlawful to use that

language. Given the suggestion that the scope of the Code not extend to the expression of lawful comments, which I agree with, it would be useful to be clear that this kind of complaint would also fall outside the scope of the Code.

This combination significantly restricts the kinds of thing that could count as bringing the Assembly into disrepute and which would be covered by the Code.

3. Staff conduct: There may be reasons to think that Members should be held responsible for the conduct of their staff but I do not think that this Code is the right place to do that. This is because it is hard to see how the behaviour of staff falls under the scope of the Code (which is limited to what Members do in their capacity as Members), and it is hard to see how the scope could be extended to cover this without making it a Code for staff members.

This does not mean that there is not scope for rules that relate to staff members in the Code, but I think these rules would have to be rules that apply to MLAs not to the staff members themselves. These could include rules that prohibit Members allowing their staff to put private interest above the public interest when carrying out official duties for the Member (as suggested in paragraph 109), and might also include rules about what Members should do if they discover staff have been putting private interests over the public interest. I think it would be beneficial to include rules of this type in the Code. But, restricting rules in this way would prevent Members being held responsible under the Code for the actions of their staff where they were unaware of what is being done.

2 May 2014 - Attorney General for Northern Ireland



Attorney General
for Northern Ireland

Paul Gill
Clerk of Standards
Room 254
Parliament Buildings
Stormont
Belfast
BT4 3XX

Our Ref: AGNI/14/045

Your Ref:

Date: 30 April 2014

Dear Paul

Thank you for sending the Attorney General a copy of the Committee for Standards and Privileges issues paper - *Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members*. You had asked for the Attorney's views on the issues raised within the paper and, in particular, paragraphs 135 – 138 which relate specifically to the Attorney General. The Attorney has asked me to reply on his behalf.

In relation to paragraphs 135 – 138, the Attorney agrees with the Committee's position that some of the current categories of registrable interests cannot apply to the Attorney General and awaits the outworking of their considerations on this issue. Should the Committee decide that an amendment to the wording of Standing Order 69 is required, as suggested in paragraph 138, it would be necessary to review any proposed changes and how they might impact on the Attorney General.

It is also worth noting that Standing Order 69 requires Members to declare any relevant interests before taking part in any debate or proceeding of the Assembly. This is something that the Committee for Standards and Privileges may wish share with the Committee on Procedures as part of their considerations on the extent to which the Attorney General participates in the Assembly.

Paragraphs 107 – 112 of the issues paper relates to *Staff Conduct*. It should be noted that currently all staff working within the office of the Attorney General for Northern Ireland are members of the Northern Ireland Civil Service and subject to its Code of Conduct. The Committee for Standards and Privileges may wish to include this point in their considerations.

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On a more general note, the Committee for Standards and Privileges may wish consider how the Code will take account of the Attorney General's independence, which is enshrined in statute by virtue of section 22 (5) of the Justice (Northern Ireland) Act 2002.

The issues paper includes a number of references to particular matters that the Committee for Standards and Privileges will consider further or take additional action. The Attorney has found the review of this issues paper to be very informative and believes that it would be useful for a similar approach to be taken as the Committee continues to develop its work in light of the further considerations and actions above.

Yours sincerely

Eamonn McConville
Office of the Attorney General for Northern Ireland

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7 May 2014 - Northern Ireland Government Affairs Group



N I G A G

THE NORTHERN IRELAND GOVERNMENT AFFAIRS GROUP

Code of Conduct Review

NIGAG particular interest lies in the area of the Disclosure of information and engagement with public affairs/lobbyists.

We are concerned that NI Assembly does not provide the level of information relating to Committee business that should be expected in a properly functioning Parliament/Assembly. Information on Committee business is rarely, if ever, posted on line in advance of meetings despite this being common practice elsewhere such as Scotland.

There is a temptation on Members and those involved in lobbying activity to discuss papers received with interested parties perhaps without adequate clarity as to which information is confidential and which is not.

NIGAG also believes the failure to provide Committee papers on line, either in advance or on the day, is detrimental to Members as legitimate interests are unable to fully examine these documents and advise Members as fully as they might otherwise.

On the issue of engagement with public affairs staff and others NIGAG would be concerned if onerous responsibilities were placed on both Members and NIGAG members in the discharge of their entirely legitimate activities.

In addition we feel that it might benefit both Members and organisations if there was greater clarity about the requirements of the Declaration of Interests.

13 May 2014 - The Electoral Commission

The Electoral Commission

Paul Gill
Clerk of Standards
Committee on Standards and Privileges
Northern Ireland Assembly
Room 254
Parliament Buildings
Stormont
Belfast. BT4 3XX

13 May 2014

— STANDARDS & —
16 MAY 2014
— PRIVILEGES —

Dear Mr. Gill *Paul,*

Review of the Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members

Thank you for your letter of 20 March 2014 inviting the Electoral Commission's views on the Assembly's review of the Code of Conduct and Guide.

The Electoral Commission is an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the UK's democratic process. We regulate party and election finance and set standards for well-run elections and referendums.

Our particular area of interest in the Assembly's review is the dual reporting obligations placed on Members by the Political Parties, Elections and Referendums Act 2000 (PPERA) and the Assembly's Code of Conduct. The Committee's issues paper addresses this matter at paragraphs 124 to 128.

Dual reporting and the Electoral Commission

Since 2006 there has been a mechanism in PPERA to enable the dual donation and loan reporting requirements on members of a legislature to be removed, by bringing the legislature's reporting requirements into line with those of PPERA. This enables members to discharge the majority of their donation reporting requirements (except as candidates) by reporting to the relevant legislature. The Commission only retains a role in respect of impermissible donations.

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INVESTOR IN PEOPLE



13 May 2014 - The Electoral Commission

Removing the dual reporting requirements for Members in their capacity as holders of elective office and party members reduces reporting burdens and the potential for unintentional breaches of the rules. The Westminster Parliament used this mechanism in 2009, so that the Westminster MPs now report donations to the Register of Members' Financial Interests and not to the Commission. The Commission obtains the information it needs for monitoring and publication purposes from published updates of the Register of Members' Financial Interests. The Standards, Procedures and Public Appointments Committee at the Scottish Parliament is currently also developing proposals to use this mechanism with effect from the next Parliament.

We would welcome the opportunity to explore with the Committee the prospect of aligning the Assembly's reporting rules with the reporting requirements in PPERA to bring about the end of dual reporting. In order to satisfy the requirements in PPERA we will need to ensure that:

- the Assembly's rules, such as initial reporting requirements on the date of taking up elective office and on-going registration timetables and thresholds, are compatible with PPERA
- the categories of registrable interests in the code cover Members' obligations under PPERA as both holders of elective office and party members
- the Commission is able to obtain all necessary information from the Register of Members Interests and the Clerk of Standards to comply with its PPERA obligations
- there is a robust approach to dealing with breaches of the rules.

We are pleased that the current Code of Conduct and Guide already sets out clearly that Members have reporting obligations under PPERA as well as the Assembly's rules. If the Committee decide to take forward work to end dual reporting it will take time to ensure that the necessary rules are fully aligned. **It is therefore important that references to Members' PPERA reporting requirements continue to be included in future versions of the Code of Conduct and Guide until these issues have been dealt with.**

Code of Conduct and Guide, please do not hesitate to contact me or Roisin McDaid on 028 9089 4025 or email rmcdaid@electoralcommission.org.uk.

Yours sincerely

Seamus Magee
Head of the Electoral Commission in Northern Ireland
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14 May 2014 - Parliamentary Commissioner for Standards, House of Commons



HOUSE OF COMMONS

STANDARDS &

14 MAY 2014

PRIVILEGES

13 May 2014

Paul Gill
Clerk of Standards
Northern Ireland Assembly
Room 254, Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Paul

NORTHERN IRELAND ASSEMBLY: REVIEW OF CODE OF CONDUCT AND GUIDE TO THE RULES

Thank you for your letter of 21 March. I am grateful for this opportunity to comment on the Issues Paper relating to the Assembly's Code of Conduct and Guide to the Rules.

I agree that it is important to clarify the scope of the Code and the Rules for Members and to remove ambiguities. It is also important that the underlying rules should be clearly expressed and readily available to Members and to the public. You will be aware of the recommendations of my predecessor which are set out in the Third Report of the Committee on Standards and Privileges of 2010-12: Proposed Revisions to the Guide to the Rules relating to the conduct of Members. The Committee accepted all my predecessor's recommendations except those in the area of advocacy, which they revised. I hope that the House will soon find time to consider these changes so that they can be implemented.

In the paragraphs below I have offered comments on those parts of the paper where my experience, or that of the UK Parliament, may offer a different perspective to that of the Northern Ireland Assembly, or may otherwise be of service.

Application of the Code to Ministers (paragraphs 17-20)

Neither I, nor so far as I am aware, my predecessors, have inquired into alleged failures to register gifts received exclusively as a Minister, or into other aspects of purely Ministerial conduct. We do not record gifts received by Ministers in the Register of Members' Financial Interests.

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Members' private lives (paragraphs 21-25)

Under the heading *Scope of the Code*, the 2012 Code of Conduct for Members of Parliament says:

2. The Code applies to a Member's conduct which relates in any way to their membership of the House. The Code does not seek to regulate the conduct of Members in their purely private and personal lives or in the conduct of their wider public lives unless such conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its Members generally.

However, paragraph 17 of the Rules says

17. The Commissioner may not investigate a specific matter under paragraph 16 which relates only to the conduct of a member in their private and personal lives.

As Commissioner, I am concerned that, as a result of rule 17, which arose from an amendment made on the floor of the House, I would be unable to inquire into the conduct of a Member in their private and personal life even if it significantly damaged the reputation and integrity of the House or of its Members generally.

Free speech (paragraphs 26-34)

Under paragraph 105 of the Guide to the Rules, I am unable to inquire into a Member's views or opinions.

Quality of service provided by Members (paragraphs 39-41)

As I explain in my Annual Report, my office regularly receives complaints about the way in which Members have dealt with constituency matters. The complainants often come to us as a last resort, and they are often distressed. I agree therefore that it is important to be as clear as possible about Members' discretion in the way in which they undertake their responsibilities and the corresponding expectation that constituents may have of the complaints system.

Lobbying (paragraphs 100-106)

I share the concerns expressed by the Committee on Standards about the activities of lobbyists. You will be aware of the Committee on Standards' Sixth Report of 2013-14, *All-Party Parliamentary Groups*; and of the Speakers' Working Group on All-Party Parliamentary Groups which preceded it. This office has contributed to both reports, which explain, consider and address particular concerns about the access which might be afforded to lobbyists.

I hope that this perspective on some of the issues which you are considering will be helpful.

Yours sincerely

Kathryn Hudson
Parliamentary Commissioner for Standards

14 May 2014 - Committee on Standards, House of Commons



Committee on Standards

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From Rt Hon Kevin Barron MP, Chair of the Committee

STANDARDS &

14 MAY 2014

PRIVILEGES

Paul Gill
Clerk of Standards
Northern Ireland Assembly
Room 241, Parliament Buildings,
Ballymiscaw, Stormont,
Belfast. BT4 3XX

13 May 2014

Dear Paul,

Thank you for your letter asking me to comment on the issues paper from the Committee on Standards and Privileges in the Northern Irish Assembly. I am responding on behalf of the House of Commons' Committee on Standards who I have consulted before sending this response.

The issues that the Committee's paper raises are similar to those the previous Commissioner and the Committee on Standards and Privileges explored when they reviewed our Code of Conduct and Guide to the Rules. Indeed, we are currently reviewing our own processes in light of the reflections of our lay members on their first year in office. We will shortly be publishing our terms of reference for our new inquiry and of course would welcome the Committee's input. In this response I do not comment on every issue, but offer some reflections on House of Commons experience.

Members' private lives/Bringing the Assembly into disrepute

The paper raises the difficulty with dealing with reputational damage from a Member's private life. We too consider there are difficult issues here, but some actions may affect the reputation and integrity of the wider institution. When reviewing the Code of Conduct the Committee on Standards and Privileges concluded that:

we accept the Commissioner's recommendation that cases in which a Member's conduct in private or wider public life is so extreme that it damages the reputation of the House should fall within the Code. We stress that, like the Commissioner, we do not think the Committee or the House should be drawn into judging a Member's purely private and personal relationships.

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However, when the House debated our proposals in March 2012 an amendment was moved to insert a new paragraph stating that:

The Commissioner may not investigate a specific matter under paragraph 16 which relates only to the conduct of a Member in their private and personal lives.

This is now included in our current Code at paragraph 17. We are in a situation where a Member could cause significant reputational damage to the House. While it could be a breach of the Code of Conduct the Commissioner would be unable to investigate it. We consider that the provision in paragraph 16 of the Code should apply only when the behaviour causes significant damage to the reputation of the institution. But that it would be undesirable to draw the Code so tightly that even in extreme cases the House was precluded from taking action.

GRECO recommendations

In March 2013 we too looked at GRECO's recommendations in respect of UK legislatures. We considered that concerns went wider than lobbying alone:

The challenge is to ensure that such representations are properly made, and do not give rise to impropriety. This is not simply a matter of the rules relating to lobbying, but of the entire system. Individual members and indeed committees may have some private meetings with interest groups, but in the United Kingdom the emphasis is on transparency. Proceedings on legislation presented to Parliament take place in public. Submissions to scrutiny committees and the evidence taken by those Committees is similarly public.

Transparency and openness have to be the principles which guide Members when taking on external interests, engaging with those who have an agenda, and when registering and declaring interests.

It is important that the rules are enforced. You may be aware that we have recently considered a case of a Member acting improperly in response to lobbying. This case involved "a sustained and pervasive breach of the House's rules" and, bar one case which subsequently became a matter for the criminal courts, the most serious we have considered since 1947. In these circumstances our Code and the surrounding rules were sufficiently robust to conclude that the Member "not only engaged in paid advocacy, but he also brought the House into disrepute" while he "deliberately evaded the rules about registration and declaration, which are intended to provide transparency and accountability".

Free speech

We wholeheartedly share the Committee's view that "it would not be appropriate for [Committees like ours] to seek to prevent or limit the expression of any political opinion (including opinions on social or oral issues) within the law". The Committee of Privileges, of which I am also Chair, considered a case earlier this year where a Police Information Notice (PIN) was issued by Sussex Police to a Member for sending a complete, unedited copy of Hansard (the House's official report) to a constituent. That volume of Hansard contained a speech by the Member where he "sacked" his constituent and the speech on the floor of the House of Commons was recorded as a hate crime as part of an ongoing dispute. We concluded in that Report that:

.../3

The ability of those who speak in Parliament to speak freely is a fundamental part of our democracy. The prospect that there may be legal proceedings in consequence of the making of or simple publication of, such a speech is likely to have a chilling effect on MPs and on others who take part in official proceedings.

We “exercised restraint in [that] case, given the novelty of the circumstances, we would regard future attempts to restrict Members’ freedom of speech in the House through PINs as a serious contempt”. Sussex Police accepted the Committee’s findings in full and “commissioned a review of [their] policy relating to Police Information Notices”.

Quality of Service provided by Members

This matter was touched on by the previous Commissioner who said:

55. The “special duty to their constituents”, identified in paragraph 6 of the current Code, alongside a Member’s “general duty to act in the interests of the nation as a whole”, in my judgement properly captures the key responsibilities of the Member of Parliament echoed in paragraph 1 of the Code discussed above. It is, in my view, a proper aspiration to include in the Code, and not one that needs further definition or elaboration. It is for the Member to decide how best to meet that “special duty”. It is not for the House, let alone the Commissioner, to lay down how that obligation is to be met. Each constituency is different in its character, history and expectations. The interests of different constituents may conflict. Time and resources are not unlimited. Each Member has to come to his or her own judgement on how best to serve his or her constituency and those who live in it. Within our democracy, political parties have a significant role in deciding on the party’s candidate for the constituency, including whether the sitting Member should run again. But ultimately, it is for the electorate, and not the House, to decide on the promises and the performance of their various candidates, including any sitting Member.

56. It follows that I do not consider that the way the Member handles constituency business, or the representations made to them by a constituent or anybody else, should be adjudicable by the Commissioner and, through him, the House. The only circumstances where the House may wish to adjudicate on a Member’s conduct in their constituency is the wholly exceptional case where there is clear evidence that the Member’s conduct has been so serious and blatant as to cause significant damage to the reputation of the House. A Member’s alleged failure to respond to a constituent or meet their wishes would fall far short of such a threshold.

We agree with this and with your Committee’s formulation that “Members should answer for their performance to the electorate not to the Committee”

I hope my thoughts are of help to the Committee.

CHAIR

15 May 2014 - House of Lords Commissioner for Standards



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Paul Gill
Clerk of Standards
Committee on Standards and Privileges
Northern Ireland Assembly

15 May 2014

Dear Mr Gill,

Thank you for your letter of 21 March 2014 inviting my views on your committee's issues paper on its review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members.

I am most grateful for your invitation. However, I am conscious that the legislative chamber for which I discharge my responsibilities is a very different entity to the Northern Ireland Assembly. What works well in one chamber may not be appropriate to the other. That said, I hope the following limited observations are useful.

I have adopted the paragraph numbering used in the issues paper.

2. In the House of Lords the Commissioner for Standards determines whether the Code of Conduct has been breached. The Sub-Committee on Lords' Conduct then considers the Commissioner's report and must report it without amendment to the Committee for Privileges and Conduct. The Sub-Committee's role is to recommend an appropriate sanction in case of breach. The Committee for Privileges and Conduct hears any appeal by a member against finding or sanction (or both). The committee's role is to endorse or overturn the Commissioner's finding and to consider whether the recommended sanction is appropriate. The committee does not reopen the Commissioner's investigation. Thus, it is the Commissioner who initially determines if there has been a breach of the Code and not other members.

13. The House of Lords Code is specifically limited to members in the discharge of their "parliamentary duties". It does not extend to members' duties unrelated to parliamentary proceedings, nor to their private lives. Matters outside from the Commissioner's remit are:

- policy matters or a members' views or opinions;
- the funding of political parties;
- alleged breaches of the separate code governing the conduct of Government ministers as ministers; and
- members' non-parliamentary activities.

This formulation works well for the House of Lords and, whilst more limited than the formulation in the Northern Ireland Assembly's current Code of Conduct, it may be more specific.

21. The discussion in the issues paper captures the relevant debate well. Concepts such as "bringing the House in to disrepute" are hard to define and are liable to open up a political and moral Pandora's Box. The provision removing members for serious criminal offences appears a useful backstop.

42–51. The House of Lords Code of Conduct requires members of the House of Lords to observe the seven general principles of conduct identified by the Committee on Standards in Public Life. These principles are taken into consideration when any allegation of breaches of the provisions in other sections of the Code is under investigation. However, complaints are not entertained solely on the basis of failures to abide by the seven principles: there must be evidence of breach of a specific provision of the Code.

I have found the seven principles to be useful in setting the context for the conduct required of members. Particularly useful is the requirement for members to promote and support the principles by leadership and example.

I enclose a copy of the Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct. I hope this document will be of assistance to you. In this response I have not covered areas which do not have a direct read across to the House of Lords.

If I can be of further assistance please do not hesitate to be in touch.

Yours sincerely,

Paul Kernaghan CBE QPM
Commissioner for Standards

16 May 2014 - Northern Ireland Local Government Association

16th May 2014

Draft NILGA response to the Committee on Standards and Privileges call for evidence on the Assembly Code of Conduct

The following draft response was written further to local government consideration of a recent consultation on the new draft NI Local Government Code of Conduct for Councillors. **The response below has been drafted during the 'purdah' period for local government and will be considered at the forthcoming NILGA Full meeting on 30th May 2014, after the election.** Any additions or amendments made to this draft will be forwarded to the Committee on or after that date.

Any queries in relation to this paper should be directed to Karen Smyth at the NILGA office. k.smyth@nilga.org (028 9079 8972).

Derek McCallan
Chief Executive

16th May 2014

1.0 Introduction

The Northern Ireland Local Government Association is the representative body for district councils in Northern Ireland. The membership is comprised of the 26 local borough, district and city councils. NILGA represents and promotes the interests of local authorities and is supported by all the main political parties in Northern Ireland.

Elected member conduct, ethics and standards are important issues for local government, and increasingly so in the ongoing programme of local government reform, when new statutory obligations will be placed on councils in relation to planning. NILGA is pleased to see that there is a simultaneous review of the Code of Conduct for the Assembly, and would be keen to see some degree of complementarity between the Assembly Code, and the Code for Councillors. It is our view that it would be of benefit to the public to have some degree of consistency in what they should expect from their elected representatives.

We trust that NILGA views will be taken into consideration, and look forward to a successful outcome to this review.

2.0 Key Issues

The Need for a Code of Conduct

NILGA supports the provision of a code of conduct for Assembly members, as a code is extremely helpful to elected members in carrying out their duties. We would view a robust code of conduct as a protection for elected members, but we are also keen to ensure that such codes are not used as 'tripping hazards' to catch members out.

There is some concern that an overly stringent code could present a barrier to attracting people to stand for election, and to members' freedom of expression once elected. There should be regular reporting on the outcomes of complaints received, so that procedures can be continuously improved.

Right to a Private Life

NILGA has some concern in relation to the application of the Code of Conduct for Councillors in that the requirements of that code as expressed in the recent consultation may breach Article 8 of the European Convention on Human Rights. NILGA has encouraged the Department of Environment to ensure that there is no conflict between the requirements of the Councillors' Code, and the right to respect for a private and family life. The draft Councillors' Code is currently worded in such a way that it gives the perception that there are no boundaries between the public and private life of a councillor.

We are encouraged to see that the Committee for Standards and Privileges is taking this issue seriously in relation to Assembly members, and we would be keen to see the outcomes of the Committee's deliberations on the matter. It is hoped that the eventual decision may assist local government in strengthening its own policy on members' right to a private life, and will enable a robust approach to be taken to a future review of the Councillors' Code, should this issue not be fully addressed in the final document, due for publication shortly after the election.

Lobbying

The Northern Ireland Local Government Association is the representative body for district councils in Northern Ireland. As such, although a political body, we could be viewed as a lobby organisation, and to date we have been free to build good working relationships with Ministers, Committee members and individual Assembly members, to relate local government views on issues of concern to the sector. We are frequently called to give evidence to Committees on various issues, and our relationship with the Environment Committee in particular, is vitally important. This was demonstrated particularly well during the recent passage of the Local Government Bill.

NILGA is strongly supportive of the need to guard against corruption or the perception of corruption – both at Assembly and council level, and we would be supportive of policy being put in place to protect members against the perception that they are gaining financially or otherwise as a result of taking a particular policy position at the behest of a professional lobbyist, or lobbying activity e.g. from a well-resourced source. Care will therefore need to be taken, particularly where businesses or individuals

stand to benefit from decisions, to ensure that members are protected and assisted in discharging their duties with integrity.

We would point out however, that members need to be well-informed, and to communicate well with the wider policy community and with the public, to ensure that the actions of the Assembly are of benefit to wider society. Lobbying activity is a critically important part of this process, and the Committee will need to find a balance in its policy, to ensure that policy development does not suffer unnecessarily due to fears surrounding access to members.

3.0 Conclusion

NILGA wishes the Committee well in its deliberations, and we trust that this review will result in the development of an appropriate and robust Code of Conduct for Assembly members. As noted above, local government in Northern Ireland has recently been involved in strengthening the Code of Conduct for Councillors, and while there are a number of differences, due to the different natures of the Assembly and Councils, there are a number of issues of mutual concern.

Developing consistent member – officer protocols, and developing a compact between central and local government in regard to the political leadership prevalent in each tier of government, linked to our emerging Codes, would be matters with which NILGA can assist, and which we believe should be an outcome of this evidence call.

Should the Committee require further information from local government, and particularly in relation to the Code of Conduct for Councillors, please do not hesitate to contact Karen Smyth at the NILGA Offices. K.smyth@nilga.org

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16 May 2014 - Chartered Institute of Public Finance and Accountancy

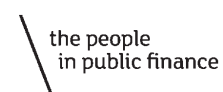


Northern Ireland Assembly, Committee on Standards and Privileges: Review of Members' Code of Conduct

A Submission by:

**The Chartered Institute of Public
Finance and Accountancy**

May 2014



CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. CIPFA shows the way in public finance globally, standing up for sound public financial management and good governance around the world as the leading commentator on managing and accounting for public money.

Further information about CIPFA can be obtained at www.cipfa.org

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1. EXECUTIVE SUMMARY

- 1.1 CIPFA welcomes the Committee's review of the Code of Conduct for Members, and their consideration of the GRECO Fourth Round Evaluation report,¹ and Committee on Standards in Public Life's review of best practice in promoting good behaviour in public life.²
- 1.2 CIPFA are strong advocates of good governance in the public sector and are actively engaged in providing guidance and support in this regard.³ The fundamental function of good governance in the public sector is to ensure that intended outcomes are achieved whilst acting in the public interest at all times.
- 1.3 In considering the Code of Conduct, in the context of the Assembly's overall governance arrangements CIPFA suggests that:
 - The fundamental principle of acting in the public interest and acting with integrity should be embedded within the culture of the Assembly and the behaviour of Members/staff (para 2.24 and 3.6).
 - The code should be reinforced by positive leadership and consideration given to how it will be communicated to best effect. Further guidance or training may be beneficial in this respect (para 3.6).
 - There should be no compartmentalisation or overlap of the Code which could lead to misinterpretation or confusion; particularly in relation to applicability of the code to Ministers, in Chamber/Committee and to Members' staff (para 4.9).
 - Further guidance should be considered in relation to specific rules within the code, including direction on where advice can be obtained if required (para 5.6).
- 1.4 CIPFA further considers that the Code of Conduct, although a fundamental aspect of good governance arrangements, should not be considered in isolation, but rather as part of the Assembly's overall governance framework (para 2.24).

¹ GRECO, Fourth Evaluation Round: Corruption prevention in respect of Members of Parliament, judges and prosecutors: Evaluation Report United Kingdom.

² Committee on Standards in Public Life, Standards Matter, 2013.

³ Public Finance International, IFAC and CIPFA publish governance best practice, June 2013. Good Governance in the Public Sector - Consultation Draft for an International Framework, June 2013

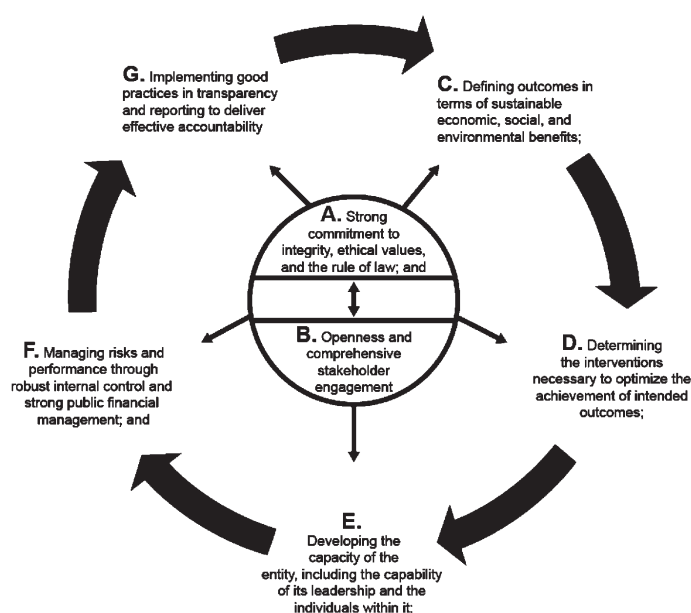
2. GOOD GOVERNANCE: ACTING IN THE PUBLIC INTEREST TO ACHIEVE OUTCOMES

- 2.1 CIPFA are strong advocates of good governance in the public sector and are actively engaged in providing guidance and support to drive improvement in this regard. Currently, CIPFA are in the process of developing a Governance Mark of Excellence or to enable organisations, via a process of rigorous assessment, monitoring and evaluation to gain external recognition of their good governance practices.⁴
- 2.2 CIPFA are also working together with the International Federation of Accountants (IFAC) to develop *International Good Practice Guidance: Good Governance in the Public Sector*.⁵ This framework aims to encourage better service delivery and improved accountability by establishing a benchmark for aspects of good governance in the public sector, and is intended to apply to all public sector entities.
- 2.3 The framework is not intended to replace existing governance codes, but rather to inform the updating and reviewing of existing codes, and to stimulate action where such codes do not exist. It also provides a basis for the public to challenge substandard governance in public sector entities.
- 2.4 Governance comprises the arrangements put in place to ensure that intended outcomes for stakeholders are defined and achieved. The fundamental function of good governance in the public sector is to ensure that entities achieve their intended outcomes whilst acting in the public interest at all times.
- 2.5 The framework sets out seven core principles characterising this fundamental function of good governance, as illustrated below.

⁴ Leading Governance Conference 2013 the Future for Boards, November 2013

⁵ Public Finance International, IFAC and CIPFA publish governance best practice, June 2013. *Good Governance in the Public Sector - Consultation Draft for an International Framework*, June 2013

Acting in the Public Interest at all Times



- 2.6 The public sector is generally responsible for using a significant proportion of resources raised through taxation to provide services to citizens. Public sector entities are accountable not only for how much they spend but also for the ways they use the resources with which they have been entrusted. This includes accountability for outputs, and for the outcomes they have achieved.
- 2.7 In addition, they have an overarching responsibility to serve the public interest in adhering to the requirements of legislation and government policies. Public sector entities are accountable to legislative bodies for the exercise of legitimate authority in society. This makes it essential that the entire entity can demonstrate the appropriateness of all its actions and has mechanisms in place that encourage and enforce adherence to ethical values and the rule of law.
- 2.8 When considering the Code of Conduct for Members, principle A: behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law is likely the most pertinent.

Principle A1: Behaving with integrity

- 2.9 Members of all forms of governing body should behave with integrity. The Assembly should promote and embed a culture where acting in the public interest at all times is the norm together with a continuing focus on achieving objectives. It should do this by taking the lead in establishing - and living up to - specific values for the Assembly and its staff.
- 2.10 These values should be communicated, understood, and shared. They should be over and above minimum legal requirements and should build on established principles for behaviour in public life, such as objectivity, selflessness, and

honesty.⁶ These principles reflect public expectations about the conduct and behaviour of those who manage public service provision and spend public money.

- 2.11 The Assembly is a role model and it is, therefore, important that it keeps the values at the forefront of its own thinking and behaviour and uses them to guide its decision making and other actions ('leads by example'). The values can also be used to promote an ethical culture and collaboration throughout the Assembly through a number of mechanisms. These include their definition and communication through codes of conduct, frequent staff consultation and communication, exemplary behaviour, training and performance assessment and reward processes.

Principle A2: Demonstrating strong commitment to ethical values

- 2.12 Ethical values should permeate all aspects of a public sector entity's operation, for example the procurement of goods and services, the appointment of staff on merit, performing job responsibilities properly and using public funds to benefit the community. They should underlie the personal behaviour for Assembly members and staff. It is the role of the governing body to ensure that these ethical values are embedded throughout an entity
- 2.13 Having an effective code of conduct for Assembly members and for staff is one of the key elements of good governance. Developing, reviewing, and communicating a code that illustrates what the values mean in specific circumstances helps to make visible:
- (a) how the entity operates;
 - (b) how it embeds its core values, such as by reflecting values in communications, processes, and behaviour; and
 - (c) how it relates to its key stakeholders.
- 2.14 Codes also help reassure stakeholders about the entity's integrity and its commitment to ethics. It is the governing body's responsibility to ensure that the code of conduct is understood, implemented, adhered to, and reviewed on a regular basis to ensure it remains up to date
- 2.15 It may not always be easy to measure objectively factors affecting an entity's performance in leadership, ethics, and culture, or to identify ethical problems before they manifest in organisational performance. However, it is important that the governing bodies of entities seek to know, understand and maintain their performance in these areas. Useful evaluative approaches to measure ethical performance include staff surveys, performance appraisals, administrative reviews, exit interviews, whistleblower arrangements and leadership self-assessments.
- 2.16 Stakeholders can also provide important feedback on how an entity is performing in leadership, ethics, and culture. This can be solicited formally or be received through comments and complaints. Complaints can form a vital part of feedback and should be handled and resolved efficiently, effectively, and in a timely manner so that lessons learned are used to improve the performance, both ethical and operational, of the entity and its services.

⁶ The Nolan Principles, [The Seven Principles of Public Life](#)

Principle A3: Respecting the rule of law

- 2.17 Fair legal frameworks, enforced on an impartial basis, as well as an independent judicial system assist in building societies where entities and individuals alike can flourish. They do this by affording legal protection for rights and entitlements, offering redress for those harmed, and guarding against corruption or other crimes and unethical behaviour.
- 2.18 The important legislative role of the Assembly demands a high standard of conduct that prevents this role from being brought into disrepute. Adhering to the rule of law also requires the Assembly to ensure that there are effective mechanisms to deal with breaches of legal and regulatory provisions. Public sector entities should as far as possible be subject to laws which are generally applicable to the rest of the community to ensure equity
- 2.19 Public sector entity governing bodies and staff should, therefore, demonstrate a strong commitment to the rule of law as well as complying with all relevant laws and regulations. They should also strive to utilize their powers for the full benefit of their communities and other stakeholders and to avoid any misuse of power or corruption.

Reporting good governance

- 2.20 The Code of Conduct, although a fundamental aspect of governance arrangements, should not be considered in isolation, but rather as part of the Assembly's overall governance framework.
- 2.21 It is essential that governance arrangements are not regarded merely as bureaucracy, but foster sound decision making with effective processes to support it. At the same time, they should not become onerous and effectively an industry in themselves.
- 2.22 In CIPFA's view, public bodies should be encouraged to test their governance structures against a framework of good governance and to report publicly on an annual basis on the extent to which they are living up to the framework and on their planned actions for the future. In local government, for example, authorities prepare and publish an annual governance statement in accordance with Delivering Good Governance in Local Government Framework⁷ setting out how they have monitored the effectiveness of their governance arrangements in the year and on any subsequent planned changes.
- 2.23 An effective governance framework should encourage leaders to focus more systematically upon the sustainability of their organisations and the wider and longer term implications and impacts of their actions and activities. As discussed above, together the CIPFA/IFAC guidance being developed and the CIPFA Governance Mark of Excellence offers a set of core principles for good governance in public sector entities, supplemented by practical implementation guidance.

2.24 CIPFA recommends that:

- **The Code of Conduct should be considered as part of the Assembly's overall governance arrangements, rather than in isolation, and ensure**

⁷ CIPFA and SOLACE, *Delivering Good Governance in Local Government Framework*, 2007

that it embeds the fundamental function of good governance, that Members should act in the public interest at all times.

- The Committee, in considering the code, should have regard to *International Good Practice Guidance: Good Governance in the Public Sector*, in particular the first principle: behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law.
- The Committee should consider developing a framework of good governance within the Assembly, and publically reporting on performance and achievements. CIPFA would be willing to provide support in this regard.

3. PRINCIPLES OF CONDUCT AND ACTING IN CAPACITY AS A MEMBER

- 3.1 Members of all forms of governing body should behave with integrity, as set out in principle A1. This should be the guiding force behind the overall scope of the code, and coverage relating to 'Acting in the capacity as a Member' and 'Members private lives'.⁸ Although the Code does not cover activities of Members in their private lives, it should be emphasised that the behaviour of Members in their private lives may impact on the reputation and integrity of the Assembly, and therefore the principle of integrity should be embedded as underlying the personal behaviour of Members and staff.
- 3.2 This is reflected in the Code of Conduct for Members of the National Assembly for Wales, which states that:
- 'Assembly Members should 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 refrain from any action which would bring the Assembly, or its Members generally, into disrepute.'*⁹
- 3.3 In relation to the 'Principles of Conduct', CIPFA welcomes the inclusion of the Nolan principles, similar to the Codes of the other devolved regions,¹⁰ and notes the Committee's consideration of the relationship between principles and rules.¹¹ CIPFA considers that in conjunction with the interpretation or observation of rules, Members and staff need to have the underlying principles at the forefront of their thinking at all times (in order to avoid instances such as the expenses scandal).
- 3.4 It is worth noting that the Scottish Parliament's Code of Conduct clearly sets out the key principles underpinning the Code, then provides more detailed rules, as well as details of how such rules will be enforced, and a separate volume of guidance on the interpretation of the rules.¹²
- 3.5 The Committee's paper consider what a Code requires in order to be effective, and sanctions required for failure to comply with the code.¹³ However, there appears to be no consideration of how the code will be communicated, any training provided to Members or staff in relation to the code, and how adherence will be ensured. As discussed above, CIPFA considers that to be effective the code must be reinforced by positive leadership and embedded in the culture. Thus, the Assembly's shared values incorporated within the code should be communicated, understood, and shared. A culture based on these values can be fostered through mechanisms such as communication, consultation, training and performance assessment.

⁸ Committee on Standards and Privileges: Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members , *Issues Paper* (para 13-14 and 21).

⁹ National Assembly for Wales, *Code of Conduct for Assembly Members*

¹⁰ Scottish Parliament, *Code of Conduct for Members of the Scottish Parliament* and National Assembly for Wales, *Code of Conduct for Assembly Members*

¹¹ Committee on Standards and Privileges: Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members , *Issues Paper* (para 45)

¹² Scottish Parliament, *Code of Conduct for Members of the Scottish Parliament*

¹³ Committee on Standards and Privileges: Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members , *Issues Paper* (para 44 and 139-144)

3.6 CIPFA recommends that:

- The principle of integrity should be embedded as underlying the personal behaviour of Members and staff.
- The Committee considers providing further guidance on the interpretation of the rules within the Code.
- The Committee consider how the code could be reinforced by positive leadership, how it will be communicated to best effect and whether any training for Members or staff could be beneficial in raising awareness and adherence to the code.

4. APPLICABILITY OF THE CODE OF CONDUCT

- 4.1 CIPFA welcomes the fact that the Committee are considering the Ministerial Code of Conduct,¹⁴ and agrees that all efforts should be made to ensure that there is no overlap between this and the Code for Members.
- 4.2 As both codes will apply to Ministers, the Committee should ensure that in wording the scope of the code in relation to Ministers there is no room for confusion with a clear differentiation between the two. CIPFA considers that there is a case for evaluating the two codes in tandem, to ensure both consistency and clear lines of separation to leave no doubt as to potential overlaps.
- 4.3 In relation to the applicability of the code in the Chamber and in Committees,¹⁵ although appreciating the distinctions in powers between the Speaker and Committee Chairs, CIPFA considers that the applicability of the code in some circumstances but not others makes it potentially compartmentalised.
- 4.4 In the Scottish Parliament's Code, there is a section on Conduct in the Chamber or in Committee.¹⁶ Although this refers to the relevant Standing Orders, recognising the different powers of Conveners and the Speaker, it clarifies that conduct must be maintained within both environments, and thus embeds the underlying principles of the code in both.
- 4.5 The code must emphasise the importance of consistently embedding the underlying principles, in order that a strong commitment to ethical values is demonstrated across the board and Members are committed to acting with integrity at all times.
- 4.6 In relation to staff conduct,¹⁷ CIPFA agrees with the GRECO report that '*the conduct of staff should be judged against the standards expected of the Members*'.¹⁸ In this regard a code of conduct for both Members staff and Commission staff would be appropriate, consistent with that applied to Members, whilst providing for their respective roles. As discussed above, the Guidance on Good Governance on the Public Sector, and the underlying principles, is applicable to all public sector entities, and at all levels, and as such these principles should be equally embedded in the behaviour and thinking of both Commission and political staff.
- 4.7 The Scottish Parliament's Code states that:

'Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members' staff, and Parliamentary staff.'

¹⁴ Committee on Standards and Privileges: Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members , *Issues Paper* (para 17-20)

¹⁵ Committee on Standards and Privileges: Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members , *Issues Paper* (para 35-38)

¹⁶ Scottish Parliament, *Code of Conduct for Members of the Scottish Parliament*

¹⁷ Committee on Standards and Privileges: Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members , *Issues Paper* (para 107-112)

¹⁸ GRECO, *Fourth Evaluation Round: Corruption prevention in respect of Members of Parliament, judges and prosecutors: Evaluation Report United Kingdom*

Members are responsible for ensuring that their staff are fully aware of and understand the policies, rules and requirements that apply to the conduct of personnel on the SPCB's premises.¹⁹

4.8 However, this does not address the issue of staff conduct when not on the Parliamentary estate, nor account for the possibility of a Member being unaware of inappropriate conduct on the part of their staff. Such issues could be addressed by adopting a modified version of the code of conduct, specifically for the staff of Members and the political parties.

4.9 CIPFA recommends that:

- **The Committee consult the Ministerial Code and ensure there is no room for confusion or overlap between this and the Code for Members.**
- **The Committee recommend that the Executive revisit the Ministerial Code to ensure that there is consistency of the underlying principles between the two Codes.**
- **The Committee consider the compartmentalisation of the code between Chamber and Committee functions, and how this may undermine the consistent embedding of the underlying principles and values.**
- **Codes of Conduct consistent with that for the Members, should be established for political and Commission staff to embed the principles of good governance Assembly-wide.**

¹⁹ Scottish Parliament, [Code of Conduct for Members of the Scottish Parliament](#)

5. OTHER SPECIFIC ISSUES

Conflicts of interest

- 5.1 Conflicts may arise between the personal interests of Members involved in making decisions and the decisions that the governing body or staff need to make in the public interest. To ensure continued integrity and openness and to avoid public concern or loss of confidence, the Assembly should ensure that appropriate policies are in place so that members and staff take decisions objectively and steps are taken to avoid or deal with any conflicts of interest, whether actual or perceived.
- 5.2 CIPFA agrees with the Committee that it is crucial that rules covering conflicts of interest should be retained within the Code.²⁰ It is important to recognise that such interests may be actual or perceived, and that Members should be able to seek advice on this if unsure. It is also necessary to recognise that disclosure promotes transparency and thus in such matters it is better to err on the side of transparency when such decisions are taken.
- 5.3 The Committee may wish to note that in this regard, the Scottish Parliament's Code of Conduct contains a separate volume of guidance for the various sections of the code, including where Members can seek further advice on specific issues.²¹

Whistleblowing

- 5.4 As highlighted under principle A2, having arrangements for whistleblowing can be an indicator of demonstrating a strong commitment to ethical values. From the Committee's paper this potentially important area does not appear to be covered within the consideration of the code of conduct.
- 5.5 Whistleblowers can play an essential role in detecting mismanagement or corruption, but this can involve high personal risk as they may face employment difficulties or dismissal in doing so. Promotion of responsible whistleblowing and adequate protection for whistle blowers should be a feature of good governance. Transparency International has developed international principles for whistleblower legislation to aid in developing such standards.²²

5.6 CIPFA recommends that:

- **The code retain rules relating to potential conflicts of interests, whether these be actual or perceived.**
- **The Assembly has clear procedures and processes by which Members can seek advice in relation to such potential conflicts.**
- **The Committee should consider incorporating provision for whistleblowing into the code, taking note of international principles.**

²⁰ Committee on Standards and Privileges: Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members, *Issues Paper* (para 62)

²¹ Scottish Parliament, *Code of Conduct for Members of the Scottish Parliament*

²² Transparency international, *Recommended draft principles for whistleblowing legislation*

16 May 2014 - Commissioner for Standards for the National Assembly for Wales

Northern Ireland Assembly

Review of the Code of Conduct and Guide to the Rules 2014

Comment by Gerard Elias QC, Commissioner for Standards for the National Assembly for Wales

1. I make these comments pursuant to a request forwarded to me by Paul Gill, Clerk of Standards. Although in making my response I draw upon my experience as Commissioner for Standards in Wales, it will be appreciated that these comments are my own and are not necessarily shared by the Committee on Standards or the wider Assembly membership.
2. The existing NI Code mirrors much of what is in place here and there is no doubt that the aims and objectives of both our Codes and Guidance are broadly similar. I have restricted my comments to those areas where the approach seems to differ, principally to offer food for thought on an alternative way forward.
3. I comment by reference to paragraph numbers in the Issues Paper:

#13 & #25 & #56-58 In Wales, we acknowledge that members have a right to a private and family life, however, where conduct of an essentially private nature has a public face, such conduct *may* fall to be considered as a breach of standards. Thus conduct which on an objective basis is likely to have the effect of bringing the Institution into disrepute in the eyes of the public, is likely to be amenable to sanction.

To take examples, a lengthy and drunken argument in a public hotel has been the subject of an admissible complaint as was a conviction for drink driving. In the latter case there was a court hearing in the former there was not. The Committee and the full Assembly dealt with both cases. The broad principles under which they acted were that the public expects members to uphold the law and act in a way which maintains trust in the Institution and its Members.

To those who say that the courts deal with criminal matters, I agree. In my view, however, even if it is only to say “We disapprove but (e.g. because the court has imposed xyz penalty) impose no further sanction”, the public rightly expects the Institution to act, and be seen to act, where its reputation is sullied by the conduct of an Assembly Member.

I acknowledge that the scope for “private life” is likely to be small – but AMs do not stand alone in this – Judges are but one example where conduct in a private capacity is unlikely to be ignored if it brings the system/judiciary into disrepute.

#58 What is “an offence committed whilst “acting as a Member”. E.g. Am I acting as a Member if I am driving to a Constituency meeting but not if I am driving home? I strongly prefer the test of reputation – the disrepute test, and believe the public would expect it to be applied where a Member’s conduct objectively raised the issue.

#37/38 I am not precluded from considering a complaint about a Member's conduct in the Assembly or in Committee but I have drawn up an informal protocol with the Presiding Officer that, were I to receive such a complaint, I would refer it to her in the first instance. Equally, if circumstances warranted a full investigation of a complaint, the PO could refer the complaint to me for that purpose.

I would not regard as admissible any complaint in this area which went to what I call "performance" issues – Members must conduct themselves in whatever way they feel appropriate in pursuit of the democratic process and only in the most extreme of cases am I likely to intervene. I agree with the Issues Paper **#39** (in this area as with others), that essentially Members are answerable to the electorate for their "performance" and how they choose to perform their role is not for me as a standards issue.

For the record, about half the complaints I receive fall into the category of "performance" issues.

#79 I would strongly endorse this proposal. Confidentiality benefits everyone, particularly in the initial stages of investigations – including the Member against whom an unsubstantiated complaint is made.

I would be happy to enlarge upon any of these matters if it would be helpful.

Gerard Elias QC

14.05.2014

Commissioner for Standards

National Assembly for Wales

16 May 2014 - Ulster Unionist Party



Ulster Unionist Party response to the review of the code of conduct and guide to the rules relating to the conduct of members.

May 2014

Introduction

The Ulster Unionist Party welcomes the opportunity to make a short response to the current review. The Code of Conduct is very important as it not only does it guide Members on how they should carry out their public duties, but it also essential to inform members of the public of the minimum standards they can expect from their elected representatives.

Current shortcomings

Since the current Code was adopted in 2009 there have unfortunately been a number of shortcomings identified. The problems in the original drafting have meant that various different interpretations can be taken from a single provision within the Code.

Our primary concern is the lack of substantive changes to properly tackle the weak implementation of the existing Code and the subsequent poor public image this presents of the Assembly and its elected members.

We are also concerned that to date the Code of Conduct has not been adequately successful in ensuring that Assembly Members conduct themselves in such a manner where acts of glorification of terrorism are not supported.

Unfortunately the Commissioner for Standards has been unable/unwilling to carry out investigations and has cited indications in the current Code as a means to justify his decisions. Clarity is needed to ensure that any future decisions by the Commissioner are explicable. Essentially we must ensure that the new code is unambiguous.

Acting in the capacity as a Member

We believe guidance is necessary in order to assist in determining when a MLA can be reasonably presumed to be acting in a personal capacity or in a professional capacity. For example, when an elected representative is invited to functions, it is important to understand if they are invited as an MLA or as an individual member of a political party, and whether the two are inter-twined at any such event.

We accept that separation between a Member's private, party political and Assembly life will on occasions be difficult to determine. Nevertheless, we believe clearer guidance is necessary in order to address the current ambiguity in the 2009 Code.

Members' Private lives

All Members of the Legislative Assembly have a life outside of their role and the Ulster Unionist Party would seek to ensure that that is respected. We would not support the extending the scope of the Code to Members' private lives.

Free Speech

All Member of the Assembly should strive to lead by example, to show respect, uphold the rule of law and admonish anything that promotes the criminal acts both past and present.

Whilst not all comments may be agreeable, the Ulster Unionist Party would not support extending the scope of the Code to lawful comments by Members.

Unfortunately instances still occur of MLAs treading closely between talking of periods in Northern Ireland's history and glorifying criminality and terrorism. Therefore we would ask the Code do pay special attention to the cognisance of the content of

Other issues

During the current term we have seen numerous instances of inadequate investigation, unnecessary delays, poor transparency, perceived political bias and weak sanctions which have undermined the purpose of the code. The main example of which include failures to action derogatory comments both in the Assembly and on social media. We would therefore request that, in addition to amending reviewing the code and amending any guidance, rules and sanctions, the Committee immediately seek to rectify this by putting forward amendments to the processes of reporting, investigating, adjudicating and reviewing suspected breaches of the revised code.

We believe Members' Staff should remain outside the scope of the Code of Conduct. Staffing matters should be a matter for an Employer/Employee agreement and as such, separate guidance and staff training could be provided by the Assembly.

We believe that there should be more assistance provided to those making a complaint against an MLA, to understand the process and to take away the feeling of intimidation that is often felt. It is interesting to note that the NI Ombudsman is now receiving complaints verbally, and while we don't believe that this is necessary, we think that a verbal conversation often help the complainer to understand the process and the need to provide certain information.

Additionally, considering the emphasis of social media that is now so prominent in today's society, it would be helpful if MLAs were provided with guidance on using this means of communication. This guidance should clearly state the relevant stipulations in the Code of Conduct.

19 May 2014 - The Speaker of the Northern Ireland Assembly



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**Paul Gill
Committee on Standards & Privileges
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19 May 2014

Dear Paul,

Thank you for the opportunity to respond to the Committee's review of the Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members. In this letter I have restricted my comments to paragraphs 85 – 96 of the issues paper prepared by the Committee, which deals with 'Privilege and 'Contempt'.

The issues paper notes that I responded to the previous Committee on Standards and Privileges on the meaning of Assembly privilege as it related to the Committee's remit and Standing Order 70. I am pleased that the direction of the Committee as outlined in the issues paper would seem to be in accordance with my view that there are some matters which, although sometimes described as matters of privilege, are more properly matters of conduct and therefore should be directly incorporated in the revised code. In particular, I would very much agree with the Committee that where there is a prima facie case that a Member has disclosed a confidential document without authorisation, this should be investigated as an alleged breach of the Code of Conduct.

I would be happy to give specific consideration to the Committee's final proposals when the current review has been completed.

Yours sincerely,

WILLIAM HAY MLA

SP129_14

19 May 2014 - Committee on Standards in Public Life

CSPL (14) 59

COMMITTEE ON STANDARDS AND PRIVILEGES

REVIEW TO THE CODE OF CONDUCT AND GUIDE TO THE RULES RELATING TO THE CONDUCT OF MEMBERS



Committee on
Standards in
Public Life

April 2014

Chair: Lord Paul Bew

**RESPONSE FROM THE COMMITTEE ON STANDARDS IN PUBLIC LIFE TO THE
NORTHERN IRELAND ASSEMBLY COMMITTEE ON STANDARDS AND PRIVILEGES
REVIEW OF THE CODE OF CONDUCT ISSUES PAPER**

1. The Committee on Standards in Public Life welcomes this consultation on the review of the Code of Conduct for members of the Northern Ireland Assembly. The Committee considers it good practice to review codes of conduct regularly in order to learn the lessons from administering the Code and in light of changing expectations and standards.
2. The Committee on Standards in Public Life is an independent advisory body to the Government, which monitors, reports and make recommendations on all issues relating to standards in public life. The Committee promotes high ethical standards in public life in the UK and works to ensure that the Seven Principles of Public Life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership – underpin all aspects of public life.
3. In 1994, when the Committee was established by the then Prime Minister, its terms of reference were 'To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.'¹
4. As a result of the Committee's Triennial Review in 2012, the terms of reference of the Committee were clarified so that "in the future the Committee should not inquire into matter relating to the devolved legislatures and governments except with the agreement of those bodies..."². As such, we are grateful to be invited to respond to this review.
5. Many of the issues raised in the consultation paper are not matters of principle but practical issues about the clarity of guidance which in our view, are best resolved on the basis of the Northern Ireland Assembly Commissioner for Standards and Committee on Standards experience of administering the rules. We have therefore confined our comments to issues of principle and those areas of recent changes in standards or expectations.

¹ First Report Standards in Public Life CM 2850-I May 1995.

² Hansard (HC) 5 February 2013, col. 7WS.

CSPL (14) 59

Principles

6. The Committee is encouraged by the extent to which you draw from the recommendations of our report *Standards Matter*³ particularly your emphasis on providing both aspirational principles and enforceable rules which will mutually complement each other, an approach that the Committee promotes across the landscape of public life. The Committee are also encouraged by your continuing emphasis on the Seven Principles of Public Life. The strength of these principles is that they provide a common set of standards for all who serve the public. As such, the Committee has reservations regarding your consideration to amend the descriptors of the Seven Principles '*to reflect specifically the role of a Member*'. Whilst the principles and their specific application to members in particular circumstances may need elaborating in further guidance, we would resist any amendment to the actual descriptors of the Principles, which are widely recognised and expected elsewhere. We would also encourage you to clearly separate in the Code, the Seven Principles from any additional principles you may wish to incorporate.

Lobbying

7. In our *Strengthening Transparency Around Lobbying*⁴ report the Committee considered the spectrum of lobbying activity; the application of the Nolan principles to lobbying; and against that background, what is required from both individuals and organisations to ensure high ethical standards in lobbying. The Committee acknowledges that lobbying is a legitimate and potentially beneficial activity and necessary for effective policy formulation. Free and open access to government and Parliamentarians is essential, but lobbying must be carried out ethically as it is one activity whereby those with vested interests seek to influence decision makers; it raises issues of transparency, accountability and equality of access. We recommended a range of measures to help public office holders, including Parliamentarians, to demonstrate openness, probity and fair access when being lobbied and when engaging in lobbying.
8. In the case of Parliamentarians it is particularly important that where Members speak on matters informed by their outside financial interests, there is sufficient transparency to enable the public to know about their interests and assess their contributions accordingly. This is all the more the case because former Members often take on significant public or corporate roles

³ Standards Matter: A review of best practice in promoting good behaviour in public life (Fourteenth Report) (Cm 8519)(January 2013)

⁴ November 2013

once they leave Parliament. It is important for public confidence that during their time as Members, they are not perceived to be influenced in their behaviour by hope or expectation of future personal gain.

9. Of particular relevance to this consultation, we recommended:

- that restrictions on parliamentary lobbying by former Members should be imposed by extending the lobbying rules to them for two years in respect of approaches to Ministers, other Members or public officials; and require former Members to register for two years any occupation or employment which involves them or their employer in contact with Ministers, other Members or public officials⁵.
- consideration should be given to whether Chairmanship of a Select Committee brings with it a particular influence on matters of public policy that justifies the imposition of additional restrictions in relation to conflicts of interests; and providing explicitly in the Codes of Conduct that Members should not accept all but the most insignificant or incidental gift benefit or hospitality or payments from professional lobbyists⁶.
- as a matter of good practice, any guidance on lobbying should remind all public office holders of the principle of equality of access and the need proactively to consider, after any meeting, whether a balance of views should be obtained⁷.

10. These recommendations are consistent with the Group of States Against Corruption (GRECO) whose report of the United Kingdom in its Fourth Evaluation Round *“Corruption prevention in respect of members of Parliament, judges and prosecutors.”*⁸ highlighted the need for clearer guidance to parliamentarians concerning acceptance on lobbying.

11. Since our report has been published the Committee on Standards has launched a consultation on the Interests of Committee Chairs.⁹ The House of Lords also agreed in March 2014 recommended changes to its Code of Conduct and its Guide to strengthened its lobbying provisions by providing a statement of principles on how to deal with lobbyists stating that members *‘dealings with lobbyists should always be governed by the principles of integrity and openness’* and that *‘members should take particular care not to give the impression of giving greater weight to representations because they come from paid lobbyists; representations should be given such weight as they deserve based on their intrinsic merit ... members should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist.’*¹⁰

Staff Conduct

⁵ Ibid 4 Recommendation 3

⁶ Ibid

⁷ Ibid 4 Recommendation 4

⁸ Adopted on 16 and 17 October 2012

⁹ 8th Report - Interests of Committee Chairs HC 997 Published 20 January 2014

¹⁰ Lords Privileges and Conduct Committee Thirteenth report: Amendments to the Code of Conduct and the Guide to the Code HL Paper 123 27 January 2014

CSPL (14) 59

12. The Committee considers that the principle of leadership in particular includes requires Members to demonstrate ethical leadership and to challenge poor behaviour, including the behaviour of their staff. The Committee does not consider it has the necessary expertise to comment on some of the questions of detail raised in the Issues Paper which might be determined by employment law. However, the Committee has stated previously when considering MPs staffing¹¹, that it is important as a matter of principle and good practice, that there should be broad parity of treatment of staff. A code of practice backed up by appropriate training and HR support for members, is one way to achieve that.

Ethics in Practice

13. Finally as discussed in Standards Matter *“principles and rules are necessary but not sufficient to ensure that an organisation maintains high ethical standards. People’s awareness of rules does not necessarily make them more motivated to follow them. People need not only to know what acceptable behaviour should look like, but also to understand the principles behind it and internalise them”*. The Committee is currently conducting research on how best to reinforce high ethical standards in practice, concentrating on how ethics can be included in internal processes such as induction and professional development across public sector organisations. Any renewed Code of Conduct should in the Committee’s view be supported by education which promotes and supports ethical decision making and builds a culture of high ethical standards. The Committee will publish a final report on reinforcing high ethical standards in practice in July 2014.

¹¹ MPs’ Expenses and Allowances: Supporting Parliament, Safeguarding the Taxpayer (Twelfth Report) (Cm 7724)(November 2009) page 61, recommendation 18.

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April 2014

27 May 2014 - Equality Commission for Northern Ireland

Equality Commission

FOR NORTHERN IRELAND

RESPONSE TO THE NORTHERN IRELAND ASSEMBLY COMMITTEE ON STANDARDS AND PRIVILEGES ISSUES PAPER ON THE REVIEW OF THE CODE OF CONDUCT AND GUIDE RELATING TO THE CONDUCT OF MEMBERS

May 2014

Introduction

1. The Equality Commission for Northern Ireland welcomes the opportunity to respond to the Assembly Committee on Standards and Privileges ('the Committee') *Issue Paper on the Review of the Code of Conduct and Guide to the Rules Relating to the Conduct of Members*¹. Further details on the scope of the Commission's remit duties and expertise is contained in Annex 1.
2. We have set out below our initial views and may raise additional points at the oral evidence session of the Committee at its meeting on 4 June 2014. The Commission has only responded to those questions most relevant to its remit and experience.
3. The Commission has recently responded to the Department of the Environment's consultation on a draft Local Government Code of Conduct for Councillors. This response reflects in a number of key areas our recommendations to the DOE; particularly as regards the wording of the principles relating to equality and good relations.²

Executive Summary

Importance of leadership

- We believe that elected representatives at all levels, as well as Government Departments and other public bodies, should **lead by example** in terms of their actions and behaviours. It is important that the standards set out in the Code are embedded through appropriate training and induction.

Scope of the revised Code

Members' private lives

- As regards the proposed scope of the revised Members' Code and, in particular, the extent to which it covers the conduct of members when they are not acting in

¹ <http://www.niassembly.gov.uk/Documents/Standards-and-Privileges/Report/1/agreed%20Issues%20Paper.pdf> – paragraph 45-52

² ECNI response to DOE draft Code of Conduct, April 2014, http://www.equalityni.org/ECNI/media/ECNI/Consultation%20Responses/2014/DoENICoCfor-councillors_2014_response_final_020514.pdf?ext=.pdf

their official capacity as an elected member, we recognise that there are both advantages and disadvantages to the range of approaches both proposed and adopted here and in other jurisdictions.

We **recommend** that the Committee assures itself that the final agreed approach is compliant with the requirements set under human rights legislation. We are of the view that any intrusion into the personal or private life of Members should always be proportionate and where there is a clear public interest to justify it.

We **recommend** that any discriminatory behavior of elected representatives, whether carried out in their role as a Member, as an employer or other capacity covered by the law, that breaches equality legislation or hate crime legislation, should be prohibited under the Code.

We also **recommend** that the final Code is supplemented by guidance and training for Members. Members should be made aware of the significant negative and detrimental impact that inflammatory language and behavior, towards groups protected under the equality legislation, can have; even if this behaviour occurs when the Member is acting in a private capacity.

Free speech

- In general, we remain of the view that whilst Members should be free to legally express any political opinion that they may hold, they should not do so in way that offends the underlying principles relating to equality or good relations.

We agree that the wording of the clause must be compliant with the requirements set out in human rights legislation. We **recommend** the Committee when ensuring such compliance, takes a proportionate approach to striking the appropriate balance between permitting Members to express a lawful political opinion, yet expressing it in such a way that does not offend the underlying principles.

We also **recommend** that the Members' Code makes it clear whether or not the provisions relating to Members' entitlement to legally express a political opinion are to be encapsulated as a principle or an enforceable rule.

Principles of conduct-equality and good relations

Inclusion of principles

- In general, we **recommend** that the Code retains clear principles on both equality and good relations. We consider that the inclusion of principles relating to equality and good relations is consistent with the Section 75 duty on public bodies; are in keeping with the current general duty on Members '*to act in the interests of the community as a whole*'; is consistent with the strategic aims and

objectives of the Executive's Strategy *Together: Building a United Community*³; and is in keeping with the principle of equal treatment which is a fundamental right that underpins both European and wider international human rights law.

Enforceable rules

- We **recommend** that the Committee gives consideration to including in the Members' Code *enforceable rules* that are directly linked to the principles of equality and good relations.

Wording of principles

- In addition to our recommendation that the Code retains clear principles on both equality and good relations, we recommend a number of key changes to the current wording of these principles.

Principles: good working relationships and respect

- We **recommend** the continued inclusion of these as two separate principles. We consider that the two principles are quite separate; with the first, respect, wide ranging, and the second, good working relationships more specific to the Assembly as a workplace for the Members' employees and others.

Detailed comments

Importance of leadership

4. Like the Code of Conduct for Councillors, we consider that the Code of Conduct for Members ('the Members' Code') is of critical importance in setting and ensuring clear principles, standards and responsibilities for elected representatives in undertaking their work.
5. In our previous evidence to the Committee on the draft Members' Code in 2008⁴, we stressed the importance of **effective leadership** not only by public bodies, but by all those who hold political or public life positions.
6. We believe that elected representatives at all levels, as well as Government Departments and other public bodies, should **lead by example** in terms of their actions and behaviours, in order to encourage high standards of behaviour in others and to help build public trust and confidence in the integrity of the public office or public institution.
7. Members have a significant leadership role and should be champions of equality and good relations in their work. The Equality Commission's final report on

³ OFMDFM (2103), *Together: Building a United Community* Strategy, <http://www.ofmdfmi.gov.uk/together-building-a-united-community-strategy.pdf>

⁴ Bob Collins, Chief Commissioner, Equality Commission for Northern Ireland, evidence to Assembly Committee for Standards and Privileges, 4 June 2008

reviewing the effectiveness of Section 75 highlighted the key role that leadership plays in driving compliance and ultimately in promoting equality of opportunity and good relations.⁵

8. It is essential that the standards set out in the Members' Code are clear and easily understood so that both Members and the public are aware of what is and is not acceptable behaviour and which forms of conduct constitute a breach of the Code.
9. However, it is equally important that the standards set out in the Code are embedded through appropriate training and induction. In order to ensure visible commitment to the principles of equality of opportunity and good relations by leaders across local government, the Commission has recommended that training on equality and good relations is placed on a **mandatory** footing for all elected representatives.
10. We believe that our view is consistent with the findings of the Committee on Standards in Public Life in *Standard Matters*⁶ which makes clear that many of those whose integrity had been called in to question behaved inappropriately, not because they were unaware of what was expected but because they did not find it expedient. It therefore stressed the need for high standards of behaviour to be 'understood as a matter of personal responsibility, embedded in organisational processes and actively and consistently demonstrated, especially by those in leadership positions.'

Scope of the revised Code

11. It is clear from the *Issues paper* that a key issue being considered by the Committee relates to the proposed scope of the revised Code and, in particular, the extent to which it covers the conduct of members when they are not acting in their official capacity as an elected member; for example, their conduct or activities in their private and family life.
12. The current Code makes it clear that the Code only covers the conduct of Members with respect to anything they say or do in their capacity as an elected Member and does not cover their conduct in private and family life. We note that one option the Committee is considering is whether the scope of the Code should apply to Members when it could *reasonably be presumed that a Member was acting in their capacity as an elected Member*.
13. In addition, we note that a slightly different test is proposed in the DOE *draft Code of Conduct for Councillors*; which proposes that Councillors must observe the Code not only when acting as a Councillor, but also where a Councillor or a

⁵ *S75: Keeping it Effective, Final Report*, ECNI, Nov 2008, www.equalityni.org

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf - *Standards Matter: a review of good practice in promoting good behavior in public life*, Committee on Standards in Public Life, January 2013

representative of the council is *claiming to act or giving the impression* that they are acting in the role of councillor or representative of the council.⁷

14. As highlighted in the *Issues paper*, we also aware that in Great Britain, the Committee on Standards in Public Life in *Standard Matters*⁸ has made it clear that “public office holders are entitled to privacy in their personal lives. But it is important to recognise 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”.⁹
15. We further note that the Code of conduct for Members of Parliament¹⁰ makes it clear that the code of conduct does not seek to regulate the conduct of members in their purely private and personal lives, or in the conduct of their wider public lives “**unless such conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its members generally**”.
16. We further note that there is therefore no capacity for the Commissioner of Complaints to investigate a complaint where the Member causes significant damage to the reputation and integrity of the House of Commons when acting in a private and personal capacity. However, we note that the Committee on Standards and Privileges does have the power to consider any matters relating to the conduct of Members, and could consider cases where it is considered that personal conduct caused significant damage to the reputation and integrity of the House.
17. Finally, the *Issues paper* makes it clear that the Committee, having considered whether or not there are circumstances in which the private lives of members, including criminal conduct in private lives, could affect the reputation and integrity of the Assembly, has indicated that it **does not believe that it would be reasonable or proportionate to seek to extend the scope of the Code to Members’ private behaviour**.
18. We recognise that there are **both advantages and disadvantages** to the range of approaches both proposed and adopted here and in other jurisdictions. We also made in clear in our previous evidence to the Committee that it is difficult to draw a distinction between a private citizen and being a Member or another public representative, as well as finding a balance between having a public persona and being a private individual.

⁷ DOE Consultation on draft Local Government Code of Conduct, Feb 2014, www.doeni.gov.uk

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf - *Standards Matter: a review of good practice in promoting good behavior in public life*, Committee on Standards in Public Life, January 2013

⁹ Ditto

¹⁰ *Code of Conduct for Members of Parliament*, 2012, www.parliament.co.uk

19. In addition, we also highlighted in our previous evidence that although people who have a public position are less free to exercise their right to be a private citizen, that does not mean that they forgo entirely their right to privacy or that there should be intrusion into their family lives and there must be a clear divide between holding public office and the right to a family life.
20. In general, we **recommend** that the Committee assures itself that the final agreed approach is compliant with the requirements set under human rights legislation; particularly as regards the rights to private life and freedom of speech.¹¹ In line with the recommendations set out in *Standards Matters*, we are of the view that **any intrusion into the personal or private life of Members should always be proportionate and where there is a clear public interest to justify it.**
21. We also **recommend** that any discriminatory behavior of elected representatives, whether carried out in their role as a Member, as an employer or other capacity covered by the law, that breaches equality legislation or hate crime legislation should be prohibited under the Code.
22. We also **recommend** that the final Code is **supplemented by guidance** that makes it clear to both the public and Members the type of circumstances in which Members will be considered to be fall within the scope of the Code; for example, if the approach is adopted that it should extend to Members where it could reasonably be assumed that the Member was acting in their capacity as an elected Member, then **indicative examples** of the types of situations or circumstances where it might reasonably be presumed that a member was acting in their capacity as an elected Member, should be outlined in supplementary guidance.
23. Finally, as stressed above, even if the Code of Conduct only covers the activities of Members when acting in their official capacity as a Member, and a formal complaint cannot be made in relation to their conduct outside this official capacity, it is critical that, through training and guidance, Members are made aware of the **significant negative and detrimental impact that inflammatory language and behavior**, towards groups protected under the equality legislation, can have; **even if this behaviour occurs when the Member is acting in a private capacity.**

¹¹ We note that the DOE has recently indicated that it is satisfied that the Code permits a person's right to private life whilst also protecting the position of councillor and councils. *Departmental Response to consultation on draft NI Local Government Code*, May 2014, www.doeni.gov.uk. The DOE has also indicated that it would consider the outcome of the Committee's review of the Members Code.

Scope: free speech

24. The Commission notes the Committee's proposal to clarify the scope of the Members' Code so that it provides that it does not extend in any circumstances to the expression of lawful comments by Members.
25. This issue relates to previous complaints made under the current Code on the provisions that provide that '*Members are entitled to legally express any political opinion that they may hold*', but '*may not do so in a manner that is manifestly in conflict with the Principles of Conduct*'.
26. We note that a number of complaints alleged that Members have expressed political, social or moral views that were considered to be in breach of the principles relating to upholding the law or the principle relating to promoting good relations.
27. We made it clear in our previous evidence to the Committee in 2008 that '*freedom of speech is fundamental and if we lose that freedom we will have lost the freedom to engage in democratic dialogue*¹².'
28. We also highlighted that there are ways for us to express our views and which leave freedom of expression untrammelled. We made it clear that given the public nature of public representative's roles and the fact that they are elected, as well as having the power to move, encourage and rouse, they have the power to incite people. We made it clear that none of our rights are absolute and every right bears a reciprocal responsibility.
29. As set out in the *Issues Paper*, we recognise that the right to freedom of speech is not absolute and is subject to the restrictions considered necessary in a democratic society, including public safety or the prevention of disorder or crime.
30. In general, **we remain of the view** that whilst Members should be free to legally express any political opinion that they may hold they should not do so in way that offends the underlying principles relating to equality or good relations.
31. We **agree** that the wording of the clause must be compliant with the requirements set out in human rights legislation¹³. We **recommend** the Committee in ensuring compliance, takes a proportionate approach to striking the

¹² Bob Collins, Chief Commissioner, Equality Commission for Northern Ireland, evidence to Assembly Committee for Standards and Privileges, 4 June 2008

¹³ Under the Human Rights Act, Article 10 provides that the exercise of this freedom may be limited as long as the limitation is prescribed by law; is necessary and proportionate; and pursues a legitimate aim. We would draw the Committee's attention, in particular, to the recent High court decision which concerned the scope of and legitimate restrictions to a politician's right of freedom of expression under article 10 of the European Convention for on Human Rights <http://www.bailii.org/ew/cases/EWHC/Admin/2014/1504.html>

appropriate balance between permitting Members to express a lawful political opinion, yet expressing it in such a way that does not offend the underlying principles.

32. We also **recommend** that the Members' Code makes it clear whether or not the provisions relating to Members' entitlement to legally express a political opinion are to be encapsulated as a principle or an enforceable rule.

Principles of conduct-equality and good relations

33. We note that another key issue being considered by the Committee is the relationship between the principles (which currently include the Nolan Principles and the principles of equality and good relations) and rules in the Members' Code.
34. The Committee is concerned that the current Members' Code does not set out the relationship between principles and rules and what differentiates them. It is also concerned that there are no explicit rules of conduct in the Members' Code which are directly linked to the principles of equality, promoting good relations, respect or good working relationships.
35. In addition, it has indicated that it is considering recasting the principles of respect and good working relationships as a single principle. The Committee has also indicated that it believes that the Code should not give the impression that the current existing principles of equality and good relations create duties specific to Members above those set out in legislation.
- *Retention of equality and good relations principles*
36. In general, we **recommend** that the Code **retains clear principles** on both equality and good relations.
37. We reiterate our view, as expressed to the Committee in 2008, that *equality and good relations are positive and dynamic concepts, and are not simply about the avoidance of discriminatory practices*.
38. The importance of having principles, as oppose to only rules, in a Code is made clear by the Committee on Standards in Public Life in *Standard Matters*¹⁴. The Committee, has, for example, highlighted that 'Codes should never, however, override principles'. It was also made clear that behaviour can technically be within the rules yet still offend against underlying principles and that 'adherence to a code of conduct may not therefore, always provide an adequate defence of poor behaviour; nor should it'.

¹⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf - *Standards Matter: a review of good practice in promoting good behavior in public life*, Committee on Standards in Public Life, January 2013

39. We note that the Nolan Principles, which are mainly aspirational and in some instances go beyond duties set out in law, have been hugely influential in raising standards and creating cultural change within organisations.¹⁵
40. We consider that the inclusion of principles relating to equality and good relations, **is consistent with the Section 75 duty on public bodies**, including the Assembly Commission, to have due regard to need to promote equality of opportunity and regard to the desirability of promoting good relations.
41. Through our role in advising public bodies in relation to their good relations duties under Section 75 of the Northern Ireland Act 1998, we are acutely aware of the negative and significant impact that inflammatory language and behavior towards groups protected under the equality legislation can have; for example, language or behaviour that reinforces negative stereotyping of, or encourages prejudice towards a particular equality group.
42. We consider that the inclusion of clear equality and good relations principles will encourage Members to act in a manner that proactively seeks to challenge prejudice and promote understanding between different equality groups.
43. We also believe the principles are **in keeping with the current general duty on Members ‘to act in the interests of the community as a whole’**. In addition, we consider that the inclusion of principles relating to equality and good relations, **is consistent with the strategic aims and objectives of the Executive’s Strategy Together: Building a United Community**¹⁶.
44. In addition, we believe that the inclusion of an equality principle is in keeping with the **principle of equal treatment** which is a fundamental right that underpins both European and wider international human rights law.
- *Need for enforceable rules*
45. Further to the Committee’s belief that in order for the principles to be meaningful there must be rules which explain how the principles apply in specific circumstances, we **recommend** that the Committee gives consideration to **including in the Members’ Code enforceable rules that are directly linked to the principles of equality and good relations**.
46. In particular, as set out above, we **recommend** the inclusion of an enforceable rule that makes it clear that Members must not discriminate on any of the equality grounds protected under the equality legislation or act in a manner that is in breach of the hate crime legislation.
47. We also **recommend** that the Committee gives consideration to the inclusion of an enforceable rule directly linked to the good relations principle. As set out in

¹⁵ As made clear by the Committee on Standards in Public Life in *Standard Matters*.

¹⁶ OFMDFM (2103), Together: Building a United Community’ Strategy, <http://www.ofmdfmni.gov.uk/together-building-a-united-community-strategy.pdf>

more detail below, the Commission is currently considering an updated definition of good relations and, following those considerations, will be happy to engage further with the Committee in relation to the possible wording of an enforceable rule linked to this principle.

48. Finally, we also bring to the Committee's attention that in Wales there is a separate **legal duty** imposed on Councillors under the *Conduct of Members (Principles) (Wales) Order 2001* (SI 2001 No 2276), which identifies ten principles which govern the conduct of local authority members in Wales, namely selflessness, honesty, integrity and propriety, duty to uphold the law, stewardship, objectivity in decision-making, **equality and respect**, openness, accountability, and leadership. Each principle is further defined in the Schedule to the Order. For example, in relation to "Equality and Respect", paragraph 7 of the Schedule states:

"Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others."

Recommendations on proposed wording of principles

49. In addition to our recommendation that the Code retains clear principles on both equality and good relations, we have set out in detail below, our recommended changes to the current wording of these principles.

Equality principle

50. We **recommend** that the principles include the following equality clause.

You should promote equality of opportunity and not discriminate against any person, 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.

51. The Committee will note that we are recommending a change to the current wording of the equality principle in the Members' Code. The current wording (in particular the words 'by treating') imply that one promotes equality / does not discriminate simply by treating with respect. We thus **recommend** changes to the wording in order to avoid ambiguity.

Good relations principle

52. We **recommend** changes to the current wording in the Members' Code relating to good relations.

53. The Commission is of the view that 'promoting good relations' is not primarily concerned with 'acting justly' or 'promoting a culture of respect for the law' as set out in the current Members' Code.

54. We recognise that neither 'good relations' nor 'promoting good relations' is defined in legislation. The Commission, in our 2007 *Guidance for public authorities on promoting good relations*, set out a working definition of good relations in order to provide further clarity to public authorities:

*"the growth of relationships and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms."*¹⁷

55. The Commission, as with others, is considering an updated definition of good relations in the context of the publication of *Together: Building a United Community*¹⁸, as well as the enhanced good relations duty placed on public authorities in Great Britain following the enactment of the Equality Act 2010 in Great Britain.¹⁹

56. While we and others continue to give consideration to a formal definition, the Commission considers that the Committee should take account of these developments in drafting the good relations principle within the Members' Code of Conduct.

57. Specifically, consideration should be given to a focus on the **need to tackle prejudice and promote understanding between people on the grounds of religion, political opinion, race, gender, age sexual orientation and disability**.

58. The Commission will be happy to engage further on this matter as it decides on an updated definition of good relations.

¹⁷ Promoting Good Relations: a Guide for Public Authorities, ECNI, 2007 (page 13), http://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/Good_Relations-Public_Authorities_Guide.pdf?ext=.pdf

¹⁸ OFMDFM (2103), *Together: Building a United Community* Strategy, <http://www.ofmdfmni.gov.uk/together-building-a-united-community-strategy.pdf>

¹⁹ Section 149 (Public Sector Equality duty) of the Equality Act 2010 in Great Britain has also advanced considerations of Good Relations, by setting out that:

"Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) *tackle prejudice, and*
(b) *promote understanding."*

Principles: good working relationships and respect

59. The *Issues Paper*²⁰ recommends that the principles of respect and good working relationships should be recast as a single principle.
60. Members' responsibilities are wide. In addition to their role as legislators, to their constituents and to the public in general, individual Members have a role as employers and this should not be exempt from the overall deliberations. Members and members' parties employ staff and are not exempt from the law on employment in the Fair Employment and Treatment (Northern Ireland) Order 1998.
61. The two principles, then, are quite separate with the first, respect, wide ranging, and the second, good working relationships more specific to the Assembly as a workplace for the Members' employees and others. We **recommend** the inclusion of these as **two separate** principles.

Equality Commission

May 2014

²⁰ <http://www.niassembly.gov.uk/Documents/Standards-and-Privileges/Report/1/agreed%20Issues%20Paper.pdf>
– paragraph 53

Annex 1: The Equality Commission for Northern Ireland

1. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission's remit also includes overseeing the statutory duties on the Department to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.
3. The Commission's general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action
 - promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant the Department;
 - keeping the legislation under review;
 - promoting good relations between people of different religious belief and / or political opinion.
4. The Equality Commission, together with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (UNCRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of the Convention in Northern Ireland.

29 May 2014 - Community Relations Council

Committee on Standards and Privileges
Room 241, Parliament Buildings
Ballymiscaw,
Stormont,
Belfast, BT4 3XX

May 2014

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

The Community Relations Council's (CRC) aim is "to lead and support change towards a peaceful, inclusive, prosperous, stable and fair society founded on the achievement of reconciliation, equality, co-operation, respect, mutual trust and good relations."

CRC welcomes the opportunity to respond to this review. CRC's specific interest in this review of the code is how it can promote and support the development of good community relations. Good relations and community relations deal with sensitive issues, and at times these issues can become divisive, which in turn have a negative impact on perceptions relating to the Assembly, its members and its business.

It is important to note that our society continues to emerge from conflict and it is important to recognise and sustain the good work already done. CRC hopes that the following comments assist the committee and this review process.

CRC and Local Government

By way of background, CRC has a long history of working with local councils on issues regarding community and good relations. This work is relevant to this current review.

CRC engages with local authorities at a number of levels and works to support them in exercising their duties under section 75 (2) of the Northern Ireland Act 1998¹. This support is offered through a number of channels for example OFMDFM's District Council Good Relations Programme. Within this programme CRC works closely with Good Relations Officers during the planning, development and implementation of local Council's Good Relations Strategy's. The various Peace programmes have also enhanced our work with elected representatives and local authorities. In particular Peace IV saw the Consortium² implement support mechanisms that developed Partnership capacity³. Further engagement and partnership takes place during CRC's Annual Community Relations Week, which provides a platform to celebrate, challenge and future plan community relations priorities with the district council area. Each year sees a wide range of events taking place across all 26

¹ In 2002 CRC produced a helpful tool in the *A Good Relations Framework* publication which was developed after a number of pilot good relations programmes across different Local Authorities and other public sector bodies.

² CRC and Pobal

³ For example: developed a range of initiatives such as the development of *Bespoke Programme of Support* for each Partnership (based on the outcomes of the Support and Development Needs Assessment); organised a series of *events* to support Partnerships in the delivery of their plans, and established a *Chairpersons and Managers Forum* which provided another opportunity to focus on the strategic direction of the work through peer learning and best practice sharing.

district council areas, which demonstrates the commitment to community relations from council staff, elected representatives, community organisations and local residents.

However, CRC's work with local authorities has raised a number of issues regarding the opportunities and challenges to promote and support for good relations. CRC believes that it is important to consider these issues in the context of this review.

Central to this discourse is the capacity of members to engage and promote good relations. Research commissioned by CRC reported a range of attitudes to the skills of elected representatives in promoting good relations e.g. 21% of respondents thought the skills of elected representatives were good/very good where as 34% of respondents thought the skills of elected representatives were poor/very poor⁴.

CRC experience and evidence suggests the need for a strong code of conduct that commits elected representatives to taking their duties seriously regarding good relations. In this context CRC makes the following comments and suggestions.

Principles

Community and good relations are important issues that need to be promoted within and across the Assembly, and specifically by Assembly members. CRC welcomes the opportunity this Review offers to solidify and protect these issues. CRC agrees the seven principles of public life should be included, and believes this will bring complementarity between this code and the code of conduct for Local Government (recently consulted on).

CRC notes the inclusion of a Promoting Good Relations Principle and this is welcome. CRC would point out to the Committee the duties placed on the Assembly that arise from Section 75 (2) and recommends linking this to the Promoting Good Relations Principle.

In addition it would be useful for the Committee to review the Promoting Good Relations Principle in the context of legislation which defines good relations.

Support and Development

The Local Government draft code states '*as a councillor, it is your responsibility to make sure that you are familiar with the provisions of the Code and that you comply with those provisions*'. CRC welcomed this requirement, but advocated a strengthening of this section and advising that *familiarising* would require relevant and appropriate training. This training element was also referred to in the 10th Report of the Committee on Standards in Public Life which drew attention to 'appropriate use of training and development'.

It is important to acknowledge good work already undertaken by MLA's within their constituencies regarding the promotion of good relations. CRC commissioned research, which examined peace building within local authorities, found a range of

⁴ The Reform of Local Government: supporting the development and improvement of local authority peace building work. Community Relations Council. 35:2013.

approaches regarding good relations training⁵, yet some Council staff reported 'a lack of buy-in from elected members and are reluctant to push too hard with them'⁶. Again, these findings are relevant to this current review.

Setting down principles and rules helps provide a framework for conduct and behaviour, yet it is crucial that Assembly members are able to avail of a range of support which can assist with compliance. It would therefore be helpful if the committee considered including a recommendation for compulsory professional training on good relations. This recommendation would acknowledge that leadership and capacity building are central to better good relations. It would give specific recognition that we are a society emerging from conflict and would emphasise the need to pay particular attention to our post-conflict environment. Moreover it would acknowledge the fact that the Assembly works within a political and cultural climate and needs the time, resources and support to reflect on the effects of living and working in such an environment, both in relation to themselves as individuals, their parties and the broader society. The training would help inform professional practice and help ensure equality of access to services for constituents⁷.

In support of the above it is useful to refer to CRC's previous comments relating to leadership and capacity building in good relations (CRC response to Review of Public Administration consultation):

- a) Public servants and local elected representatives are committed to undertaking good relations training as part of their induction. This should be introduced in consultation with CRC, Equality Commission for Northern Ireland (ECNI), and other key stakeholders.
- b) Good relations training should be an element of The Good Relations Challenge Programme within local councils. This must be in keeping with statutory duty of Section 75 of the *Northern Ireland Act 1998*, guidance for which has been published by ECNI;
- c) Good relations should be a core part of professional education for councillors, and this training should also draw on models of international best practice.

The above could go some way to supporting Assembly members to fulfil their duties regarding good relations.

Developing Policy Context

It is also important to consider future developments under the auspices of the Together Building a United Community, as well as a future Peace IV. These developments should be reflected upon during the current and any future review of the code of conduct.

Public Awareness

⁵ Larne Borough Council have held away days with cllrs and senior staff to examine and agree on the main sensitive issues facing council over its next term; Coleraine provides leadership training for cllrs which is ILM accredited; and Craigavon Borough Council established an elected members for. The Reform of Local Government: supporting the development and improvement of local authority peace building work. Community Relations Council. 22:2013.

⁶ The Reform of Local Government: supporting the development and improvement of local authority peace building work. Community Relations Council. 22:2013.

⁷ CRC's response to Review of Public Administration. 2005.

It would be useful as part of this Review process for the Committee to consider how the Code of Conduct and the Complaints Procedure will be publicised to the public – it is important to raise awareness as to the duties of members of the legislative assembly in upholding the code and fulfilling their duties.

Conclusion

CRC has engaged with a wide range of elected representatives, as well as Assembly staff responsible for the promotion of good relations. CRC would welcome the opportunity to continue to engage and support the Assembly, and this Committee on the development of this code specifically in relation to the promotion and development of good relations.

CRC welcomes the opportunity to respond to this review and looks forward to the issues raised in this response being addressed and taken forward by the Committee.

For further information contact:

Gemma Attwood – gattwood@nicrc.org.uk

Policy Development Officer

Community Relations Council

16 May 2014 - Dr John Glenn

I wish to make the following comments on the review of the NI Assembly's Members Code of Conduct

1. The Members Code of Conduct should include such ethical principles as: honesty, integrity, impartiality, fairness, justice, good character, support for the Government of the UK.
2. The CV of all members should be acceptable to independent assessment and not contain any criminal or paramilitary convictions or associations which violate the operation of good government.
3. No member of a Parliamentary body should be associated with any illegal paramilitary body or organisation in the past or the foreseeable future.
4. If any member of a Parliamentary body in Northern Ireland has a CV which would not even be tolerated or accepted for employment anywhere in the UK, then they should be banned from Government.
5. Any member or potential member of the NI government in future must abide by the 'Code of Conduct' containing the principles 1 to 4 outlined above.

Unfortunately the British, Irish, American and even European governments have been guilty of violating the above principles when dealing with the political negotiations leading to the present NI Assembly set-up. Some of the things which have happened in the process of arriving at the present settlement are listed as follows:-

- a. Deceit; lies; private deals to parties in secret; breaking of promises given to parties in public; failure to defeat terrorism in NI; citizens of NI held to ransom by violence; innocent victims not recognised; concessions given to terrorists and paramilitary parties on all sides; true democracy and government ignored by Westminster, Irish, American and European establishments in order to get a settlement in Northern Ireland.
- b. In August 1969 the 'Downing Street Declaration' starts the process of Westminster interference in NI Government affairs after the start of violence, terrorism and the troubles in Northern Ireland.
- c. On 24th March 1972 Conservative PM Edward Heath suspends Stormont Government and introduces Direct Rule from Westminster against wishes of NI Government and PM Brian Faulkner.
- d. In 1979 Conservative PM Margaret Thatcher replaces Labour PM Harold Wilson and initially takes strong action against IRA terrorist campaign in Northern Ireland.
- e. PM Thatcher started having secret talks with IRA from 1983 after election of Gerry Adams MP to Westminster. Thatcher then introduced the 'Anglo-Irish Agreement' on 15th November 1985 which was a massive betrayal of the Unionist population on NI and done without the local politicians knowledge or agreement. Thatcher even continued secret talks with the IRA from 1985 - 1990 when she stood down as PM. (see BBC TV program 'Thatcher and the IRA' for more details). PM John Major continued with this process until he was succeeded by PM Tony Blair from 1997-2007. The treachery continued even more with Blair continuing to negotiate with IRA/Sinn Féin. Blair and his advisor Jonathan Powell were responsible for the 'On the Run' (OTR's) letters of immunity for IRA/SF members who were involved in terrorism and murder (see Tony Blair & Jonathan Powell memoirs). I believe that senior members of IRA/SF both in government and otherwise have been given immunity from prosecution by the British/Irish/American governments during PM Tony Blair's time in office which led to the 'Belfast Agreement' in 1998 under David Trimble, the St. Andrews Agreement 2006 and the Hillsborough Agreement 2010 under Dr Ian Paisley and to the present time.

(see David Trimble's book 'Himself Alone'; Margaret Thatcher's memoirs; BBC 'Spotlight' program on 'Mike Logan' 8th April 2014 for more details). These show the murky world of deceit in British/Irish/and American dealings and politics regarding the 'Appeasement Process' in Northern Ireland.

I trust you will consider my submission towards the 'Review of NI Assembly's Code of Conduct'. I also have submitted an attachment giving more details on 'Political Set-up at Stormont' for your attention.

Regards

Dr John Glenn

British Citizen & True Unionist

Born Again Christian believer (John 3:3-8,14-21; John 5:24)

Believer in Civil & Religious Liberty as taught in the Bible, God's Word

Former DUPed Ex DUP voter

16th May 2014

PS. This is a larger format of copy already sent by email at 15.47 hrs today.

The present political form of government in NI Assembly at Stormont

I wish to draw your attention to some important issues regarding the present unsatisfactory political arrangements at Stormont for the governance of Northern Ireland and glad to answer any questions on it.

1. It is a **sad reality** that for a **considerable number of years past, and still up to the present time**, the **majority of the Roman Catholic electorate**, in all elections in Northern Ireland, **vote for Sinn Fein/IRA which is a paramilitary party**, rather than for the **truly democratic non-paramilitary SDLP party**. What would be the **reaction of the RC electorate** if the **protestant electorate** voted the **UVF/UDA paramilitary parties into power in NI Assembly as the main party** and their leader as **First Minister**? **I don't think they would accept it for one moment, nor even the Westminster Parliament - Why is it then tolerated here?** I'm still waiting for an answer from DUP; UUP; TUV; UKIP; NI21; Alliance Party; SDLP; SF/IRA; UVF/UDA; RC/Protestant community and Westminster Government !!! No one is even asking or answering this question to my knowledge. I believe everyone just wants the **appeasement process** to continue **no matter what the cost** and call it a **peace process** even if it means **living in and being governed by a Dictatorship Assembly** at Stormont - only tolerated in **communist** countries such as **China or Russia or North Korea !!!**.

2. In the NI Assembly and the Press, **Sinn Fein must not be addressed as SF/IRA but only as SF**, yet **their Army Council has not been dissolved but is still in existence, contrary to what DUP** would have us believe (see last IMC report as given in the following web pages indicated below):

www.theguardian.com/uk/2008/sep/03/northernireland.ireland

www.rte.ie/news/2008/0903/107614-northpolitics/

So then **SF/IRA are still two sides of the same political coin**. The **IRA Army Council is still in existence** and probably **meeting occasionally** even though it is **not supposedly operational at present**. But if **mandatory coalition** was ended and **replaced by voluntary coalition** - which I believe should happen, then I'm convinced that **SF/IRA would not accept this** but would most **likely threaten violence and terrorism** in order to **blackmail both the Unionists and British Westminster Government** into **compromise and further concessions?** This demonstrates quite clearly that **SF/IRA are only democrats** when they are in **mandatory coalition government** in Northern Ireland - nothing else would satisfy them.

3. The politicians / the good and the great / the media and newspapers (Belfast Telegraph, Newsletter etc) continually use the term **'peace process'** as a misnomer for what it really is an **'appeasement process'**. It is obviously a **deliberate attempt to sustain the present 'mandatory coalition' - so-called democratic** - government at Stormont and make the **naive/gullible protestant** electorate and others believe it. This means that **SF/IRA terrorists** are being **rewarded** for all the killing, bombing and destruction of people & property over 40 years **by voting them into government in NI**. I have obtained information from government sources and **Freedom of Information Act** that it **cost the British government and taxpayers at least £200bn in compensation for deaths/injuries/destruction of property and other associated costs during the troubles in NI !!!**. I am convinced that I was not given the true cost but only an estimate in my **FOI request** to satisfy the Government. The true cost will never be disclosed or known.

4. Another issue was the **Richard Haas Talks & Negotiations** in Belfast to try and resolve problems such as the **parades impasse, flags & emblems, and the legacy of the past**. Why is it that the Government here in NI and at Westminster always allow the **American** government to interfere in and try and resolve NI political problems? I thought we had learned from the past experience of **George Mitchell negotiations (1995)** and **Bill Clinton (1998)** putting pressure **then, and later**, on David Trimble in the **1998 Belfast Agreement**. The American government has always shown a **bias towards the republican agenda of SF/IRA in NI** as well as allowing & encouraging **fundraising in USA** through the strong **Irish-American lobby**. I believe we should no longer allow American interference in the NI affairs but look to our own electorate and **only truly democratic** parties in NI to negotiate with Westminster a **truly democratic voluntary power sharing** assembly with other **non-paramilitary** parties in NI. **America** couldn't even get sufficient support at home or elsewhere in the world for their desire to interfere politically & militarily in the Syrian conflict - as they wrongly did in Iraq and Afghanistan. Thankfully the **Westminster Parliament** and the **British public rejected** military intervention in Syria. **America** should concentrate on getting **their own house in order first** before lecturing other countries. (eg. on the gun laws, racial & black problems, homosexuality & immorality, financial & bank scandals, supply of arms, global warming & environmental pollution, and world domination by military, financial, and political might).

5. The **greatest mistake** of the **Belfast Agreement in 1998** was the decision to placate both **republican SF/IRA** and **loyalist UDA/UVF** by giving an **amnesty** to all political prisoners & terrorist murderers and releasing them unto the streets again so that **their political representatives could be allowed into Stormont**. This was **morally wrong** and completely contrary to the **Ten Commandments** and the teaching of **the Bible**. (6th commandment Exodus 20v6 - 'Do not commit murder'; Rev. 21v8 murderers etc cast into hell; 1 John 3v15). It was also **politically incorrect** because the state has the **authority given by God** in scripture to punish **murderers** - even **by death**, and **not reward** them by bringing them into government (Romans 13vv1-5). Also a nation or government is only made great by **righteous laws and actions** (see Proverbs 11v11 & Proverbs 14 v34) not by passing **bad laws** or pursuing policies **contrary to God's Laws**. The **Belfast Agreement(1998)**; **St. Andrews Agreement(2006)**; **Hillsborough Agreement(2010)**, are all **morally wrong & politically incorrect** based on the teaching of **God's Law** and other Bible passages. I voted against all three **Agreements** because I saw in all of them the **seeds of the destruction of unionism in NI with UK** based on my **own dearly held unionist, political, and christian beliefs of justice and honesty** in politics and government. My voting decisions have been fully vindicated since then.

6. The influence of **Dr Ian Paisley and the DUP** in the **political and religious life** of Northern Ireland over the **past 50 years** cannot be **overlooked** even though he himself has now retired from the political scene. **Like many others** in Northern Ireland, because of the **SF/IRA terrorist campaign and their murder of my relatives & friends**, and lack of **strong action by the UUP and Westminster** against it, I was encouraged to **support the DUP politically** in all the local elections. **However** when Dr Paisley encouraged the DUP to go into **mandatory coalition** government with **SF/IRA in 2007** I was completely surprised, shocked & betrayed. **David Trimble in the 1998 Belfast Agreement allowed SF/IRA into Stormont - but not into government** - instead Trimble went into **voluntary coalition** government with **SDLP (a non-paramilitary party)** and with **Seamus Mallon as Deputy FM**. This was at least a **truly democratic system** of government and capable of **being voted out at elections** - unlike the **mandatory coalition system with SF/IRA accepted by Paisley and the DUP in 2007** which is **permanent and cannot be changed** unless agreed to by **SF/IRA - which is most unlikely !!!**. Paisley had always said he would **NEVER, NEVER, NEVER !!!** go into government with **SF/IRA** so he proved to be a **political hypocrite** and **betrayed all his supposedly true unionist and protestant principles**, and all the **relatives of those murdered by SF/IRA during 40 years of terrorism and destruction in NI !!!**. **Dr Ian Paisley and his DUP party** have been responsible for **splitting unionism** in general and the **Ulster Unionist Party (UUP)** in particular from **1966 onwards**. In all elections in NI up until then there was **only one unionist party to vote for, namely UUP**. The protestant electorate was **always united and victorious** in all elections with **RC Nationalist and Labour parties** in opposition. There was **stability and prosperity** in NI and the **UUP political motto was 'United we stand - Divided we fall'**. How unlike the **present state of life and politics** in Northern Ireland. **Political instability** at Stormont and **not changeable** under the present regime; **economic hardship** for everyone in the UK and Northern Ireland at present because of the recession and troubles; **uncertainty for the future** due to the political set-up and community unrest in Northern Ireland.

7. My **only desire** is to see **proper democratic** government in Northern Ireland like all other parts of the United Kingdom - in Westminster, Wales and Scotland. **Where there are no unrepentant terrorists in government !!!**. I look forward to the time when **DUP & UUP MLA's & MP's** do a conscience check and come to their political senses. They should realise that even though they get elected in NI & Westminster at present there is a large body of the **protestant family and loyalist community** in NI becoming more **politically sceptical and frustrated with the Unionists Parties**. This is because they see their **civil & religious liberties being gradually eroded** and the guilty parties **like SF/IRA and their community groups, and others**, calling the tune. The stage has now been reached when **public streets in NI** (such as Ormeau Rd; Newtownards Rd; Short Strand; Donegall Rd; City Centre; Ardoyne shops junction; Woodvale Rd; Crumlin Rd; Dunloy; Rasharkin; Portadown; Coleraine; Garvaghy Rd etc) are **becoming no-go areas** for the protestant community. This is mainly due to the **discriminatory decisions** by the unelected **Parades Commission quango** against **traditional loyalists/unionists parades** which mostly decides **in favour of and rewards SF/IRA** and their **associated community groups** who agitate **trouble in opposition** to parades. There is also pressure being applied from **British, Irish & American governments (eg. Haass talks)** to try and sanitise the actions of **SF/IRA** and their **dissident surrogates** - who have not gone away but continually cause murders, bomb scares and disruption - and also interfere with **flags, parades, the past, and the government of Northern Ireland**. I do hope that there will be no further **compromises and concessions** made by the **DUP & UUP and other unionists** to the recent **Haass talks** to placate and satisfy the **SF/IRA agenda only !!!**. There are elections to **Europe and Local Government** in 2014 and **Westminster** in 2015. And there should also have been **Elections to Stormont** in 2015 also according to the **1998 legislation**. However

in order to keep the **undemocratic mandatory coalition** in existence for longer it has been **put back until 2016**, quite surreptitiously, without being debated in Stormont !!! However the electorate will have the **opportunity eventually to give their opinion** on these matters. I do hope that the unionist electorate will **waken up this time** to the way they have been **betrayed by the DUP going into mandatory coalition with Sinn Fein/IRA** and how they have been **unfairly treated and discriminated against** by Westminster, Dublin, America, Europe and others ever since. One **good political change** in direction by the **DUP recently** has been the rejection of the **'Shrine to IRA/SF terrorism at Maze-Long Kesh'** former prison Lisburn. This was **mainly due to pressure** from the **loyal orders, RUC/GC and relatives of innocent victims of IRA/SF terrorism in NI & GB**, over past **40 years**. (see data of deaths etc. from **'Lost Lives'** given below). I do **trust and pray** this will be the **start of many more political changes** by the **DUP** and **UUP** towards **ending their participation in government with unrepentant Sinn Fein/IRA terrorists** and returning a **truly democratic system of government in Northern Ireland !!!**.

Also in the next political government at Stormont the number of MLA's should be reduced from 6 to 4 for the 18 Westminster constituencies **giving 72 MLA's**; and the number of **Departments reduced from 12 to about 6**. The present **bloated** system was devised by the **1998 Belfast Agreement** to make sure **all the parties** were represented at Stormont irrespective of the cost and bureaucracy involved. **It presently costs approximately £200m per year to run Stormont !!!**. This can be greatly reduced with less bureaucracy and a truly democratic system of government without, paramilitary parties, to replace it.

Regards

Dr John Glenn

British Citizen & True Unionist

Born Again Christian believer (John 3:3-8, 14-21; John 5:24)

Believer in Civil & Religious Liberty as taught in the Bible, God's Word

Former DUPed Ex DUP voter

My relatives and friends were murdered by IRA/Sinn Fein terrorists during the troubles
My brother lost his life in 1943 while serving with the RAF in fighting for King & Country against the fascist Hitler German regime who were trying to destroy and conquer the UK.

16th May 2014

Postscript Added

If true democratic government (without unrepentant terrorists being included) cannot be returned to NI then I believe Direct Rule from Westminster should be returned to NI until this type of government is permitted. I would much rather be governed by ministers from Westminster who are true democrats rather than by the present NI Assembly which includes a SF/IRA terrorist party whose Army Council is still in existence after 40 years of murder & destruction in NI.

Cost to UK Government and taxpayers of fighting the war against terrorists in NI is approx. **£200bn and the real total is unavailable**. (obtained by FOI Act from Westminster Government / Military Dept / PSNI/RUC).

Statistics of deaths caused by all paramilitary bodies, security forces & others in NI from 1966 until 2006 given in Table 3 of **'Lost Lives'** ISBN 9781840185041 www.mainstreampublishing.com.

Republicans	Loyalists	All Security Forces	others	Total
2152	1112	367	89	3720
58%	30%	10%	2%	100%

Total number of people still suffering from serious injuries received during the troubles approx. 100,000

2 July 2014 - The Association of Professional Political Consultants

Response by
The Association of Professional Political Consultants (Appc)

To the Northern Ireland Committee on Standards & Privileges

This response is submitted by the APPC, which represents 82 public affairs consultancies throughout the UK, including four which operate in Northern Ireland.

By way of background, the APPC has been publishing a voluntary register of its members' clients for nearly 20 years. It oversees a code of conduct for its members, which is enforced by an independent disciplinary procedure outsourced to the Centre for Effective Dispute Resolution (CEDR). Together with the Chartered Institute of Public Relations (CIPR), the APPC supports the UK Public Affairs Council (UKPAC), which oversees a joint register.

Whilst APPC does not believe it should comment on specific provisions in the Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members, we welcome this opportunity to respond to the Committee in writing on the lobbying aspects of the Issues Paper and on other lobbying questions raised by the Committee.

Having said that, in our view, the focus should be on those that are likely to be lobbied. It is they who have the duty to act in the public interest and to deal with any conflicts of interest. While we have pioneered a publicly available register of clients and an independently enforced code of conduct for at least some of those who do the lobbying, politicians have not always taken their own responsibilities sufficiently seriously, as illustrated by some recent journalistic sting operations.

APPC is pleased to note that the Standards & Privileges Committee states that there is no evidence of problems (systemic or otherwise) at the Assembly in relation to the lobbying of Members, and also that the Committee supports the stance of 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."*

APPC has made a number of submissions to the Committee on Standards in Public Life, most recently on its report "Strengthening Transparency around Lobbying", when we said:

'Lobbying in itself is not a problem. To the contrary, the freedom for individuals and organisations to lobby Government and Parliament is a key feature distinguishing democracies from totalitarian societies. There is little evidence that abuse of lobbying is widespread or systemic. Transparency International, for example, reports that the UK is one of the world's countries where corruption is not commonplace. There have been instances of inappropriate behaviour by politicians, but it is noteworthy that these have rarely involved real lobbyists as opposed to undercover journalists.'

Our responses to the questions posed by the Committee are as follows.

Transparency of Lobbying, etc, Act 2014

The Act gives a great deal of discretion to the Registrar of Consultant Lobbyists, who has yet to be appointed, and it is therefore premature to comment on how the Act will be implemented or how the statutory register will operate.

Whilst it is not known how the Act will operate in respect of “cross-border” (ie within the jurisdictions of the UK) lobbying activity, it seems likely that it will apply to those lobbying organisations in NI who have direct communication with Ministers and Permanent Secretaries in Westminster. That raises the interesting – and undoubtedly complex – area of “cross-border” in the Northern Ireland context of the neighbouring jurisdiction; we have not yet addressed this, but remain aware of similar legislation now passing through the Oireachtas.

APPC has serious reservations about the Transparency of Lobbying, etc, Act, including:

- The Act does not apply to lobbyists’ interactions with MPs and Peers, only with Ministers and no civil servants below the rank of Permanent Secretary
- The Act will apply only to third-party lobbyists, not to those who lobby on behalf of their employer
- The Act, we believe, will result in less transparency than currently offered by our self-regulatory regime

Is it easier to introduce mechanisms for managing lobbyists’ interactions with elected reps when there is a statutory definition of who a lobbyist is?

APPC believes that there should not be a definition of “lobbyist” but rather of lobbying activity. APPC, together with the Chartered Institute of Public Relations and the Public Relations Consultants’ Association, commissioned a definition of lobbying activity, which is annexed to this submission.

Would a Register of NI Lobbyists be a good thing?

APPC welcomes in principle a proposal for a statutory register of lobbying provided that the register will be universal, including not just consultant lobbyists but all who lobby in a professional capacity. Any such register should include an indication of whether the individual or organisation registered is covered by an existing code of conduct (such as APPC’s) which would make it easier for a concerned stakeholder to make a complaint to the appropriate body.

In our view, if there is to be a statutory register of lobbyists, it should cover all those who lobby professionally and offer professional advice on how to lobby. To illustrate this, we recently conducted a survey of all meetings with external stakeholders conducted by the Department for Business over a six-month period and found that only two out of 988 involved public affairs consultants.

We think that the disclosure of issues would most efficiently and effectively be achieved by Ministerial disclosure of meetings with external stakeholders.

Would the lobbying industry in Northern Ireland have any difficulties with measures similar to those in the Scottish Parliament, the House of Lords and the National Assembly for Wales being introduced at the Northern Ireland Assembly. If so, then why?

APPC members would have no difficulties with such measures. APPC supports all means to improve transparency and encourage ethical conduct. We think that Ministers, officials and Parliamentarians should all be guided by codes of conduct, based on the foundations of the principles for the conduct of public life. All of these codes should be supported by independent enforcement mechanisms.

In our view, the focus should be on those that are likely to be lobbied. It is they who have the duty to act in the public interest and to deal with any conflicts of interest. While we have pioneered a publicly available register of clients and an independently enforced code of conduct for at least some of those who do the lobbying, politicians have not always taken their own responsibilities sufficiently seriously, as illustrated by some recent journalistic sting operations. We further think that Ministerial disclosure of meetings with external stakeholders should be more consistent and timely.

Annex 1

Definition of lobbying drafted on behalf of APPC, CIPR and PRCA and submitted to the Cabinet Office, April 2013

Annex 2

APPC Code of Conduct, July 2013

APPC

1 July 2014

Annex 1. Definition of Lobbying

Definition of Lobbying

- (1) A person who provides lobbying services must be registered.
- (2) In subsection (1) “lobbying services” means activities which are carried out in the course of a business for the purpose of—
 - (a) influencing government, or
 - (b) advising others how to influence government.
- (3) Activities are to be taken as having the purpose specified in subsection (2) if a reasonable person would assume, having regard to all the circumstances, that the activities were intended to have the effect described in subsection (2)(a) or (b).
- (4) In this section “government” includes, within the United Kingdom—
 - (a) central government, devolved government, local government,
 - (b) members and staff of either House of Parliament or of a devolved legislature,
 - (c) Ministers and officials, and
 - (d) public authorities (within the meaning of section 6 of the Human Rights Act 1998).
- (5) Subsection (1) does not apply to—
 - (a) anything done in response to or compliance with a court order,
 - (b) anything done for the purpose of complying with a requirement under an enactment,
 - (c) a public response to an invitation to submit information or evidence,
 - (d) a public response to a government consultation exercise,
 - (e) a formal response to a public invitation to tender,
 - (f) anything done by a person acting in an official capacity on behalf of a government organisation, or
 - (g) an individual who makes representations solely on his or her own behalf.
- (6) In subsection (2) “influencing” includes informing; but making information or opinions public (for example, by way of advertisements or attributed articles in a newspaper) is not the provision of lobbying services.
- (7) In this section—
 - (a) “business” includes any undertaking, including charitable and not-for-profit undertakings; and
 - (b) services provided by or on behalf of an undertaking are provided “in the course of a business”, even if the persons providing the services are acting on a pro bono, volunteer or not-for-profit basis.

(8) Subsection (1) applies whether a person is acting—

- (a) on behalf of a client,
- (b) on behalf of an employer,
- (c) as a volunteer on behalf of a charitable or other organisation, or
- (d) on the person's own behalf (subject to subsection (5)(g));

but the Secretary of State may by regulations made by statutory instrument permit persons who provide lobbying services on behalf of an organisation (in any capacity) to rely on the organisation's registration.

(9) The Secretary of State may by regulations made by statutory instrument provide that a person does not contravene subsection (1) by providing lobbying services without being registered, provided that the person becomes registered within a specified period beginning with the first date on which those services were provided.

Annex 2. APPC Code of Conduct

Association of Professional Political Consultants

CODE OF CONDUCT

Preamble

This Code of Conduct covers the activities of regulated political practitioners (defined as APPC members and their political practitioners) in relation to all UK institutions of Government. This Code applies equally to all clients, whether or not fee-paying.

It is a condition of membership of APPC that the member and its political practitioners will accept and agree to abide by this Code and that members will be jointly and severally liable for the actions of their political practitioners in relation to the Code. Regulated political practitioners are required to endorse the Code and to adopt and observe the principles and duties set out in it in relation to their business dealings with clients and with institutions of government.

Other conditions of membership of APPC include:

- **Undertaking an annual compliance procedure in respect of the Code**
- **Being bound by the terms of the APPC Complaints & Disciplinary Rules and Procedures**
- **Providing four times a year to APPC the names of all clients and political practitioners during the previous three months for publication in the APPC Register**

The Code of Conduct applies the principles that political practitioners should be open and transparent in their dealings with parliamentarians or representatives of institutions of government; and that there should be no financial relationship between them. APPC members are determined to act at all times with the highest standards of integrity and in a professional and ethical manner reflecting the principles applied by this Code. In the view of APPC, it is inappropriate for a person to be both a legislator and a political practitioner.

Definitions

“Political practitioner” means a person offering public affairs services to a client on behalf of a member, or to an employer, whether that person is employed, full or part-time, or freelance or an intern, or to an employer.

“Institutions of Government” mean all United Kingdom, English, Welsh, Scottish and Northern Ireland central, regional and local government bodies and agencies, public bodies and political parties.

“Public affairs services” means offering any advice, representation, research, monitoring or administrative assistance) predominantly related to UK institutions of government or undertaking work of an advisory nature related to institutions of UK government.

The Code of Conduct

1. In pursuance of the principles in this Code, political practitioners are required to adhere to this Code in its entirety in order to ensure that the reputation of the Association or the profession of political consultancy is not brought into disrepute.
2. Political practitioners must act with honesty towards clients and the institutions of government.

3. Political practitioners must use reasonable endeavours to satisfy themselves of the truth and accuracy of all statements made or information provided to clients or by or on behalf of clients to institutions of government.
4. In making representations to the institutions of government, political practitioners must be open in disclosing the identity of their clients and must not misrepresent their interests.
5. Political practitioners must advise clients where their activities to deliberately and intentionally interact with the institutions of government may be illegal, unethical or contrary to professional practice, and to refuse to act for a client in pursuance of any such activity.
6. Political practitioners must not make misleading, exaggerated or extravagant claims to clients about, or otherwise misrepresent, the nature or extent of their access to institutions of government or to political parties or to persons in those institutions.
7. Save for entertainment and token business mementoes, political practitioners must not offer or give, or cause a client to offer or give, any financial or other incentive to any member or representative of an institution of government, whether elected, appointed or co-opted, that could be construed in any way as a bribe or solicitation of favour. Political practitioners must not accept any financial or other incentive, from whatever source, that could be construed in any way as a bribe or solicitation of favour.
8. Political practitioners must not:
 - Employ any MP, MEP, sitting Peer or any member of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Authority;
 - Make any award or payment in money or in kind (including equity in a member firm) to any MP, MEP, sitting Peer or to any member of the Scottish Parliament or the National Assembly of Wales or the Northern Ireland Assembly or the Greater London Authority, or to connected persons or persons acting on their account directly or through third parties.
9. Political practitioners must ensure that they do not benefit unreasonably by actions of any third party that, if undertaken by the consultant, would be considered a breach of the Code.
10. Political practitioners must comply with any statute, any resolution of an institution of government and with the adopted recommendations of the Committee on Standards in Public Life in relation to payments to a political party in any part of the United Kingdom.
11. Political practitioners who are also local authority councillors are prohibited from working on a client assignment of which the objective is to influence a decision of the local authority on which they serve. This restriction also applies to political practitioners who are members of Regional Assemblies, Regional Development Agencies or other public bodies.
12. Political practitioners must keep strictly separate from their duties and activities as political practitioners any personal activity or involvement on behalf of a political party, including as an office holder or candidate for office.
13. Political practitioners must abide by the rules and conventions for the obtaining, distribution and release of documents published by institutions of government
14. Political practitioners must not hold any pass conferring entitlement to access to the Palace of Westminster, to the premises of the Scottish Parliament or the National

Assembly of Wales or the Northern Ireland Assembly or the Greater London Authority or any department or agency of government. The only exceptions are:

- Where the relevant institution is a client of the political practitioner and requires the political practitioner to hold a pass to enter their premises.
 - Where the political practitioner holds a pass as a spouse or civil partner of a member or as a former member of the relevant institution, in which case the pass must never be used whilst the practitioner is acting in a professional capacity.
15. Political practitioners must conduct themselves in accordance with the rules of any institution of government while within their precincts, and otherwise.
 16. Political practitioners must always abide by the internal rules on declaration and handling of interests laid down by any public body on which they serve.
 17. Political practitioners must not exploit public servants or abuse the facilities of institutions of central, regional or local government within the UK.
 18. Members must disclose the names of all their clients and practitioners in the APPC Register. A member providing secretariat or other services for an All-Party Parliamentary Group must list that APPG as a client, together with the name(s) of the APPG's funder(s) and any associated organisation(s).

In all their activities and dealings, political practitioners must be at all times aware of the importance of their observance of the principles and duties set out in this Code for the protection and maintenance of their own reputation, the good name and success of their business, and the standing of the profession as a whole.

July 2013

20 August 2014 - Northern Ireland Assembly Commission

Room 23
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Mr Paul Gill
Committee on Standards & Privileges
Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

13 June 2014

Dear Mr Gill,

Thank you for your letter dated 21 March 2014 in which you invited comments on the issue paper into the review of the Assembly's Code of Conduct and Guide to the Rules Relating to the Conduct of Members. The Commission considered the detail of the 'Issues Paper' at their meeting on the 13 May 2014, and made the following comments, namely:

Improper use of payments or allowances

- At paragraphs 67-70, the Committee notes the potential to re-word the existing rule to reflect the changes in governance arrangements since the formation of the Independent Financial Review Panel (IFRP). The Handbook is subject to regular review (for example, as a result of taxation changes or operational changes within the Finance Office) but the Commission has indicated that it might be helpful to Members to refer to the role of IFRP in the rule. The Commission proposes the following revised wording of "*No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules **established by the Independent Financial Review Panel or by the Assembly Commission** applying to such payments, allowances and resources must be strictly observed.*"

Guidance or instructions of the Assembly Commission

- The Commission also notes that if paragraphs 67-70 cover essentially all of the financial implications for Members, it is assumed that those that are covered by paragraphs 71-74 relate to everything else such as events, Staff/ Member protocol, use of Parliament Buildings, use of ICT Resources, Health and Safety Policy, Fire Safety Policy, Environmental Policy, Security Policy, Conduct and Visitor Behaviour Policy. In relation to identifying 'the guidance and instructions falling under this rule and to determine in which cases non-compliance should amount to a breach of the Code', the Commission is of the view that this is a matter for the Commissioner for Standards if a complaint is made.

Members' Staff conduct

- In relation to paragraphs 107 – 112 of the Issues Paper, it acknowledges that Members have a responsibility to manage the conduct of their staff. In this regard, the Commission recognises the financial provisions made to Members by IFRP through Office Costs Expenditure (OCE) and notes that OCE can be used to provide Members with advice or

guidance on all aspects of managing employees. It is the view of the Commission that this appears to be the most appropriate mechanism for the provision of support to Members.

On behalf of the Commission, I would like to thank the Committee for the opportunity to respond. Please let me know if you would like me to clarify any further matters.

Yours sincerely

Mr Tony Logue

Head of the Commission/ Chief Executive's Office

Sinn Féin code of conduct response

Sinn Féin welcomes the opportunity to respond to review of the Code of Conduct for Members.

Sinn Féin is committed to high ethical standards in public life and fully endorses the principles of public life as set out in code of conduct and members handbook.

Sinn Féin agree that the scope of the code should be clearly defined and note that some have intended to use the code for political point scoring therefore we welcome clarity on when the code applies and when it does not.

Free Speech

Sinn Féin supports the committee proposal “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.”

Staff Conduct

Sinn Féin agrees that Members staff should uphold the same principles in their conduct as Members but we do not believe that a register of interests should be applied to staff

Attorney General

The Attorney General is not elected into position therefore the code of conduct is not and should not be applicable, the AG is appointed by FMDFM and is held to account through structures within Justice System.

18.12.14 – IFRP

Independent
Financial
Review
Panel

Mr Jimmy Spratt MLA
Chair
Standards and Privileges Committee
Northern Ireland Assembly
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

18 December 2014

Dear Mr Spratt

Thank you for your letter dated 12 Dec 2014 concerning some remarks of mine during a recent broadcast. I am grateful to you for indicating current practice in relation to the employment of family members.

I should have clarified that the wider circle of relatives and connected parties employed was not required to be disclosed under the current code of conduct and this is a matter of some concern to the Independent Financial Review Panel.

The IFRP was unaware that the Committee on Standards and Privileges was currently undertaking a review of the MLAs Code of Conduct. You should have received a request from the IFRP for a meeting which I trust can be arranged soon and where we might usefully discuss matters of mutual interest including those raised in your letter.

In the meantime your committee is fully aware of the content of the three consultative documents issued by IFRP this year covering MLA pensions, constituency office rents and employment of support staff. Our fourth and final consultative document covering MLA salaries, allowances and other expenses shall be published early in 2015. Any comments from your committee would be welcome, and it would be useful for your committee to take account of these consultative documents as submissions in undertaking your review of the Code of Conduct.

The logo consists of a solid blue rectangle. Inside the rectangle, the words "Independent", "Financial", "Review", and "Panel" are stacked vertically in a yellow, sans-serif font.

Independent
Financial
Review
Panel

INDEPENDENT FINANCIAL REVIEW PANEL CONSULTATION ON MEMBERS' SALARIES AND OFFICE HOLDER ALLOWANCES

**DEADLINE FOR RESPONSES:
5 PM ON FRIDAY 29 MAY 2015**

A copy of this consultation document can be accessed on the IFRP website (www.ifrp.org.uk), by email (info@ifrp.org.uk) or by writing to the IFRP at:

The Independent Financial Review Panel
Room 241
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

The Consultation Document can be made available in large type on request.

Friday 27 March 2015

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NORTHERN IRELAND ASSEMBLY MEMBERS' SALARIES AND OFFICE HOLDER ALLOWANCES

CONSULTATION DOCUMENT

FOREWORD

The Independent Financial Review Panel ('the Panel') was established in July 2011 to independently set the pay, allowances and pensions of Members and office holders of the Northern Ireland Assembly ('the Assembly'). Our remit includes a range of subjects, for example:

- Members' Salaries;
- Additional Allowances paid to office holders within the Assembly and Executive (e.g. Ministers, Committee Chairs, the Speaker, etc.);
- Pensions;
- Office Costs Allowance paid to Members to support their work in constituencies; and
- Travel expenses.

The Panel publishes a Determination setting out its assessment of what monies should be paid to Members and any restrictions on how they can be paid or spent. We normally only publish one Determination per Assembly Mandate. Once the Panel publishes its Determination, Members have no right of appeal. Enforcement of the rules in the Determination is a matter for the Northern Ireland Assembly Commission ('the Commission') which incorporates them into a Handbook for Members setting out detailed financial controls.

We are now starting to develop our Determination for the next Assembly which is scheduled to begin in May 2016. It is our intention to publish this well in advance of the start of the new Assembly so all existing and prospective Members and those who might consider running for election to the Assembly can see what will be available to them should they be successful.

In developing its Determination the Panel is required by law to:

- Secure for Members a level of remuneration which fairly reflects the complexity and importance of their functions and does not, on financial grounds, deter people with the necessary commitment and ability from seeking election to the Assembly;
- Secure for Members adequate resources to enable them to exercise their functions as members of the Assembly; and

- Ensure probity, accountability and value for money with respect to the expenditure of public funds.

In order to inform our deliberations, we carry out research into the way in which monies paid to Members are used. As part of that process we look at external benchmarks and undertake a number of consultation exercises.

We are currently analysing the results of our first three consultation exercises which were in relation to the Assembly Members' Pension Scheme, Assembly Members' Constituency Office Costs and the employment of Assembly Members' staff. The Panel has also initiated a short 4 week consultation on Prior Disclosure which closed on the 27 March 2015.

This, our fifth consultation, focuses on the salaries of Members and allowances paid to office holders of the Assembly.

We would be very grateful if you would respond to this consultation exercise and help us to ensure that the monies from the public purse are used appropriately and effectively, that the expenditure represents value for money, and importantly that Members have sufficient resources to fulfil their responsibilities to their constituents.

PATRICK MCCARTAN CBE, Chairman, Independent Financial Review Panel

DR HENRIETTA CAMPBELL CB, Panel Member

ALAN MCQUILLAN OBE, Panel Member

BACKGROUND AND CURRENT POSITION RELATING TO MEMBERS' SALARIES AND OFFICE HOLDER ALLOWANCES

Introduction

- 1 This consultation focuses upon issues relating to the salaries that will be paid to Members and allowances paid to office holders in the next Assembly.
- 2 Currently, Members' salaries are paid in accordance with the Northern Ireland Assembly Members' Salaries, Allowances, Expenses and Pensions Determination 2012 ('the 2012 Determination'), as amended by the Northern Ireland Assembly (Members' Salaries and Allowances) Determination 2014 ('the 2014 Determination'), effective from 1 April 2015. The 2014 Determination was made under exceptional circumstances to set the salaries and allowances payable to Members for the additional year of the current Assembly up until April 2016. At that point the Panel made no change to Members' salaries and level of office holder allowances payable for the remaining year of this Assembly.
- 3 The current position is therefore that the core salaries and allowances paid to Members are based upon the original Determination of the Panel published in 2011.

Remuneration of Members

- 4 The core remuneration paid to Members consists of a number of components, which include:
 - Their basic salary; and
 - Allowances paid to various Members who hold specific additional responsibilities within the Executive and Assembly ('office holders') e.g. Ministers, Committee Chairs, The Speaker, etc. A full list of the current allowances is at Annex A.
5. As outlined in the Report of the Panel in March 2012¹ and subsequently detailed in the 2012 Determination as from time to time amended, the Panel sought to develop a clear pattern of remuneration for office holders that:

¹ Northern Ireland Assembly Members' Salaries, Allowances, Expenses and Pensions, Report of the Independent Financial Review Panel, March 2012.

<http://ifrp.org.uk/wp-content/uploads/2012/03/The-Report-of-the-Independent-Financial-Review-Panel-March-2012.pdf>

- was based upon the evidence from its research and comparison with other similar institutions in the UK;
- fairly rewarded office holders for their responsibilities and workloads;
- created a clear hierarchy of allowances based upon our assessment of the relative weight of each role. These were developed from the evidence gathered at that time, discussion with Members and some office holders and other sources;
- protected and enhanced the Assembly in its role of holding the Executive to account through a clear focus on fair remuneration for certain posts which, in the Panel's assessment, played critical roles in this vital process; and
- fairly recognized those posts where the responsibility and workload is vested in a single individual in comparison to those posts where responsibilities are shared across several individuals.

Further detail on the salaries and allowances paid to Members can be accessed at:

<http://www.niassembly.gov.uk/your-mlas/members-salaries-and-expenses/>

The Approach to Setting Members' Salaries in the 2012 Determination

6. When the Panel first looked at Members' salaries in 2012, change was clearly long overdue. The Assembly had previously held responsibility for setting Members' pay and allowances. Not only was this seen publicly as an unhealthy situation, but political pressures at that time had meant that Members had not had any rise in their core pay for almost 11 years.
7. The Panel's approach then was to undertake a 'triple benchmarking' exercise looking at Members' responsibilities and pay in comparison to similar posts in:
 - other Legislative Bodies in the UK and Ireland;
 - the public sector in Northern Ireland; and
 - the private sector in Northern Ireland.
8. The Panel also commissioned and utilised an independent remuneration benchmarking exercise by PricewaterhouseCoopers² to compare the salaries of Assembly Members with a range of salaries and rewards for comparable occupations in both the public and private sectors in Northern Ireland. This then led to the award of a core salary for Members of £48,000, an increase of 11.36% on the previous provision. The Panel also looked at the relative

² PricewaterhouseCoopers, Remuneration Benchmarking, January 2012

responsibilities of the office holders in the Assembly and, again based on benchmarking data, set out a pattern of new allowances for the various post holders.

Setting Members' salaries in the next Assembly

9. In considering how to set Members' salaries in the next Assembly, the Panel has determined to adopt a similar approach but using the most current available data from publicly available sources. Given its statutory remit, the Panel has also sought to develop a model for pay and allowances that:

- is fair for the responsibilities and workload inherent in the various posts;
- will not deter individuals from a career in politics; and
- will deliver value for money in the context of a period of particular austerity in public finances and where the affordability of any changes is a critical factor.

10. The Panel selected a number of methods to compare Members' base salary with earnings in Northern Ireland occupations with a broadly similar level of responsibility. In particular it:
- researched NI earnings levels and changes from 2011³ as evidenced in the Annual Survey of Hours and Earnings (ASHE);
 - compared pay and grades in a wide range of public sector occupations; and
 - Conducted a role relativities and pay comparison exercise with the other UK and Irish Legislatures.

In utilising these sources, the Panel were also careful to take account of any known error limits in them.

11. It was also important to consider the way in which Members' salaries had fared in comparison with earnings in the labour market from which they are drawn. The following table sets out how the salaries of Members, Members of other legislatures and NI Median Earnings have changed in the last 5 years.

³ The Annual Survey of Hours and Earnings (ASHE), 2013 revised results, <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/index.html>

Table 1 Members' Salaries: 2007-2015

	2011	2012	2013	2014	2015	2016 Projected ³	% projected increase since 2011
House of Commons (£)	65,738	65,738	66,396	67,060	74,000	75,000	14.1
Scottish Parliament (£)	57,521	57,521	58,097	58,678	64,750	65,625	14.1
Welsh Assembly (£)	53,852	53,852	53,852	53,852	54,390	64,000	18.8
Dáil Éireann (£) ¹	69,504	69,504	65,444	65,444	65,444	65,444	-5.8
NI Assembly (£)	43,101	43,101	48,000	48,000	48,000	48,000	11.4
Median NI earnings (£) ²	23,034	23,944	23,952	24,020	24,360	24,700	7.2
as % of MLA salary	53.4	55.6	49.9	50.0	50.8	51.5	

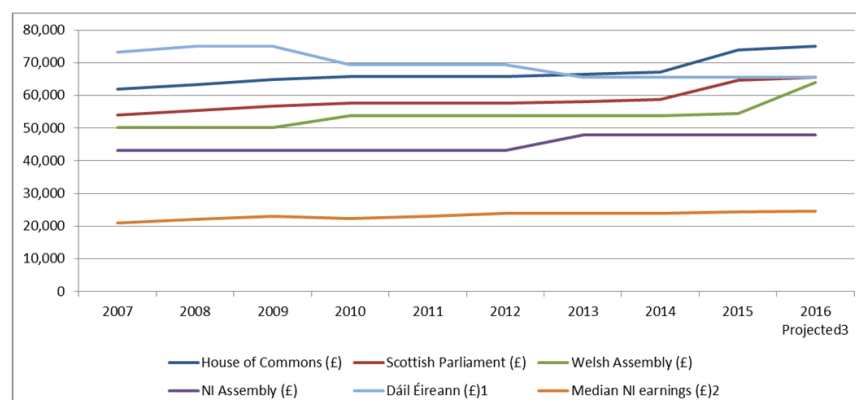
Notes:

1. TD salaries all converted at rate of exchange at 31 January 2015 (1 Euro = £0.75)
2. Figures are for median NI annual full-time earnings (from DETI ASHE survey). 2015 and 2016 figures are both projected based on an average increase of 1.4% over the previous three years. Please note that figures for median NI full-time annual earnings have a range of error of around +/- 6%, while NI median full-time weekly earnings have a range of error of approximately +/- 3% (based on 2014 published coefficients of variation).
3. The HoC and Scottish Parliament Members' 2016 projected salaries are based on an average increase of 1.3% in UK full-time median earnings over the most recent three years (source: ONS Annual Survey of Hours and Earnings). Figures for the NI Assembly and Dáil Éireann have been held constant at current levels, and the 2016 figure for the Welsh Assembly reflects the recent proposals of the Remuneration Board of the National Assembly for Wales (November 2014).

Sources:

House of Commons Research Paper 13/33, "Members' pay and expenses - current rates from 1 April 2013", 31 May 2013.
 Independent Parliamentary Standards Authority, "MPs' Pay and Pensions Final Report", December 2013.
 Remuneration Board of the National Assembly for Wales, "Proposed changes to the Determination regarding salaries for Assembly Members in the Fifth Assembly", November 2014.
 Scottish Parliament website: <http://www.scottish.parliament.uk/msps/msp-salaries.aspx>
 NI Assembly website: <http://www.niassembly.gov.uk/your-mlas/members-salaries-and-expenses/salaries-and-expenditure-rates-2012-2015/>
 Oireachtas website: <http://www.oireachtas.ie/parliament/tdssenators/salariesallowances/>

12. The graph below further shows the relevant movement of each of these salaries over the last 10 years.



Notes:					
1. TD salaries all converted at rate of exchange at 31 January 2015 (1 Euro = £0.75)					
2. Median NI earnings figures for 2015 and 2016 are both projected based on an average increase of 1.4% over the previous three years (source: DETI Annual Survey of Hours and Earnings). Please note that figures for NI median full-time annual earnings have a range of error of around +/- 6%, while NI median full-time weekly earnings have a range of error of approximately +/- 3% (based on 2014 published coefficients of variation).					
3. The HoC and Scottish Parliament Members' 2016 projected salaries are based on an average increase of 1.3% in UK full-time median earnings over the most recent three years (source: ONS Annual Survey of Hours and Earnings). Figures for the NI Assembly and Dáil Éireann have been held constant at current levels, and the 2016 figure for the Welsh Assembly reflects the recent proposals of the Remuneration Board of the National Assembly for Wales (November 2014).					

13. Although the Panel notes that the salary increase for Members in 2012 was awarded after a long period of no salary increase, over the last 5 years the percentage rise in Members' pay has been broadly comparable to the other legislatures in the UK and Ireland and the rise in Northern Ireland Median Earnings.
14. In determining the future levels of pay for Members, the Panel also has to have regard to similar posts in other legislative bodies and also the costs of politics borne by the public purse. This is especially relevant as we enter a period of significant reductions in public spending in real terms, with reductions in the size of the public sector and a renewed emphasis on efficiency and value for money. The Panel are very aware that this is an area where comparisons are sometimes difficult and where there can be no absolute measures but Table 2 below provides some useful indicators between the relative costs of Members' salaries per head of population in the various parliamentary bodies.

Table 2 - 2015 Members' Salaries: Comparison between Legislatures

	Members' Salaries (2015)	% of MP Salary*	Population ('000) ²	No. of Members	Total Member Salaries ³ per head of population (£ per head)
House of Commons	74,000	100.0	64,105.7	650	0.75
Scottish Parliament	64,750	87.5	5,327.7	129	1.57
National Assembly of Wales	54,390	73.5	3,082.4	60	1.06
Dáil Éireann ¹	65,444	88.4	4,593.1	166	2.37
Northern Ireland Assembly	48,000	64.9	1,829.7	108	2.83

Notes:

- 1 Comparisons with Dáil based on rate of exchange at 31 January 2015 (1Euro=£0.75)
- 2 2013 population estimates (latest available)
- 3 Salary per head times number of Members (excludes office holder and other allowances, expenses, etc.)

15. The information above clearly indicates that at the end of the current Assembly, and after the implementation of the May 2015 pay award for MPs in Westminster, a Member will be earning 65% of an MP's salary. It can be noted that Members of the Northern Ireland Assembly's salaries are significantly greater per head of population than elsewhere. There will always be some diseconomies of scale in a smaller jurisdiction but in terms of cost per head of population, Members' salaries in Northern Ireland are:
 - 3 times greater than an MP in Westminster;
 - 2 times greater than an MSP in the Scottish Parliament;
 - 1.5 times greater than AM in the National Assembly of Wales; and
 - 2 times greater than a TD in Dáil Éireann.
16. To some extent this level of provision has been recognised by the political parties and Governments and it has been agreed to reduce the number of Members from 108 to 90, a reduction of 17%. However, the Panel notes that this will not take place until the end of the next Assembly and even then will only go part of the way towards reducing what is clearly a significant imbalance in costs that will continue throughout the next Assembly.
17. In setting the future salaries of Members, the Panel also wants to have strong regard to issues of affordability and the likely changes in patterns of salary over the 5 years of the next Assembly, starting in 2016. This in effect means that we have to try and forecast some 6 years ahead. In that context we have considered the most up to date information on the likely level of inflation over that period. Recent data from the Bank of England⁴ has suggested that the Consumer Price Index measure of Inflation is likely to:
 - fall further in the near term, and could temporarily turn negative; and
 - return to the 2% target within two years.
18. In the Panel's judgement, this is likely to mean that upward pressures in wage levels, generally at a national level are likely to be contained over the period of the next Assembly. In Northern Ireland, where the public sector has historically been such a major part of the economy, the full impact of planned spending cuts has yet to be seen, but in our view, in the short to medium term is likely to constrain wages still further.

Affordability

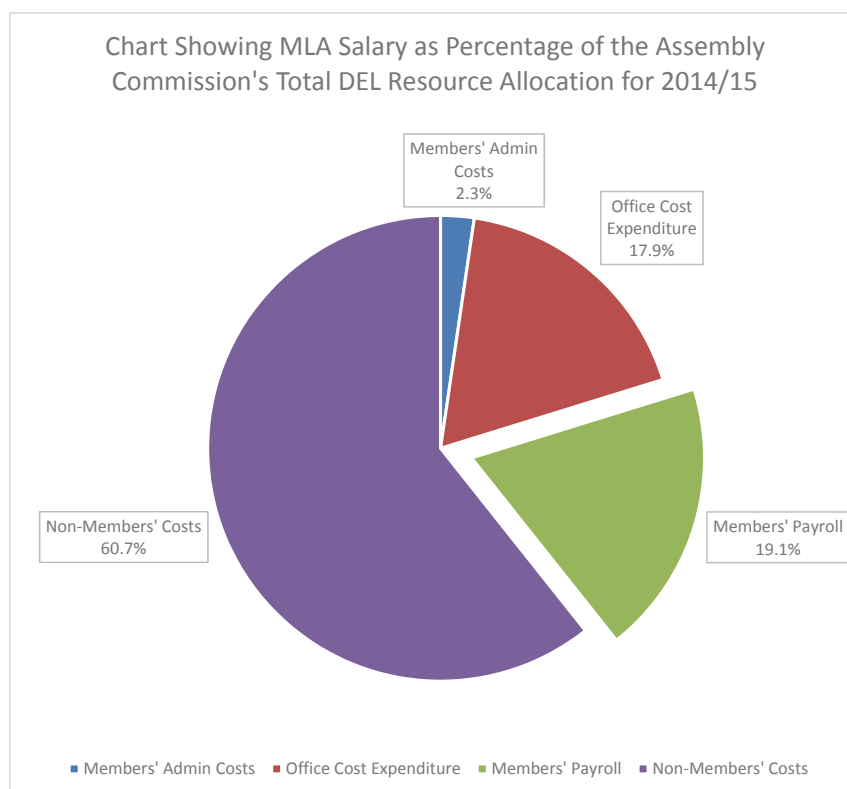
19. There is then the further issue of affordability of salaries over the next Assembly. All Members' salaries and expenses are paid by the Commission

⁴ Bank of England Inflation Report, February 2015 - <http://www.bankofengland.co.uk/publications/Pages/inflationreport/2015/feb.aspx> (see Chapter 5 'Prospects for Inflation').

on the basis of a budget provided by the Executive. At this stage there is considerable downward pressure over the period 2015-2016 and beyond.

20. This poses a particular challenge for the Secretariat⁵ and the Commission. The pie chart below shows that Members' salaries represent 19.1% of the Commission's total Departmental Expenditure Limit ('DEL') Resource Allocation for 2014-15. Any increase in Members' salary costs means that all those increases and the entire burden of any cut on the remainder of the budget have to be borne out of other parts of the budget, which include:

- Members' expenses and the costs of providing their support staff and offices in constituencies; and
- the cost of running, staffing and servicing the Assembly in Parliament Buildings.



⁵ The Secretariat is the name given to the staff appointed by the Commission to assist in the discharge of its functions

Preliminary Views on Members' Salaries in the Next Assembly

21. The Panel has been reviewing all these issues and has come to some preliminary views. We stress that these are not final decisions and that this is an open consultation process where we wish to hear and consider the views of all interested parties before we make any final decisions. However, at this stage it is our assessment that:

- the increase in Members' salaries over the last 5 years has been fair in comparison to other legislative bodies and the general pattern of NI Median salaries;
- Members are now paid around 2 times the median earnings in Northern Ireland. The Panel believes that given the nature and scope of a Member's role, that it is probably about the correct level to attract people of the right quality into politics;
- The Panel is very conscious that the cost per head of population for Members is significantly higher than any other UK or Irish Legislature and that no significant reform of this is contemplated for the next 6 years. Even if what is proposed is enacted for the 2021 Mandate, the overall costs of Members in Northern Ireland will remain significantly above every other Parliament or Assembly;
- The budgetary cuts now faced by the Government of Northern Ireland are significant and we believe that Members will wish to show leadership in the management of public finances. The Panel is very conscious that when we increased Members' salaries in 2011 there was significant criticism of this from political parties represented in the Assembly, although in the end all Members have now accepted the pay rise;
- The financial pressures faced by the Northern Ireland Block Grant now are significantly worse than in 2011;
- At this stage the Panel is minded to make a Determination on the basis that Members' salaries will remain at £48,000 for the next Mandate. This does not preclude the IFRP or any successor body from reviewing salary levels and allowances should they believe that exceptional circumstances exist at some point during the new Mandate; and
- In making this proposal we are conscious that what we do now will have an effect not just next year but over a 5 year period thereafter. Over that period, the best information available to us suggests that after a short period of

inflation close to zero as measured by the Consumer Price Index, it is expected to revert to a 2% target within two years.

Consultation Question 1

Do you agree with the Panel's proposal that Members' salaries should remain at £48,000 for the next Mandate?

YES

☐

NO

☐

Consultation Question 2

Do you believe that a Member's salary should be indexed e.g. to growth in NI Median earnings, an MP's salary, CPI or should there be some other link?

YES

☐

NO

☐

If you do not agree, please use the space below to indicate what level you think Members' pay should be set at. Please also indicate any further views you may have on indexing Members' salaries?

ALLOWANCES FOR OFFICE HOLDERS

22. The next major component of Pay is the issue of allowances paid to holders of specific offices in the Assembly. The current levels and numbers of these are set out at Annex A.
23. The intention of these allowances is to reward Members for the work done in carrying the additional responsibilities of their office. In some cases these are clearly major and onerous responsibilities. Allowances are paid to a wide range of post holders including Ministers, Junior Ministers, the Speaker, deputy Speakers and Commission members. In developing the level for these allowances in its 2012 determination, the Panel had regard to the relativities of these posts to various other benchmarks as shown on the table below:

Table 3: Role Relativities – Westminster, Edinburgh, Cardiff, Dublin and Belfast – as collated in March 2015.

Pay level	Westminster	Edinburgh	Cardiff	Dublin	Belfast
140k+	Speaker (142,626); Prime Minister (142,500)	First Minister (143,680)			
130-139k	Cabinet Minister (134,565)		First Minister (134,722)	Taoiseach (139,013)	
120-129k					First Minister/deputy First Minister (120,000)
110-119k		Lord Advocate (116,287)		Ceann Comhairle (118,155); Minister (118,155)	
100-109k	Deputy Speaker (108,430)	Cabinet Minister (102,775); Presiding Officer (102,775)			
90-99k	Minister of State (98,740)		Presiding Officer (95,801); Cabinet Minister (95,801)	Leas-Cheann Comhairle (91,229); Minister of State (91,229)	Speaker (92,000)
80-89k	Parliamentary Under Sec. (89,435)	Minister (86,300); Deputy Presiding Officer (86,300)	Deputy Presiding Officer (80,237); Deputy Minister (80,237)		Minister (86,000)
70-79k				Committee Chair (71,999); Member of Commission (71,999)	
60-69k	Member of Parliament (MP) (67,060)		Committee Chair (66,272); Assembly Commissioner (66,272)	TD (Teachta Dála) (65,444)	Junior Minister (60,000); Committee Chair (60,000)
50-59k		Member of Scottish Parliament (MSP) (58,678)	Member of National Assembly for Wales (AM) (53,852)		Deputy Speaker (57,000); Member of Assembly Commission (54,000)
40-49k					Member of Northern Ireland Assembly (MLA) (48,000)

Sources: Remuneration Board of the National Assembly for Wales, "Proposed changes to the Determination regarding salaries for Assembly Members in the Fifth Assembly", November 2014;
Oireachtas website - TD salaries and allowances.

24. Table 4 provides a comparison of Members' office holder allowances as compared to Members of other legislatures in the UK and Ireland. The latest comparable information available for office holder allowances is for 2014. More information on the role of office holders can be accessed using the following links: <http://www.niassembly.gov.uk/>
<http://www.northernireland.gov.uk/>

Table 4: Members' Office Holder Allowances (April 2014)

	Northern Ireland Assembly	Scottish Parliament	National Assembly for Wales	House of Commons	Dáil Eireann ¹
First Minister	72,000	85,002	80,870	75,440	73,569
Minister	38,000	44,097	41,949	67,505	52,712
Junior Minister	12,000	27,622	26,385	31,680	25,786
Speaker	44,000	44,097	41,949	75,766	52,712
Deputy Speaker	9,000	27,622	26,385	41,370	25,786
Member of Commission	6,000	0	12,420	0	6,555
Committee Chair	12,000	0	12,420	14,876	6,555

Note: Comparisons with Dáil based on rate of exchange at 31 January 2015 (1Euro=£0.75)

25. Tables 5 below provides a comparison of Members' salaries as compared to Members of other legislatures in the UK and Ireland when office holder allowances are included.

Table 5: Member Salaries including Office Holder Allowances (April 2014)

	Northern Ireland Assembly	Scottish Parliament	National Assembly for Wales	House of Commons	Dáil Eireann ¹
First Minister	120,000	143,680	134,722	142,500	139,013
Minister	86,000	102,775	95,801	134,565	118,155
Junior Minister	60,000	86,300	80,237	98,740	91,229
Speaker	92,000	102,775	95,801	142,826	118,155
Deputy Speaker	57,000	86,300	80,237	108,430	91,229
Commission Member	54,000	58,678	66,272	67,060	71,999
Committee Chair	60,000	58,678	66,272	81,936	71,999
First Minister	48,000	58,678	53,852	67,060	65,444

Future of Allowances

26. The Panel is aware that when we were first established it was part way through an Assembly and a lot of the focus at that stage had to be on setting the correct base pay for Members. For the next Assembly we also wish to look in detail at the level of allowances to current Office Holders.
27. In addition to considering a general reduction in all Office Holder allowances, the Panel is also seeking your views based on the current allowances regime as detailed in Table 4 on page 16 of this document. The following questions address each of the allowances separately.

First Minister and deputy First Minister

28. These posts are clearly the most critical and important in the Assembly. They carry very high burdens in terms of making politics, the Executive, and the Assembly, work and have high personal workloads. At this stage the Panel considers that in relative terms they are fairly rewarded for the posts that they hold.

Consultation Question 3

Do you agree that the current allowance for First and deputy First Minister, as detailed in Table 4, should remain at £72,000 for the next Mandate?

YES

☐

NO

☐

If you do not agree, please use the space below to indicate at what level you think the allowances should be set and why?

Ministers

29. In its 2012 Determination the Panel set the level of allowance for all Ministers at the same level. We are also very conscious that the First and deputy First Minister have just announced proposed changes to the number of Ministers that will result in a significant reduction in the numbers and increase in individual workloads. These changes are expected to take effect from the start of the next Mandate.
30. At the point of publishing this consultation we cannot see the exact figures for the size of the new Departments and their budgets / staffing levels etc. During the period from our last Determination, we have been very conscious that:
 - there is a strong view within the Assembly that all Ministers are of equal status and should be paid the same salary; and
 - while we accept that constitutionally all Ministers may carry the same weight within the Executive, at the same time we cannot help but note that there are radical differences between the size and scope of the different ministerial briefs and their importance to people in Northern Ireland. Logically that should have an impact on Ministerial salaries.
31. Now that information is available on the details of the new Departments⁶, the Panel will wish to look at Ministerial Allowances to determine if all Ministers should still be paid the same allowances or Ministers should be paid on a 2 or even 3 point scale determined by the size of their Department and scale of the budget in accordance with the oral statement provided by OFMDFM relating to the reduction in the number of Northern Ireland Civil Service Departments.

Consultation Question 4

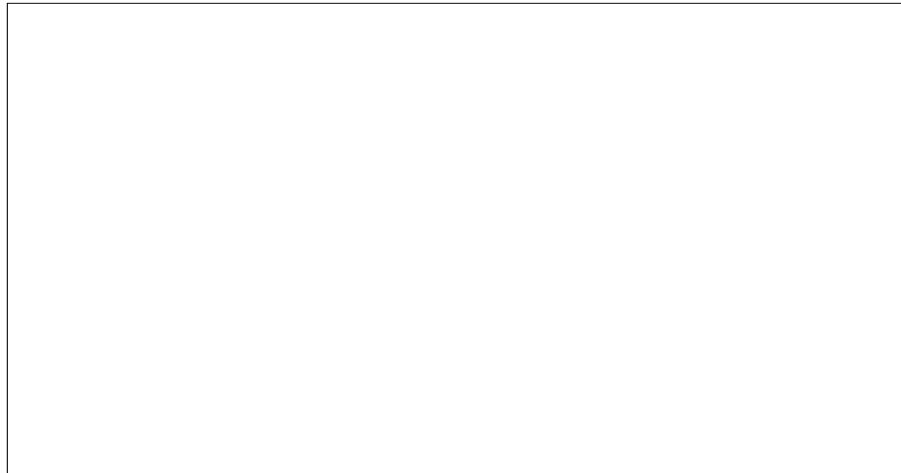
Do you consider that all Ministers should continue to be paid the same allowance of £38,000 as detailed in Table 4 or should allowances be banded according to, for example, the overall size and budget of their Department? *(Please tick one box)*

- It is my view that Ministers' allowances should remain unchanged for the next Assembly
- It is my view that Ministers' allowances should be incorporated into a scale dependent on the size of the Department and budget for which they hold responsibility.

☐
☐

⁶ OFMDFM Oral Statement : OFMDFM Oral Statement reduction in the number of Northern Ireland Civil Service Departments;
<http://www.northernireland.gov.uk/news-ofmdfm-020315-ofmdfm-oral-statement>

Please use the space below to indicate at what level you think the allowances should be set and why?



Junior Ministers

32. The Panel is also considering the role and responsibilities of Junior Ministers, particularly arising from the oral statement provided by OFMDFM where a number of current responsibilities from OFMDFM are to be distributed to other Departments, thus reducing the scope of OFMDFM.
33. There are two Junior Minister positions at OFMDFM. Junior Ministers assist the First Minister and deputy First Minister in carrying out the work of their department. They are jointly accountable to the First Minister and deputy First Minister. In preparing their original determination in 2012, the Panel found some difficulty in determining the exact role of the Junior Ministers.
34. We are conscious that the Office of the First Minister and deputy First Minister is managed directly by the First and deputy First Ministers who each already have a number of Special Advisers to assist them in those roles.
35. We were therefore concerned that we could not clearly see any role for the Junior Ministers that was not essentially a political role as opposed to one directly related to the function of the Assembly. Given the information available to us at that point we therefore made a significant cut in the Allowance for Junior Ministers.
36. We are very clear that the structure of Junior Ministers' roles is not a matter for our Panel and we do not wish to intrude on this in any way. However, we

are charged with a duty to ensure that roles attracting allowances are paid fairly and that such payments represent value for money. At this point, given the lack of clarity on the exact roles of these posts, the Panel is considering if the roles of Junior Minister warrant the payment of any allowance.

Consultation Question 5

Do you consider that the post of Junior Minister warrants the payment of a £12,000 Allowance?

YES

☐

NO

☐

If you agree, please use the space below to indicate on what basis you consider that such an allowance should be paid and for what responsibilities?

Speaker, Principal Deputy Speaker and Deputy Speakers

37. The Speaker plays a critical role in the effective operation of the Assembly and in supporting the role of MLAs and Committees in holding the Executive to account. In its last determination, the Panel set the allowance for this post at £44,000, giving the post a salary above that of a Minister.

Consultation Question 6

Do you consider that the Speaker should be paid the same allowance of £44,000 for the next Assembly?

YES

☐

NO

☐

If you do not agree, can you indicate at what level you consider appropriate and why?

38. The Principal Deputy Speaker and Deputy Speakers are also paid an allowance set at £9,000 per annum. Looking at this allowance in comparison to numbers and the overall responsibilities of these posts and having regard to the allowances of other posts, the Panel is considering a flat rate allowance set at a lower level – e.g. £6,000 per annum.

Consultation Question 7

Do you consider that Deputy Speakers should be:
(please indicate your answer by ticking one box)

Paid the same allowance for the next Assembly

☐

Paid a flat rate allowance at a lower level

☐

Please use the space below to indicate your further views on the amount of allowance payable to a Deputy Speaker:

Committee Chairs

39. Committee Chairs play a vital role in the Assembly. Committees are important for the scrutiny of proposed legislation and for holding the Executive to account on a wide range of issues. In its 2012 Determination the Panel set the allowance for Statutory Committee Chairs and the Chair of the Public Accounts Committee at £12,000 to reflect those responsibilities.
40. However, the same arguments on the overall scope of the responsibilities for Ministers can also be said to apply to Committees. In the current Assembly some carry the most onerous and important burdens and others perhaps less so. The structure and scope of the work of the Committees will also change with the change in the number of Departments and the impact of this is not yet absolutely clear.

Consultation Question 8

Do you consider that the allowance currently paid to Chairs for Statutory Committees and the Chair of the Public Accounts Committee should remain unchanged or should the allowance be banded according to, for example, the overall size and budget of the relevant Department? *(Please tick one box)*

- It is my view that allowances paid to the Statutory Committee Chairs and the Chair of the Public Accounts Committee should remain unchanged for the next Assembly ☐
- It is my view that allowances paid to the Statutory Committee Chairs and the Chair of the Public Accounts Committee should be incorporated into a scale dependent on the size of the Department and budget which they scrutinise or the importance of the Public Accounts Committee. ☐

41. In addition to the twelve Statutory Committees, the Assembly also has six Standing Committees. At present, an allowance is only paid to Chairs of Statutory Committees and the Chair of the Public Accounts Committee and not to Chairs of Standing Committees.

Consultation Question 9

Do you consider that a Chair of a Standing Committee within the Assembly should be paid the same allowance as a Chair of a Statutory Committee?

YES

☐

NO

☐

If you agree, please use the space below to indicate on what basis you consider that such an allowance should be paid and for what responsibilities?

Commission Members

42. The Commission is the corporate body of the Assembly and is responsible for the provision of the property, staff and services to support the effective operation of the institution. The Commission, chaired by the Speaker, is where senior representatives of the five main parties come together to ensure the smooth running of Assembly business. It is a vital component of the management structure within the Assembly itself. The Assembly Commission as a Corporate Board has a responsibility of a £38m Budget to support the effective operation of the Assembly. In its 2012 Determination the Panel set the allowance for a Commission Member at £6,000 to reflect their responsibilities.

Consultation Question 10

Do you consider that a Commission Member should be paid the same allowance of £6,000 for the next Mandate?

YES

☐

NO

☐

Please use the space below to indicate your further views on the amount of allowance payable to a Commission Member:

General issues in relation to Salaries and Office Holder Allowances

43. The Panel has also given consideration to the circumstances in which a reduction of salary or allowances payable to Members may be necessary or appropriate. The Panel notes that the Assembly has power under the Northern Ireland Act 1998 to reduce the remuneration payable to Ministers and members of political parties in limited circumstances (section 47A of that Act). The Panel further notes that the Assembly's standing orders allow the Assembly to impose sanctions on a Member including his or her exclusion from proceedings of the Assembly for a specified period and the withdrawal of rights and privileges, including the rights to salary and allowances. The Panel intends that its proposals on salaries and allowances will complement these existing powers.

Absence of Members from the Assembly

44. A further issue that has arisen during the current Assembly is the question of continuing the salaries of Members who are absent from the Assembly or from their entire duties as a Member for a period of time. At present, once a Member is elected to the Assembly, they are generally paid a flat rate salary for their entire term of office

Members who are unable to attend the Assembly because they have been imprisoned or remanded in custody pending a trial

45. This has never happened in Northern Ireland but has occurred elsewhere and has given rise to public concern. The Panel has noted that the Scottish Parliamentary Corporate Body responded to this matter by bringing forward an amendment to the Scottish Parliament Salaries Scheme. The amendment, which was agreed by the Parliament, provided that for any period during

which an MSP was imprisoned, the salary payable to that member would be reduced by 90%. The Panel wishes to consider if a Member, who is charged with a criminal offence and remanded in custody, or convicted of a criminal offence and imprisoned, should continue to be paid their salary and allowances pending the outcome of their trial.

Consultation Question 11

Do you believe that a Member who is charged with or convicted of a criminal offence and imprisoned should continue to be paid their **salary** at the full rate?

YES

☐

NO

☐**Consultation Question 12**

Do you believe that a Member/ Office Holder who is charged with or convicted of a criminal offence and imprisoned should continue to be paid their **expenses** at the full rate?

YES

☐

NO

☐

Please use the space below to indicate your further views on the issue of sanctions for Members who are unable to attend the Assembly because they have been imprisoned or remanded in custody pending a trial.

Sick Leave

46. At present there is no concept of sick leave for Members. A Member may remain on sick leave for months with no impact on their pay or allowances. Again there are competing arguments on this. The Member may be too ill to attend the Assembly but be able to perform their other duties as a Member. In the Panel's view, any system must be fair and support the Member (who has been elected to office) through a period of illness to return to represent their constituents. At the same time we do not believe that this should be open ended. The Panel is therefore considering if some system should be introduced whereby Members have sick pay paid to them for a stepped period if they are off ill for a prolonged time. One comparative model for this is the current system for the Assembly's own staff who receive:

- full pay for up to 6 months then;
- half pay for a further 6 months; and
- then statutory sick pay.

Consultation Question 13

Do you believe that Members who are off sick for a prolonged period of time should receive sick pay in line with the model above.?

YES

☐

NO

☐

If you agree that restrictions should be imposed, can you use the space below to indicate your suggestions on what level of sickness pay protection should be provided:

Attendance at the Assembly Generally

47. At the moment there is no record at all of when Members do and do not attend the Assembly. It is perfectly possible for a Member to be elected and attend very infrequently. Enforcement of attendance is generally regarded as a matter for Party Whips but if, for example, a Member is an Independent, there is no mechanism at all to ensure that they do perform their role in the Assembly as part of their general duties as a Member. It should be noted that this has never been a major issue, but the Panel is considering what can reasonably and proportionately be implemented to minimise any potential future abuse.

Consultation Question 14

Do you believe that in order to obtain their full salary, Members should be required to attend the Assembly on a set minimum percentage of sitting days?

YES

☐

NO

☐

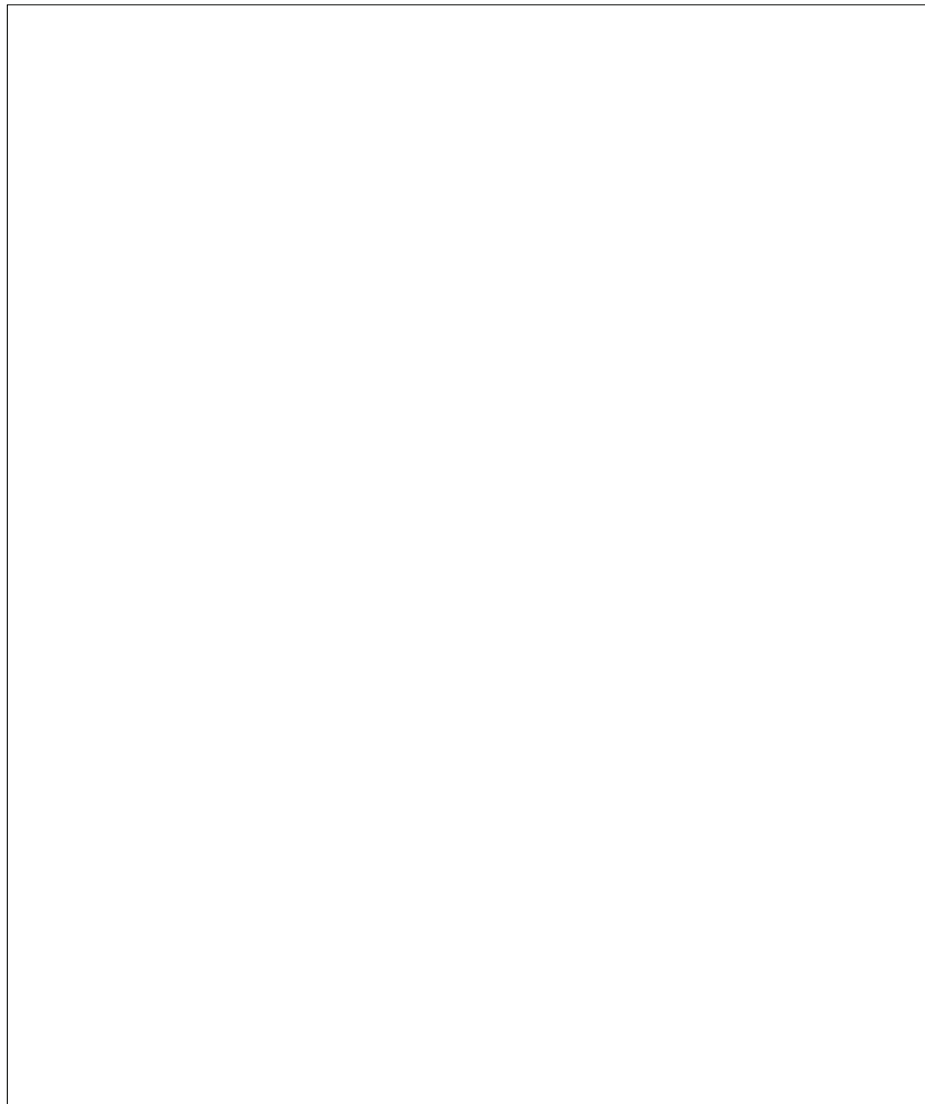
If you agree, please use the space below to outline any suggestions on how attendance could be measured:

NEXT STEPS

The Panel invites your views on the proposals listed above and any other additional comments which you wish to make.

Additional Comments

Please use this space to include any additional comments you may have on the proposals outlined in this consultation document. Your response and comments will help inform our decisions for our next Determination.



Should you wish to respond electronically, please download the consultation proposals by typing or pasting the following link into your internet browser – <http://nia1.me/salaries>

Alternatively you may send your response to:

Independent Financial Review Panel
Room 241, Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX
E-mail: info@ifrp.org.uk

You may wish to note that the names of respondees and, in some cases, the full response, will be published unless you indicate when you submit your response that you do not wish this to happen.

Are you content that your information is published?

YES

☐

NO

☐

NAME: _____

ORGANISATION (IF APPLICABLE):

ADDRESS:

Please note that it is not essential to include your details. You may respond anonymously if you prefer to do so.

CONSULTATION RESPONSES

**THE DEADLINE FOR RESPONSES TO THIS CONSULTATION IS
5PM ON FRIDAY 29 MAY 2015.**

**RESPONSES RECEIVED AFTER THIS DATE MAY NOT BE
CONSIDERED.**

DISCLOSURE OF INFORMATION

The Independent Financial Review Panel may publish, or make available on request, any information provided to it in relation to this consultation exercise. In line with the provisions of the Data Protection Act 1998, information containing personal data will not be disclosed. You should be aware that your response, or an extract from it, may appear in a Report or may be included on a list of evidence submitted. In the event of a request under the Freedom of Information Act 2000, it may be necessary to disclose information which you provide.

If you are providing any information, other than personal data, which you feel is not suitable for public disclosure, you should identify that information and provide a reasoned argument against its disclosure. The Independent Financial Review Panel will take this into account when publishing information or when responding to requests for information.

CONTACT DETAILS

The Independent Financial Review Panel
Room 241
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Ballymiscaw
Stormont
Belfast
BT4 3XX

Telephone: (028) 90521930
E-mail: info@ifrp.org.uk

ANNEX A

Current Salary Levels for Members and Office Holders of the Northern Ireland Assembly

Schedule 1 Paragraph 6(1)				
(1)	(2)	(3)	(4)	(5)
Member	Annual Salary for the year commencing 1 April 2012	Annual Salary for the year commencing 1 April 2013	Annual Salary for the year commencing 1 April 2014	Annual Salary for the year commencing 1 April 2015
A member holding office as First Minister or deputy First Minister	£114,535	£120,000	£120,000	£120,000
A member holding office as any other Minister	£80,902	£86,000	£86,000	£86,000
A member holding office as a junior Minister	£55,101	£60,000	£60,000	£60,000
A member holding office as a junior Minister and who held that office on 1 April 2012	£62,710	£62,710	£62,710	£62,710
A member holding office as Speaker	£80,902	£92,000	£92,000	£92,000
A member holding office as Principal Deputy Speaker or as Deputy Speaker	£51,600	£57,000	£57,000	£57,000
A member holding office as Member of the Assembly Commission	£49,101	£54,000	£54,000	£54,000
A member holding office as a Member of the Assembly Commission and who held that office on 1 April 2012	£54,432	£54,432	£54,432	£54,432

A member holding office as Chairperson of any Statutory Committee or of the Public Accounts Committee ⁷	£54,432	£60,000	£60,000	£60,000
A member holding office as a Deputy Chairperson of a Statutory Committee ⁸	£43,101	£48,000	£48,000	£48,000
A member holding office as a Deputy Chairperson of a Statutory Committee and who held that office on 1 April 2012	£48,768	£48,768	£48,768	£48,768
Any other member	£43,101	£48,000	£48,000	£48,000

⁷ The Assembly has established 12 **Statutory Committees** to advise and assist each Minister in the formulation of policy with respect to matters within his/her responsibilities as a Minister (Assembly Standing Orders 46 to 49). These statutory committees are established for the duration of an Assembly unless the Assembly determines otherwise (Standing Order 49(6)). Standing Order 46 confers on the statutory committees the powers described in paragraph 9 of Strand One of the Belfast Agreement- i.e. a scrutiny, policy development and consultation role with respect to the department with which each is associated, and a role in the initiation of legislation. Each statutory committee has eleven members.

In addition to the 12 Statutory Committees, the Assembly also has 6 **Standing Committees**. Standing Committees are permanent Committees of the Assembly. With the exception of the Business Committee, which is chaired by the Speaker, the posts of chairpersons and deputy chairpersons of standing committees are allocated using the d'Hondt system. Chairpersons of these Committees receive no additional allowance. The standing committees of the Assembly are:

- Assembly and Executive Review Committee
- Audit Committee
- Business Committee
- Committee on Procedures
- Committee on Standards and Privileges
- Public Accounts Committee



Northern Ireland
Assembly

Appendix 4

List of Witnesses

List of Witnesses

Dr Tom Frawley - Northern Ireland Ombudsman
Ms Marie Anderson - Northern Ireland Deputy Ombudsman
Northern Ireland Ombudsman's Office
30 April 2014

Dr Tom Walker – Director of Centre for Ethics
Queen's University Belfast
30 April 2014

Lord Paul Bew - Chairperson
Committee on Standards in Public Life
28 May 2014

Dr Michael Wardlow – Chief Commissioner
Mrs Roisin Mallon – Senior Policy Officer
Equality Commission for Northern Ireland
4 June 2014

Mr Trevor Reaney, Northern Ireland Assembly Commission
Mr Richard Stewart, Northern Ireland Assembly Commission
15 October 2014

Dr Henrietta Campbell, Independent Financial Review Panel
Mr Patrick McCartan, Independent Financial Review Panel
Mr Alan McQuillan, Independent Financial Review Panel
18 February 2015



Northern Ireland
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Appendix 5

Details of Visits undertaken as part of the Review

Committee on Standards and Privileges: Visit to Washington D.C and Annapolis, Maryland.

1. As part of its Review of the Code of Conduct, the Committee on Standards and Privileges (the Committee) visited Washington D.C. and Annapolis, Maryland, on 13th and 14th March 2014. Five of the eleven Committee members were present, along with the Clerk of Standards. Details of the meetings held are set out below.

Meeting with Kate Sawyer Keane of Perkins Coie LLP



2. On 13th March 2014 the Committee met Kate Sawyer Keane, a partner at the legal firm of Perkins Coie LLP. Ms Keane's areas of expertise include federal and state campaign finance law, Congressional and Executive Branch ethics regulation, and lobbying registration and disclosure. She numbers among her clients members of Congress, federal officials, political parties, trade associations, political action committees, and other political organisations.
3. Ms Keane briefed the Committee on the elaborate system of rules regulating the activity of lobbyists in the United States. She focussed on the Honest Leadership and Open Government Act (HLOGA) of 2007, which refined thresholds for, and definitions of, lobbying activities; increased the frequency of reporting obligations for registered lobbyists and lobbying firms; imposed additional responsibilities to make disclosures and new semi-annual reports on contributions; and added coalitions and associations to the list of regulated entities. The Act provides for the mandatory electronic filing of lobbyist reports (examples of which were provided to the delegation); established a fully searchable, sortable and downloadable electronic disclosure database on the Internet; requires that campaign fundraising by lobbyists be disclosed to the public and posted on the internet; and prohibits gifts from, and travel sponsored by, lobbyists and lobbying organizations for lawmakers.
4. Ms Keane answered questions from the Committee about the definition of a lobbyist (various tests apply); the impact of the HLOGA on the lobbying industry; and the oversight and regulation of donations to elected representatives as compared with donations made to election campaigns.

Meeting with Delegate Brian McHale, Chair of the Joint Committee on Legislative Ethics



5. On 13th March 2014 the Committee met Delegate Brian McHale, House Chair of the Joint Committee on Legislative Ethics at the General Assembly of Maryland. Delegate McHale was accompanied by Ms Dea Daly, Counsel to the Joint Committee on Legislative Ethics. The focus of the meeting with Delegate McHale and Ms Daly was the General Assembly of Maryland's Ethics Guide 2014.
6. Delegate McHale outlined key sections from the General Assembly of Maryland's Ethics Guide 2014. These include provisions for managing conflicts of interest, a duty to publicly disclose interests, and strict rules concerning the receipt of gifts.
7. A Member of the General Assembly is disqualified from participating in any way in a legislative matter if his personal interest (or that of a relative or associate) conflicts with the public interest and thereby actually compromises his impartiality and independence of judgment. However, this disqualification may be suspended at the initiative of the Member by filing a disclaimer of conflict form with the Ethics Committee, declaring that he is able to vote on the matter fairly, objectively, and in the public interest.
8. Delegate McHale briefed the delegation on a recent report on the conduct of Delegate William "Tony" McConkey. Delegate McConkey was a licenced real estate salesperson who was found to have drafted, offered, lobbied and voted for amendments to a Bill which would have led to a direct personal financial benefit to the value of thousands of dollars.
9. Ms Daly explained to the Committee how, as Ethics Counsel, she is responsible for advising Delegates on the application of the Ethics Law. Each Delegate is required by law to meet individually with her at least once a year. The relationship between the Ethics Counsel and Delegate is one of attorney and client, and all communications are confidential unless the Delegate chooses to make them public. If a complaint is filed against a Delegate, the Ethics Counsel may not participate in the investigation or in any activities of a prosecutorial nature. The Ethics Counsel can provide advice about any aspect of the Ethics Law and can assist in preparing a request for a formal opinion of the Joint Ethics Committee.

10. Delegate McHale and Ms Daly answered questions on the distinction between a Delegate's public and private life, interactions with lobbyists, leaks of confidential information, and managing conflicts of interest.
11. Delegate McHale also indicated that under no circumstances would the Joint Committee on Legislative Ethics entertain complaints about Delegates' remarks or about conduct unbecoming a Delegate.
12. The Committee was provided with copies of the General Assembly of Maryland's Ethics Guide 2014 and the report on Delegate McConkey.

Meeting with Representative Mike Conaway, Chair of the House Ethics Committee

13. On 14th March 2014 the Committee met Representative Mike Conaway, Chair of the House Committee on Ethics at Congress. Chairman Conaway was accompanied by Ms Carol Dixon, Director of Advice and Education for the House Committee on Ethics.
14. Chairman Conaway pointed out that ethical standards at the House of Representatives are regulated by three documents: the Code of Official Conduct, the House Ethics Manual, and the Highlights of the House Ethics Rules. The Code of Official Conduct is relatively short, consisting of eighteen high-level rules. The House Ethics Manual is much more substantial, at almost 450 pages. It describes the role and operation of the House Ethics Committee and what elected members, officers and staff of the House of Representatives must do to comply with their obligations under the Code. The Highlights of the House Ethics Rules condenses the most important provisions from the Manual into thirteen pages (one page each for thirteen different topics). Copies of each of these documents were provided to the delegation.
15. Some provisions of the Code of Official Conduct differ significantly from their equivalents in the Northern Ireland Assembly Code of Conduct. The House Gift Rule prohibits the acceptance of anything having monetary value unless permitted by one of the exceptions stated in the rule. Exceptions include gifts from family but not gifts from other Members. Gifts from friends with a value of over \$250 can only be accepted with the permission of the Ethics Committee. A gift with a value under \$50 is exempt as long as the donor is not a registered lobbyist, foreign agent, or entity that retains or employs them.
16. Strict rules also apply to the acceptance of hospitality and sponsored travel. Members and staff are only permitted to attend certain types of free events at which hospitality will be dispensed. A Member travelling on official business but at the expense of a private source must get approval in advance and in writing from the Ethics Committee.
17. The following are all prohibited:
 - honoraria for speeches;
 - paid professional services involving a fiduciary relationship, including law, real estate or insurance sales, financial services, or consulting or advising;
 - compensation for affiliation with any firm that provides such professional services;
 - use of the Representative's name by any firm that provides such professional services;
 - paid service as officer or board member of any organization;
 - paid teaching (without the advance written approval of the Ethics Committee); and
 - advances on copyright royalties in book contracts (royalties may be accepted only if the contract is with an established publisher on customary terms and with the approval of the Ethics Committee).
18. Chairman Conaway and Ms Dixon answered questions on allegations about Representatives' comments, conduct unbecoming, the line between a Representative's public and private life,

interactions with lobbyists, leaks of confidential information, and other acts impeding the business of the legislature.

19. It was explained that the House Committee on Ethics would not consider complaints about Representatives' comments and that a complaint alleging conduct unbecoming would only be considered where it fell within the scope of the House Ethics Manual.

Meeting with Tonia Smith, Senate Select Committee on Ethics

20. On 14th March 2014 the Committee met Tonia Smith, Counsel and Director of Education and Training at the Senate Select Committee on Ethics.
21. Ms Smith explained that the Select Committee on Ethics investigates complaints against elected members, officers, and employees of the Senate. A complaint must relate to the behaviour of the respondent in his official capacity and may fall under one of a number of categories. It may consist of an allegation of improper conduct which reflects upon the House, of a breach of the law, of the Senate Code of Official Conduct, or of other rules and regulations of the Senate. The Select Committee on Ethics establishes the facts, finds the respondent in breach or not in breach of the Code, and may recommend disciplinary action. It may also propose new rules or regulations to ensure that the appropriate standards of conduct are maintained.
22. Ms Smith noted that, like the House of Representatives, the Senate has a Code of Official Conduct (63 pages), as well as a complementary Senate Ethics Manual. The lengthier Senate Ethics Manual (550 pages) functions as a single source of information about ethics related provisions of the U. S. Constitution, federal statutes, and Senate rules. The Committee also produces a summary document entitled 'An Overview of the Senate Code of Conduct and Related Laws'. This 20 page document extracts the key requirements from the Senate Ethics Manual. Copies of each of these documents were provided to the Committee.
23. Many of the obligations imposed by the Senate Ethics Manual are similar or identical to those found within the House Ethics Manual. Senators and staff may not accept any gift, even those clearly unrelated to official business, unless permitted by one of the exceptions in the rule. Senators, like Representatives, must also obtain prior written approval before undertaking privately sponsored travel, and are subject to restrictions on accepting travel expenses from private entities that retain or employ lobbyists or foreign agents. While Senators and their staff may practice a profession during off hours, they must not affiliate with an outside business to provide professional services for compensation; permit their name to be used by an outside business providing professional services for compensation; or practice a profession for compensation to any extent during regular office hours in the employing Senate office.
24. Despite the pervasive similarities, there are important procedural and other differences between the House Ethics Committee and the Senate Ethics Committee. For instance, while the House Ethics Committee takes referrals from the Office of Congressional Ethics (see below for further detail), there is no equivalent body at the Senate. The Senate Ethics Committee carries out its own investigations.
25. Ms Smith answered questions on allegations about Senators' comments, conduct unbecoming, the line between a Senator's public and private life, interactions with lobbyists, and leaks of confidential information.

Meeting with the Office of Congressional Ethics



26. The Committee's final meeting was with Omar Ashmawy, Staff Director and Chief Counsel, and Bryson B. Morgan, Investigative Counsel, at the Office of Congressional Ethics (OCE). The OCE is an independent, non-partisan entity charged with reviewing allegations of misconduct against Members, officers, and staff of the United States House of Representatives.
27. Mr Ashmawy gave a presentation, a copy of which has since been provided to each member of the Committee.
28. Mr Ashmawy explained that the OCE is governed by an eight person Board of Directors. Members of the OCE Board are private citizens and cannot serve as members of Congress or work for the federal government. The Speaker of the House and the Minority Leader each appoint three members and an alternate and must consent to one another's appointments. Two Board members (one appointed by the Speaker and one appointed by the Minority Leader) may authorise a preliminary review of a complaint if the evidence amounts to a reasonable basis for concluding that a violation has occurred.
29. After the preliminary review stage, the evidence is again submitted to the Board. For the review to proceed to the second phase, three members must find that there is "probable cause" that a violation occurred. At the end of a second phase review, the Board must either recommend to the Committee on Ethics that the allegation warrants a further review or dismiss it. In all but one set of circumstances, the report and findings of the OCE Board must be published.
30. Mr Ashmawy answered questions about the OCE's relationship with the House Ethics Committee and how differences of opinions are managed; the media pressure to make public statements on the subject and progress of its investigations; the difficulty in establishing the source of leaks; and how they deal with complaints which fall outside their remit.
31. Mr Ashmawy expressed the view that the House's Code of Official Conduct and Ethics Manual were open to improvement and recommended that the Committee also consult the Canadian Conflict of Interest Code for Members of the House of Commons during its review.

Committee Learns More About the Scottish Parliament's Code Of Conduct

 blog.niassembly.gov.uk

<http://blog.niassembly.gov.uk/2014/05/committee-learns-more-about-scottish.html>

Committee Learns More About the Scottish Parliament's Code Of Conduct

Alastair Ross MLA, Chair of the Committee on Standards and Privileges talks about the Committee's review into the Assembly Code of Conduct and its recent visit to the Scottish Parliament to find out more about how our Code of Conduct compares to the Scottish model.

The Assembly's current Code of Conduct was drawn up in 2009 to ensure that MLAs uphold an agreed set of standards and principles as they carry out their political duties.

While the current code has served us well, my Committee felt strongly that the time had come for us to review how the code works in practice, how it compares to national and international standards, and most importantly what we can do to make it work better.

As part of the inquiry process, we recently visited Edinburgh to meet with Bill Thomson, the Commissioner for Ethical Standards in Public Life and with our Committee's Scottish equivalent the Standards, Procedures and Public Appointments Committee. The aim of our visit was to find out more about the Scottish Parliament's Code of Conduct, and to explore if aspects of the Scottish code could work or be replicated here.



The Scottish Parliament's Code of Conduct differs from ours in structure and content more than the codes of conduct in other UK legislatures. It has for example, addressed, for a number of years the issue of dealing with lobbyists. It also includes provision in relation to how MSPs treat each other, the disclosure of confidential information, the responsibility of MSPs for their own staff and a prohibition on treating Parliamentary staff in a way that might call into question their political impartiality. These are all issues which may also be considered as part of our review.

Our first meeting was with Bill Thomson. We were very clear at the outset of our inquiry that we would like our new code to go further towards underlining a clear set of standards and rules while at the same time promoting and protecting free speech and the right of MLAs to express their opinions. We had an interesting discussion with the Commissioner on this issue, which included how the Scottish Parliament has worked to find a balance of principals and rules within its Code of Conduct and the difficulties involved in separating the public and private life of elected members.

Our next meeting was with Stewart Stevenson MSP, Convenor of the Standards, Procedures and Public Appointments Committee and other Members of that Committee. An important aspect of our current review is the issue of political lobbying and specifically the relationship between MLAs and Lobbyists. We talked to Stewart and the Committee at length about political lobbying in general, the formal registration of lobbying activity and the definition of a lobbyist. You can find out more by listening to my audio interview with Stewart Stevenson below:

The visit to Scotland was certainly worthwhile and provided a lot of information and food for thought in terms of our own inquiry.

In the coming weeks we will be hearing the opinions of a range of organisations and individuals beginning with a briefing from Lord Bew, the Chair of the Committee on Standards in Public Life. The Committee's papers 'Standards Matter' and 'Strengthening Transparency around Lobbying' have so far been invaluable in informing

our Review. Further briefings will take place in June and you can find out more about witnesses and agenda items by checking the Northern Ireland Assembly Business Diary.

Our final report on the Code of Conduct is due to be published in the autumn but in the meantime you can find out more on the scope of the inquiry on our webpage.



Back row: Mrs Sandra Overend MLA, Douglas Bain CBE (Northern Ireland Assembly Commissioner for Standards), Mr Colum Eastwood MLA. Front row: Mr Alistair Ross MLA (Chairperson to the Northern Ireland Assembly Committee on Standards and Privileges), Mr Bill Thomson (Commissioner for Ethical Standards in Public Life in Scotland), Mr Fra McCann MLA



Mr Colum Eastwood MLA, Mr Fra McCann MLA, Mr Richard Lyle MSP, Mr Alistair Ross MLA (Chairperson to the Northern Ireland Assembly Committee on Standards and Privileges), Ms Fiona McLeod MSP, Mr Stewart Stevenson MSP (Convenor of the Standards, Procedures and Public Appointments Committee of the Scottish Parliament), Ms Margaret McDougall MSP, Mr Douglas Bain CBE - Northern Ireland Assembly Commissioner for Standards, Mrs Sandra Overend MLA, Mr Cameron Buchanan MSP



Northern Ireland
Assembly

Appendix 6

Research Papers

List of Research Papers

1. Developments related to lobbying in the UK and Ireland
2. Accountability systems for legislators' staff and guidance on sanctions for misconduct
3. Parliamentary privilege
4. Codes of Conduct, contempt and developments in relation to the rules on Members' Interests in UK legislatures
5. Rules on the receipt of gifts and hospitality
6. Impact of rules on lobbying in relation to overseas visits
7. Employment of/benefits received by "connected persons" in relation to elected representatives



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

22 January 2014

NIAR 29-14

Ray McCaffrey

Developments related to lobbying in the UK and Ireland

1 Introduction

This paper has been prepared following a request from the Committee on Standards and Privileges. It sets out the position in the House of Commons, House of Lords, Scottish Parliament, National Assembly for Wales and the Oireachtas for regulating lobbying. It also provides information on the *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill* currently before the UK Parliament and summarises the key findings from the Committee on Standards in Public Life's (CSPL) report on lobbying.

Although the research was not asked to examine the issue of lobbying in respect of the Northern Ireland Assembly, it is worth noting that section 43 of the Northern Ireland Act 1998 requires Standing Orders of the Assembly to prohibit Members from advocating an issue in return for payment or other benefit, or from urging a colleague to engage in such activity.

2 Key points

- The Scotland Act 1998 and the Government of Wales Act 2006 prohibit Members from advocating a cause in return for payment or any other benefit, or urging a colleague to engage in such activity.
- Paid advocacy is also prohibited by Resolutions of the House of Commons and the Standing Orders of the Commons and House of Lords.
- A Bill currently before the UK Parliament aims to regulate lobbying in respect of Ministers and Permanent Secretaries.
- Following the introduction of a Private Member's Bill, the Scottish Government indicated in June 2013 its intention to legislate on the issue of lobbying in this mandate. The Standards, Procedures and Public Appointments Committee is currently undertaking an

inquiry into lobbying. Some of the consultation Committee's inquiry make it clear that Members' staff should be included in any future legislation aimed at regulating lobbying.

- The National Assembly for Wales has taken a different approach to lobbying. The Standards of Conduct Committee did not see a need to legislate for a register of lobbyists, but it did propose (and the Assembly subsequently approved) a resolution outlining what constitutes an appropriate relationship between elected Members and lobbyists.
- The National Assembly for Wales' Resolution makes it clear that Members' staff should be aware of the guidance contained in the Resolution.
- A Bill is expected to come before the Oireachtas with the aim of regulating lobbying activity. This will extend to, among others, Ministers, Ministers of State; TDs, Senators and members of their staff

3 OECD and GRECO

OECD's Principles for Transparency and Integrity in Lobbying

In 2010 the Organisation for Economic Co-operation and Development (OECD) published its *Principles for Transparency and Integrity in Lobbying*, aimed at helping decision makers address concerns about lobbying practices. OECD produced 10 principles¹:

Building an effective and fair framework for openness and access

- 1 Countries should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies.
- 2 Rules and guidelines on lobbying should address the governance concerns related to lobbying practices, and respect the socio-political and administrative contexts
- 3 Rules and guidelines on lobbying should be consistent with the wider policy and regulatory frameworks
- 4 Countries should clearly define the terms 'lobbying' and 'lobbyist' when they consider or develop rules and guidelines on lobbying

Enhancing transparency

- 5 Countries should provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities
- 6 Countries should enable stakeholders – including civil society organisations, businesses, the media and the general public – to scrutinise lobbying activities

Fostering a culture of integrity

- 7 Countries should foster a culture of integrity in public organisations and decision making by providing clear rules and guidelines of conduct for public officials
- 8 Lobbyists should comply with standards of professionalism and transparency; they share responsibility for fostering a culture of transparency and integrity in lobbying

Mechanisms for effective implementation, compliance and review

- 9 Countries should involve key actors in implementing a coherent spectrum of strategies and practices to achieve compliance

¹ <http://www.oecd.org/gov/fightingcorruptioninthepublicsector/44641288.pdf>

- 10 Countries should review the functioning of their rules and guidelines related to lobbying on a periodic basis and make necessary adjustments in light of experience

GRECO report

In March 2013 the Group of States Against Corruption (GRECO) published its report *Corruption prevention in respect of members of Parliament, judges and prosecutors*. In relation to lobbying, the report recommended that:

GRECO recommends that the Codes of Conduct and the guidance for both the Commons and the Lord be reviewed in order to ensure that the Members of both Houses (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. The devolved institutions of Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation².

4 UK Parliament

There is currently considerable attention focused on the issue of lobbying within the UK Parliament. The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill is proving to be a controversial attempt to regulate the activity of lobbyists and this is discussed further below. However, there is existing guidance for MPs regarding lobbying and what activities would constitute a breach of the Code of Conduct.

House of Commons

What are the rules?

The House of Commons Code of Conduct states that “no Member shall act as a paid advocate in any proceeding of the House”.

Concerns over lobbying and paid advocacy date back a considerable amount of time. A 1947 Resolution of the House prohibited Members from entering into any “contractual arrangement which fetters the Member’s complete independence in Parliament by any undertaking to press some particular point of view on behalf of an outside interest”³. The same resolution also stated that an outside body or person could not use any contractual arrangement with a Member to seek to control or influence the conduct of a Member in Parliament or punish that Member for any action taken in Parliament.

Therefore a Member cannot engage in paid advocacy. Nor may they, for payment, vote, ask a Parliamentary Question, table a Motion, introduce a Bill or table or move an Amendment to a Motion or Bill or urge colleagues or Ministers to do so.

However, the “Resolution **does not** prevent a Member from holding a remunerated outside interest as a director, consultant, or adviser, or in any other capacity, whether or not such interests are related to membership of the House. Nor does it prevent a Member from being sponsored by a trade union or any other organisation, or holding any other registrable interest, or from receiving hospitality in the course of his or her parliamentary duties whether in the United Kingdom or abroad. However, if a financial interest is required to be registered in the Register of Members’ Financial Interests, or declared in debate, it falls within the scope of the ban on lobbying or consideration”⁴.

2 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)2_UnitedKingdom_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)2_UnitedKingdom_EN.pdf)

3 House of Commons, *Guide to the rules relating to the Conduct of Members*

4 As above

The 1947 Resolution was updated in 1995 and 2002. The 2002 modifications reflected recommendations made by the Committee on Standards in Public Life in a report published in 2000. As part of that report, the CSPL received evidence that the changes put in place in 1995, particularly with regard to initiation of proceedings, were unduly harsh and were unnecessarily inhibiting Members' ability to become well informed and to use their expertise and experience effectively. The subsequent modifications relaxed the restrictions on initiation to enable a Member with a personal interest to initiate proceedings on the same basis as that on which they were already allowed to participate⁵.

The CSPL provided the following guidelines on the application of the rule:

- i. Parliamentary proceedings: When a Member is taking part in any parliamentary 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 Parliament, from which the Member has received, is receiving, or expects to receive a financial 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 benefit, provided the benefit is properly registered and declared.
- ii. Constituency interests: Irrespective of any relevant interest which the Member is required to register or declare, he or she may pursue any constituency interest in any proceeding of the House or any approach to a Minister or servant of the Crown, except that:
 - where the Member has a financial relationship with a company in the Member's constituency the guidelines above relating to parliamentary proceedings shall apply;
 - where the Member is an adviser to a trade association, or to a professional (or other representative) body, the Member should avoid using a constituency interest as the means by which to raise any matter which the Member would otherwise be unable to pursue.

The Committee on Standards has made it clear that it would regard it as a very serious breach of the rules if a Member failed to register or declare an interest which was relevant to a proceeding he or she had initiated⁶.

The CSPL also agreed to the following parameters to the operation of the rule:

1. Registrable interests: The ban on lobbying for reward or consideration is to apply with equal effect to any registrable or declarable financial benefit irrespective of the source of that benefit (ie no distinction is drawn between financial benefits received from a company, a representative organisation, a charity, a foreign government or any other source). Similarly, no distinction should be drawn in the application of the advocacy rule to different categories of registrable or declarable benefit (except for the provision below relating to ballot bills, to overseas visits, and to membership of other elected bodies). Nonfinancial interests registered by Members do not fall within the scope of the Resolution agreed by the House on 6th November 1995 and the rule does not apply to them.
2. Past, present, and future benefits: Unlike the Register, which lists current benefits, or benefits received in the immediate past, the Resolution on lobbying of 6 November 1995 also refers, as does the rule on declaration, to past and expected future benefits and to indirect benefits. It is difficult to contemplate circumstances where any benefit received some time in the past, particularly an interest which has not been current in the past twelve months could be sufficiently relevant to be taken into account under the rule (see (4) below). Expected future interests, on the other hand, may be more significant. For example, Members expecting to derive direct financial benefit from particular legislation should, as well as declaring the interest in debate as appropriate, not seek to move Amendments to advance the expected future interest. The same consideration applies to other proceedings.

5 House of Commons, *Guide to the rules relating to the Conduct of Members*

6 As above

3. Continuing benefits: Continuing benefits, i.e. directorships, other employment, and sponsorship, can be divested to release a Member with immediate effect from the restrictions imposed by the rule, providing that the benefit is disposed of and there is no expectation of renewal.
4. "One-off" benefits: The rule applies to "one-off" registrable benefits, both visits and gifts, from the day upon which the interest was acquired until one year after it is registered.
5. Family benefits: The rule includes relevant payments to a Member's family, but any payment to a member of the family of any Member which arises out of the family member's own occupation is not regarded as a benefit for the purposes of the Resolution, although it may be declarable.
6. Ballot Bills: Private Members successful in the Ballot for Bills are not prevented from introducing and proceeding with a Bill by reason of the fact that they receive free or subsidised assistance from an organisation connected with the purposes of the Bill provided the Member had no pre-existing financial relationship with the organisation which is registered, or is required to be registered.
7. Overseas Visits: Although, except as set out in paragraph 47, overseas visits must be registered and declared, such visits shall not be taken into account when applying the rule.
8. Membership of other elected bodies: Membership of the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly, the European Parliament and local authorities in the United Kingdom shall not be taken into account when applying the rule.
9. Ministers: The restrictions imposed by the rule do not apply to Ministers when acting in the House as Ministers.

The Guide to the Rules Relating to the Conduct of Members recognises that the "financial interests of Members are extremely varied, as the Register demonstrates. Each Member will need to apply the rule and the Guidelines to his or her particular circumstances. When in doubt, Members will be able to seek the advice of the Registrar, the (Parliamentary Standards) Commissioner, or the Committee on Standards and Privileges"⁷.

Consideration of the GRECO report

In March 2013 the Committee on Standards published a report *Guide to the Rules relating to the conduct of Members: GRECO Report and other developments*⁸. The Committee's report addressed the recommendation made in the GRECO report and noted that:

At present, we consider that if Members conscientiously abide by the requirements of the Code and the Guide to the Rules about registration and declaration they will deal appropriately with lobbyists. The revised Guide will increase transparency still further by:

- Clarifying the rules on the registration of gifts and hospitality, including benefits given to third party organisations;
- Requiring Members to register family members involved in lobbying the public sector;
- Extending the requirement to register interests when functions are held in dining rooms to all occasions when significant hospitality is offered at a function in a room booked on the Parliamentary Estate⁹.

⁷ House of Commons, *Guide to the rules relating to the Conduct of Members*

⁸ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstandards/724/72402.htm>

⁹ As above

House of Lords

What are the rules?

The Code of Conduct states:

14. A Member must not act as a paid advocate in any proceeding of the House; that is to say, he or she must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward.

The accompanying guidance to the Code explains what is meant by paid advocacy:

Paid advocacy

23. Paragraph 8(d) of the Code states that a Member “must not seek to profit from membership of the House by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services.” Paragraph 14 of the Code states that a Member “must not act as a paid advocate in any proceeding of the House; that is to say, he or she must not seek by parliamentary means to confer exclusive benefit on an outside body or person from which he or she receives payment or reward.”

24. The “exclusive benefit” principle would mean, for instance, that a Member who was paid by a pharmaceutical company would be barred from seeking to confer benefit exclusively upon that company by parliamentary means. The way in which the benefit is conferred should be interpreted broadly. All proceedings of the House are included, for instance:

- tabling a motion or an amendment to legislation;
- voting in a division;
- speaking in debate;
- asking written or oral questions; and
- deliberation within a Select Committee.

25. The nature of the “exclusive benefit”, on the other hand, should be interpreted narrowly. The same Member would not be debarred from tabling an amendment, speaking or voting on matters relevant to, for instance, the pharmaceutical sector as a whole; National Health Service spending on drugs; or Government policy on drug licensing and patents.

26. The term “outside body” includes any registrable client of such a body.

5 Scottish Parliament

What are the rules?

Section 39 of the Scotland Act 1998 places a duty on the Parliament to prohibit MSPs from engaging in paid advocacy:

- (4) Provision shall be made prohibiting a member of the Parliament from:
- (a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or
 - (b) urging, in consideration of any such payment or benefit in kind, any other member of the Parliament to advocate or initiate any cause or matter on behalf of any person by any such means¹⁰.

Failure to observe the requirements of the Act may constitute a breach of the Act or a criminal offence.

Volume 2, section 5 of the Code of Conduct for MSPs provides details on what Members should and should not do in relation to representing the interests of persons or groups. The key points of the Code are:

- A Member should not, in relation to contact with any person or organisation who lobbies, act in any way which could bring discredit upon the Parliament
- The public must be assured that no person or organisation will gain better access to, or treatment by, any member as a result of employing a commercial lobbyist either as a representative or to provide strategic advice. In particular, a Member should not offer or accord preferential access or treatment to commercial lobbyists or their employers
- Before taking any action as a result of being lobbied, a Member should be satisfied about the identity of the person or organisation who is lobbying and the motive for lobbying
- Members should:
 - Consider whether a meeting with one group which is making representations on an issue should be balanced by offering another group with different views an opportunity to make representations
 - Consider keeping a record of all contacts with lobbyists
 - Consider arranging for an assistant or researcher to take notes at any meetings with lobbyists

The Code of Conduct also provides background and guidance to MSPs on the issue of lobbying. It emphasises the need for transparency in any relationship between lobbyists and MSPs, “in line with the Parliament’s core principles of accessibility and openness. This is particularly important where commercial lobbyists are employed to advise organisations or companies in the presentation of their arguments”¹¹.

Proposals for a statutory register of lobbyists

In 2013 Neil Findlay MSP introduced a Bill to regulate organisations that lobby MSPs, Scottish Ministers and relevant public officials. However in June 2013 the Minister for Parliamentary Business gave the following indication under Rule 9.14.13(a):

I hereby indicate that the Scottish Government will introduce a Bill, within the current session of the Parliament. This will include provisions which require certain individuals and organisations who lobby MSPs, Scottish Ministers or relevant public officials, either on their own account or on behalf of third parties, to record relevant information about their lobbying activity in a published register. Accordingly, the Bill will give effect to Neil Findlay’s final proposal for a Lobbying Transparency (Scotland) Bill.

As a result, Neil Findlay has no right to introduce a Bill to give effect to the proposal¹².

Following this announcement by the Scottish Government, the Standards, Procedures and Public Appointments Committee (SPPA) initiated an inquiry to consider what steps might be needed to improve transparency and whether the introduction of a statutory register of lobbyists would help address any such problem.

The remit for the SPPA inquiry is:

- To examine whether there is a problem, either actual or perceived, with lobbying and, if so, how this can most effectively be addressed;

11 Code of Conduct for Members of the Scottish Parliament, 2011

12 If the Scottish Government indicates to the Member who proposed the Bill that it will legislate to give effect to the provisions of the Bill, then the Member has no right to proceed with his or her Bill.

- To what extent a register of lobbyists would help with this process, who such a register should cover and how it would be operated in practice, and;
- Whether other steps might be needed to improve probity and transparency in this area.

The deadline for inquiry responses was 10 January 2014¹³.

6 National Assembly for Wales

What are the rules?

As in Scotland, Members of the National Assembly for Wales are prohibited from engaging in paid advocacy. Section 36 of the Government of Wales Act 2006 states:

The standing orders must include provision prohibiting an Assembly member from:

- (a) advocating or initiating any cause or matter on behalf of any person, by any means specified in the standing orders, in consideration of any payment or benefit in kind of a description so specified, or
- (b) urging, in consideration of any such payment or benefit in kind, any other Assembly member to advocate or initiate any cause or matter on behalf of any person by any such means¹⁴.

Standing Order 2.8 states:

A Member must not advocate or initiate any cause or matter on behalf of any body or individual in any Assembly proceedings, or urge any other Member to advocate or initiate any cause or matter in any such proceedings, in return for any payment or benefit in kind, direct or indirect, which the Member, or to the Member's knowledge his or her partner or any dependent child of the Member, has received or expects to receive¹⁵.

The Code of Conduct also prohibits paid advocacy on the part of Members¹⁶.

In June 2012 the Presiding Officer of the National Assembly for Wales wrote to the Standards of Conduct Committee asking it to review the arrangements for the regulation of lobbying activity:

I think it would be very useful if the Standards of Conduct Committee would undertake a review to consider the regime that we have in place as it relates to Members and, if necessary, make recommendations to me about any additional arrangements that might be necessary to strengthen them. I will consider any recommendations in the context of other related issues such as arrangements for cross-party groups and the need to protect the culture of the Assembly as an open and accessible institution.

The Committee subsequently reported in May 2013 on lobbying and cross-party groups. It highlighted that the Standards Commissioner for the National Assembly for Wales was “firmly of the view that the arrangements currently in place for regulating lobbying, as it relates to Members of the National Assembly, are essentially sufficiently robust and fit for purpose”¹⁷. The Committee noted that the Commissioner had never received a complaint in relation to lobbying and as far as he was aware, no complaint of this nature had been made since the Assembly was established. Furthermore, the Commissioner noted “that it was the unanimous view of all those consultees who operate in Wales and/or in the National Assembly, that

13 <http://www.scottish.parliament.uk/newsandmediacentre/68111.aspx>

14 Section 36, Government of Wales Act 2006

15 Standing Orders of the National Assembly for Wales: http://www.assemblywales.org/clean_sos.pdf

16 <http://www.assemblywales.org/memhome/pay-expenses-financial-interests-standards/cod-ymddygiad.htm>

17 <http://www.senedd.assemblywales.org/documents/s16949/Report%2003-13%20to%20the%20Assembly%20on%20Lobbying%20and%20Cross-Party%20Groups-%20April%202013.pdf>

lobbying practices are essentially transparent and adequately policed and regulated”¹⁸, and that “that the criminal law provides for the improper receipt or giving of gifts or bribes from or to those in public office”¹⁹.

Stating its own view, the Committee did not consider it appropriate to simply accept the status quo of current arrangements. Equally it did not see evidence of the need to move towards legislating for a system of statutory registration at this time.

The Committee also drew a distinction between lobbying Ministers and Assembly Members and stated that it wanted to:

avoid a situation where the requirements on individual Assembly Members would be significantly greater than those on Welsh Ministers...the obligations on individual Assembly Members and Welsh Ministers are different. Any differences should always be justified, and this Committee would be concerned about any further widening of the existing two-tier system of scrutiny of the conduct of individual Members and Ministers...the lobbying of Ministers, rather than individual Assembly Members, represents the greatest reputational risk to the Assembly going forward, particularly in the context of the Assembly gaining financial powers in the future²⁰.

Furthermore, it invited the First Minister for Wales to consider its findings and recommendations in relation to lobbying activity and Welsh Ministers.

The Committee recommended that guidance on lobbying and access to Members is adopted by Assembly resolution. The Committee drafted a resolution which was approved by the Assembly in June 2013²¹.

The final paragraph of the Resolution states that “Members should ensure that staff working for them are aware of and apply these rules and guidelines when acting on a Member’s behalf or in any National Assembly for Wales connection”²².

7 Oireachtas

The Code of Conduct for TDs prohibits paid advocacy:

6. Members may not solicit, accept or receive any financial benefit or profit in exchange for promoting, or voting on, a Bill, a motion for a resolution or order or any question put to the Dáil or to any of its committees²³.

The Fine Gael/Labour Coalition made a commitment in their Programme for Government and the Public Service Reform Plan 2011 to introduce a regulatory system for lobbying. Subsequently, the Department of Public Expenditure and Reform published a consultation inviting views on how a system to regulate lobbying might work in practice.

On the 30th April, 2013 the Government approved the drafting of the Regulation of Lobbying Bill 2013. The General Scheme of the Bill, published in April 2013, classifies designated public officials or officeholders as including (among other categories):

- Ministers, Ministers of State,

18 As above

19 As above

20 <http://www.senedd.assemblywales.org/documents/s16949/Report%2003-13%20to%20the%20Assembly%20on%20Lobbying%20and%20Cross-Party%20Groups-%20April%202013.pdf>

21 The guidance can be accessed at: <http://www.senedd.assemblywales.org/documents/s18881/%20Guidance%20on%20Lobbying%20and%20Access%20to%20AMs%20-%2026%20June%202013.pdf>

22 As above

23 <http://www.sipo.gov.ie/en/Codes-of-Conduct/TDs/>

■ TDs, Senators and members of their staff

It also defines lobbying as:

...all communication, whether directly or indirectly communicated, including the management or direction of grass-roots communication,

- (i) by organisations or by an individual, relevant to his or her capacity as an employee in or shareholder of an organisation, or
- (ii) by an individual, relevant to his or her capacity as an officeholder of a body at national level including those in a purely voluntary capacity (other than officeholders of a purely voluntary body with no remunerated officers or employees), or
- (iii) by organisations or by an individual receiving fees or remuneration from a third party for making or organising or planning that communication on specific policy, legislative matters or prospective decisions with designated public officials or officeholders²⁴.

As with the Bill before the UK Parliament, the register of lobbyists in the Republic of Ireland will be enforced by a Registrar. However, unlike its UK equivalent, the proposed Bill envisages a Code of Conduct for lobbyists in relation to the following matters:

- (a) General professional obligations
- (b) Transparency
- (c) Confidentiality
- (d) Conflict of interest
- (e) In the case of Lobbyists acting on behalf of clients, specific professional obligations towards:
 - (i) Clients / employers,
 - (ii) Public opinion and the information media,
 - (iii) Fellow practitioners,
 - (iv) The profession,
 - (f) Improper influence,
 - (g) Such other matters as the Registrar considers appropriate.

On 29 November 2013 the Joint Committee on Finance, Public Expenditure and Reform released a report on the Draft General Scheme of the Regulation of Lobbying Bill. The report is a summary of the issues raised in the consultation responses to the Department and it makes clear that it should not be viewed as the definitive report on the Bill from the Committee²⁵.

The Standards in Public Offices Commission has also commented on the proposals:

The Standards Commission considers that the enactment of such legislation has the potential to enhance the existing and developing framework of legislation ensuring transparency throughout the public service²⁶.

In response to a Parliamentary Question in November 2013, the Minister for Public Expenditure and Reform advised that the office of Parliamentary Counsel was in the process of drafting the Bill²⁷.

24 <http://www.oireachtas.ie/parliament/media/committees/finance/Final-Report.pdf>

25 <http://www.oireachtas.ie/parliament/media/committees/finance/Final-Report.pdf>

26 <http://www.sipo.gov.ie/en/Reports/Annual-Reports/2012-Annual-Report/AnnualReport2012/chapter2.html>

27 Written answer, 5 November 2013

8 Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill contains a number of elements aimed at regulating third-party influence on politics. Part 1 of the Bill would establish a register of consultant lobbyists. A House of Commons Library paper provides a summary of the intention of Part 1:

The Bill covers lobbyists who work for lobbying firms, referred to as “consultant lobbyists”, and it makes them subject to requirements to register and to reveal their client, if lobbying is their “main business”. It creates offences for failure to register or providing inaccurate or incomplete information. The register will be administered by a Government appointed Registrar, who will be funded through fees on those registering. The Registrar will have the power to impose civil penalties in respect of the offences, although this would remove the possibility of criminal proceedings and is intended to apply only to minor breaches.

The Bill covers only the lobbying of UK Government Ministers and Permanent Secretaries by means of personal communication or in writing. The lobbying provisions in Part 1 of the Bill apply to the whole of the UK since they relate to lobbying of the UK Government, not because of any requirement on those lobbying the devolved administrations. The Bill does not create a code of conduct for lobbyists, and it does not cover the lobbying of members of either House of Parliament outside of ministerial responsibilities²⁸.

What does the Bill do?

The Explanatory Notes of the Bill state:

The main purpose of the provisions on lobbying is to ensure that people know whose interests are being represented by consultant lobbyists who make representations to Government. The Bill enhances transparency by requiring consultant lobbyists to disclose the names of their clients on a publicly available register and to update those details on a quarterly basis. The register will complement the existing transparency regime whereby Government ministers and permanent secretaries of Government departments voluntarily disclose information about who they meet on a quarterly basis.

The register will be hosted by the Registrar of Consultant Lobbyists, who will be independent from the lobbying industry and Government²⁹.

Offences

Under the Bill it is an offence:

- to carry out the business of consultant lobbyist while unregistered
- to lobby if there is material inaccuracy or incompleteness in that person’s entry in the register and they have failed to correct this in an information return
- to fail to submit a return within two weeks of the end of a quarter, or to provide a materially inaccurate or incomplete return
- to fail to supply information required in an information notice by the stipulated date, or to supply materially inaccurate or incomplete information

In addition to the possibility of criminal proceedings, the Registrar may impose a civil penalty for any of these offences. The Registrar may not impose a civil penalty while criminal proceedings are under way or after a person has been convicted.

²⁸ House of Commons Research Paper 13/51

²⁹ Explanatory Notes to the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

How does the Bill define lobbying?

The Bill provides that “a person must not carry on the business of consultant lobbying unless the person is entered in the register of consultant lobbyists”. The main characteristics of a consultant lobbyist are:

...that in the course of a business (which requires the person concerned to be engaged in a commercial activity, and so therefore excludes things such as the public duties of elected officials) the person makes communications (either in writing or orally):

- personally to a UK Government minister or permanent secretary (including specified equivalent positions)
- about Government policy, legislation, the award of contracts, grants, licenses or similar benefits, or the exercise of any other Government function such as the exercise of the prerogative
- on behalf of another person
- in return for payment³⁰

How has the Bill been received?

The Bill has proven to be controversial both for the way it was introduced and for its perceived deficiencies. The Opposition and several parliamentary select committees raised concerns about the lack of consultation or pre-legislative scrutiny of the Bill and the speed at which it was being taken through Parliament. The Joint Committee on Human Rights, the Committee on Standards and the Political and Constitutional Reform Committee all highlighted areas where they were unhappy. For example, the Political and Constitutional Reform Committee concluded that “the definition of consultant lobbying was flawed because it would exclude in-house lobbyists as well as the vast majority of third-party lobbyists, many of whom undertake lobbying as part of a wider communications and public relations business and who spend very little of their time meeting with ministers and permanent secretaries”³¹.

The Opposition tabled a reasoned amendment to the Bill’s second reading, but this was defeated.

Industry bodies have criticised the Bill along similar lines. The Association of Professional Political Consultants (APPC) commented:

This is a muddled mistake. As currently drafted, it will do precisely nothing to increase lobbying transparency...

The APPC wants to see all professional lobbying governed by a statutory lobbying register. The APPC has been operating our own register for nearly 20 years and yet we had absolutely no engagement with the Government until this Bill was introduced. This is despite the fact that the industry had worked hard to produce a definition and a framework that would be workable and a registration process to provide proof of concept as to how a system could operate effectively³².

Parliamentary privilege

The Bill as originally introduced attempted to ensure that no provision would infringe parliamentary privilege and that the normal activities of MPs in representing their

30 Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

31 House of Lords Library Note, Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill

32 APPC Press release, 3 September 2013

constituents would be specifically excluded from the definition of carrying on the business of consultant lobbying.

However, concerns were raised that the inclusion of a provision seeking to protect parliamentary privilege could actually undermine that very concept.

There are two fundamental aspects of parliamentary privilege: freedom of speech in parliamentary proceedings and exclusive cognisance (the right of Parliament to regulate its own affairs). The Bill borrowed some of the language from the 1689 Bill of Rights that guarantees parliamentary privilege, but did not refer to the Bill of Rights. A former Member of the Joint Committee on Parliamentary Privilege argued that there was a possibility that the courts could in future be tasked with interpreting this paragraph, thereby potentially undermining the Bill of Rights.

The Leader of the House of Commons assured Members that the Government was “committed to ensuring that the provisions do not intrude on Parliament’s exclusive cognisance”³³ and that following consideration the clause would be removed.

Other potential impacts on Members of the House of Commons

The Bill as introduced specified that communications made by an MP to ministers or permanent secretaries on behalf of person(s) resident in the MP’s constituency would not be classed as consultant lobbying. Several difficulties were identified with this. The Bill identified a constituency resident as a person entitled to be registered as a parliamentary elector, certain groups of people whom an MP may nonetheless legitimately represent would fall outside the definition. This could include people involved in immigration disputes without the right to reside, people too young to register to vote, people who lacked legal capacity for other reasons, or companies based in the MP’s constituency. Therefore this could be interpreted as requiring an MP to register as a consultant lobbyist in order to contact a minister or permanent secretary on behalf of anyone who was not eligible to vote in the MP’s constituency. At report stage, the Leader of the House proposed a Government amendment to delete the relevant clause, which was accepted without division.

Statutory Code of Conduct

The Bill has also been criticised for its failure to provide for a statutory code of conduct, maintained by the Registrar, with which all registered lobbyists would have to comply. It was argued that once lobbyists registered under the new scheme, they may no longer adhere to the existing voluntary codes of practice within the industry. Reference was made by the Opposition to the existence of codes of conduct for lobbyists in other countries and asked the Government to make provision for such a code in the UK.

In response, the Leader of the House accused Labour of attempting to establish a “full-blown regulator of the industry”. The Government’s aim, he said was to “shine the light of transparency on key issues in lobbying and the impact on key decision makers”, rather than “introduce a bureaucratic monster” regulating the entire industry³⁴.

A proposed new clause giving effect to the Opposition’s view was defeated on a vote.

33 House of Lords Library Note, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*

34 House of Lords Library Note, *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill*

9 Committee on Standards in Public Life

In November 2013 the Committee on Standards in Public Life published its report *Strengthening Transparency around Lobbying*³⁵. The following is a summary of the key points and findings from that report:

- Credible and effective reform of lobbying needs to address...broader issues of public concern...these are issues that go beyond a statutory register of lobbyists and the regulation of the lobbying industry to much wider questions of how those with vested interests seek to influence decision makers; and to issues of transparency, accountability and equality of access.
- The CSPL felt that a culture of openness and transparency would only come through a package of measures that would include:
 - Adoption of codes or guidance to cover lobbying activity
 - Revisions to existing codes of conduct and guidance for public office holders
 - Increased transparency through proactive and accessible disclosure by public office holders
 - Increased transparency and a review of the arrangements for post-public employment and secondments and interchange to and from the public sector
 - Ethics training
 - An annual certification by accounting officers of the adequacy of their organisation's arrangements for safeguarding high ethical standards
- The CSPL doubts that the creation of a register would be enough to allay public concern
- Public office holders need to be exposed to a range of views and expertise. They need to converse, debate and discuss. There is also a need to take account of the fundamental principles of freedom of expression and association. However, not everyone has the same access to policy or decision makers or legislators.
- The Committee wished to encourage maximum transparency about lobbying activities, by both organisations and individuals, with rules which are clear and consistent and with simple mechanisms for disclosing information. It recognised that there will be limits to this – for reasons of public interest, policy, and practicality. The Committee wished to avoid excessive administrative burden and information overload. Nevertheless, public bodies and office holders which make information about the lobbying to which they have been subjected routinely available will demonstrate transparency, increase accountability and as a consequence improve public trust.
- The Code of Conduct for Members of Parliament should be revised to allow complaints to be made against an MP who is a former Minister and who takes on outside paid employment but does not follow advice provided by the Advisory Committee on Business Appointments (ACoBA).
- The Committee was not presented with evidence of widespread systematic abuse of lobbying but recurring individual cases around the manner of lobbying, and access to policy makers, recent media stings involving legislators and perceptions of conflicts of interest have raised public concern and seemingly contributed to a growing public cynicism of the democratic process. This can result in a lack of trust and confidence in the ethical standards of holders of public office, and in political decision making and leads to disengagement from the political process.

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http://www.public-standards.gov.uk/wp-content/uploads/2013/11/2901376_LobbyingStandards_WEB.pdf



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

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Ray McCaffrey

Accountability systems for legislators' staff and guidance on sanctions for misconduct

1 Introduction

The Committee on Standards and Privileges asked for this paper as part of its ongoing review of the Northern Ireland Assembly's Code of Conduct. The paper addresses the following issues:

- Whether separate accountability systems for Members' staff in the House of Commons, House of Lords, Scottish Parliament, National Assembly for Wales and the Oireachtas exist
- If separate systems do not exist, are Members held accountable for the conduct of their staff?
- The available disciplinary sanctions for misconduct of Members in legislatures in the UK and Ireland, and any guidance on the applicable sanctions for particular types of breaches

The basis for this research lies in the report produced by the Group of European States Against Corruption (GRECO) Evaluation Report on the United Kingdom¹. That report recommended:

1 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4\(2012\)2_UnitedKingdom_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/GrecoEval4(2012)2_UnitedKingdom_EN.pdf)

- 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.

and

- (i) reviewing the available disciplinary sanctions for misconduct of Members of the House of Commons and Members of the House of Lords in order to ensure that they are effective, proportionate and dissuasive; and (ii) better describing in the relevant guidance to the Codes of Conduct the applicable sanctions for breaches of the rules.

2 Key points

Accountability of Members' staff

- The research did not find any evidence that was publicly available of separate codes of conduct for Members' staff in legislatures in the UK and Ireland
- However, Members' staff in the House of Commons and House of Lords are required to declare relevant interests. Failure to declare relevant interests could lead to investigation by the respective standards commissioners.
- The Code of Conduct in the Scottish Parliament makes it clear that Members are responsible for the behaviour of their staff within the Parliamentary estate. Other rules exist in relation to staff regarding the use of social media on a Member's behalf and engagement with constituents.
- A Resolution on lobbying adopted in 2013 in the National Assembly for Wales states that Members should ensure that staff working for them are aware of and apply the new rules and guidelines.

Sanctions

- The House of Commons and House of Lords do not have sanctions that directly correspond to a breach. However, proposals from the Committee on Standards and Privileges (2012) would seek to clarify this to some extent in relation to the Commons.
- The Scottish Parliament does provide some guidance on sanctions that could be applied in certain circumstances, but the Parliament also has discretion to apply a range of sanctions in other instances where no specific sanction applies. These are dealt with on a case-by-case basis.
- National Assembly for Wales: In deciding what sanction(s) to recommend to the Assembly, the Committee will make a judgement based on the specific circumstances of the case in question. It will consider the severity of the breach, the extent to which it may have brought the Assembly into disrepute, and whether the case in question is a repeat offence, or shows persistent conduct which may be considered to show contempt for Assembly colleagues, the rules or the institution.
- Oireachtas: The guidance issued by the Committee relates to the register of financial interests, but it does not refer to any sanctions that are applicable for failure to register relevant interests or in circumstances where the Code of Conduct has been breached.

3 Accountability of Members' staff

UK Parliament

The Parliamentary Commissioner for Standards maintains a Register of Members' Secretaries and Research Assistants²:

In accordance with Resolutions made by the House of Commons on 17 December 1985 and 28 June 1993, holders of photo-identity passes as Members' secretaries or research assistants are in essence required to register:

- Any occupation or employment for which they receive over £330 from the same source in the course of a calendar year, if that occupation or employment is in any way advantaged by the privileged access to Parliament afforded by their pass.
- Any gift (eg: jewellery) or benefit (eg: hospitality, services or facilities) they receive in the course of a calendar year, if the value of the gift or benefit exceeds £330 and if it in any way relates to or arises from their work in Parliament.

Complaints, whether from Members, the public or anyone else alleging that a staff member is in breach of the rules governing the Register, should in the first instance be sent to the Registrar of Members' Interests in the Office of the Parliamentary Commissioner for Standards. The Registrar will then seek to resolve the complaint, though in serious cases the Parliamentary Commissioner for Standards may seek the agreement of the Committee on Standards to undertake a formal investigation³.

In minor cases of infringement, the Commissioner may, at his discretion, apply the rectification procedure. Under this, a late entry is printed in bold italics in the Register for 12 months from its first appearing. More major cases may be the subject of formal investigation and will be reported to the Committee on Standards.

The House of Lords maintains the Register of Interests of Lords Members' Staff. Failure to declare relevant interests on the register fall within the remit of the House of Lords Commissioner for Standards.

Scottish Parliament

The Code of Conduct makes it clear that Members are responsible for the behaviour of their staff within the Parliamentary estate:

- 7.6.1 Members will be held responsible for the behaviour of their staff within the Parliamentary complex and in their dealings with other members, other members' staff, and Parliamentary staff.
- 7.6.2 Members are responsible for ensuring that their staff are fully aware of and understand the policies, rules and requirements that apply to the conduct of personnel on the SPCB's premises⁴.

Other rules exist in relation to staff regarding the use of social media on a Member's behalf and engagement with constituents.

National Assembly for Wales

The Standards of Conduct reported in May 2013 on lobbying and cross-party groups. It recommended that guidance on lobbying and access to Members be adopted by Assembly resolution. The Committee drafted a resolution which was approved by the Assembly in June 2013.

2 <http://www.publications.parliament.uk/pa/cm/cmsecret/memi01.htm>

3 <http://www.publications.parliament.uk/pa/cm/cmsecret/140109/contents.htm>

4 <http://www.scottish.parliament.uk/msps/42780.aspx>

The final paragraph of the Resolution states that “Members should ensure that staff working for them are aware of and apply these rules and guidelines when acting on a Member’s behalf or in any National Assembly for Wales’ connection.”^{5 6}

Oireachtas

The Standards in Public Office Act 2001 provided for a Code of Conduct to be drafted for TDs. No mention is made of Members’ staff in the Act, nor is there any indication in Standing Orders that Members are accountable for the behaviour of their staff.

4 Financial interests

The Interests of Members of the Scottish Parliament Act 2006 and the Government of Wales Act 2006 make it an offence for Members of the respective legislatures to fail to register certain interests. Members who contravene the requirements of the legislation could face sanctions from within their legislature or, depending on the offence, could be subject to criminal charges.

In both the Scottish Parliament and National Assembly for Wales Members can be excluded from proceedings if they have are found to have breached the rules on registrable interests.

In the House of Commons, the rules on the registration of financial interests are set out in the *Guide relating to the Conduct of Members*. It is open to any Member or to a member of the public to complain to the Parliamentary Commissioner for Standards that a Member has not properly registered or declared his or her interests⁷.

Members are required to comply with the requirements of the Dail and the law in respect of the registration and declaration of interests. They are expected to familiarise themselves with the relevant legislation (commonly referred to as the Ethics Acts) and guidelines published by the Committee on Members’ Interests and the Standards in Public Office Commission⁸.

5 Sanctions and guidance - House of Commons

The Standards Committee has the power to make recommendations to the House for a suitable sanction in circumstances where a Member is found to have breached the Code of Conduct. The sanctions available are:

- Repayment of monies
- A written apology
- An apology by personal statement on the Floor of the House
- Period of suspension with loss of pay

The power of expulsion has not been used since 1947, but Denis Macshane resigned his seat when the House voted to suspend him for six months.

Recent research highlighted the fact that:

There has been some discussion as to whether the current procedures of the House are compatible with Article 6 (right to fair trial) of the European Convention on Human Rights. The (Committee on Standards in Public Life) considered this issue as part of its eighth

5 <http://www.senedd.assemblywales.org/documents/s16949/Report%2003-13%20to%20the%20Assembly%20on%20Lobbying%20and%20Cross-Party%20Groups-%20April%202013.pdf>

6 Members’ staff must also be aware of the different roles and responsibilities of Constituency Members and Regional Members under SO 1.10

7 Erskine May, Parliamentary Practice, 24th edition, 2011

8 <http://www.sipo.gov.ie/en/Codes-of-Conduct/TDs/>

report, recommending an Investigatory Panel to handle serious, contested cases of alleged misconduct; there has as yet been no occasion to use it. The House is not a public authority under the Human Rights Act 1998, but the European Court of Human Rights (ECHR) has jurisdiction and has heard cases relating to the procedures of the House, although not as yet in respect of disciplinary procedures⁹.

The research went on to highlight a case heard by the ECHR, *Demicoli v Malta*, in which it ruled that imposition of sanctions by the Maltese Parliament against a newspaper editor was a breach of Article 6, but distinguished between this and internal disciplinary procedures.

Guidance

The Code of Conduct together with The Guide to the Rules relating to the conduct of Members¹⁰ provides guidance to Members on compliance with the rules. It does not include the type of sanction appropriate to each offence, rather it states: "The Committee will consider any report from the Commissioner to it and report its conclusions and recommendations to the House. The House may impose a sanction on the Member where it considers it necessary"¹¹.

In December 2012 the Committee on Standards and Privileges published proposed revisions to the guide to the rules relating to the conduct of Members. This report has **not yet** been debated and approved. However it does contain the following proposed guidance in respect of sanctions:

Where the Commissioner has concluded that there has been a breach of the rules, and the Committee agrees in whole or in part, those concerned face a range of penalties. In a very few cases, the reputational damage of an adverse report will be deemed sufficient, together with any action required to remedy the breach. In more serious cases the Committee will make recommendations for further action. The Committee may recommend:

- a) a written apology;
- b) for relatively minor failures to declare interests, an apology on the floor of the House by means of a point of order;
- c) an apology on the floor of the House by means of a personal statement;
- d) for non-Members, withdrawal of Parliamentary passes, either indefinitely or for a fixed period;
- e) suspension from the service of the House for a specified number of sitting days (during which time the Member receives no salary and must withdraw from the precincts of the House.¹²)

6 Sanctions and guidance - House of Lords

In December 2013 the House of Lords House Committee published a report recommending two new sanctions in circumstances where a Member was found to have breached the Code of Conduct. Currently, if a Member is found to have breached the Code, the House only has the power to suspend them for a period not longer than the remainder of the Parliament. This is because Members attend the House of Lords by virtue of their writ of summons issued by the Monarch following a general election or the creation of a new Peerage.

9 <http://www.parliament.uk/business/publications/research/briefing-papers/SN05127/the-code-of-conduct-for-members-recent-changes>

10 <http://www.publications.parliament.uk/pa/cm201012/cmcode/1885/188501.htm>

11 <http://www.publications.parliament.uk/pa/cm201012/cmcode/1885/1885.pdf>

12 <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstnprv/636/636.pdf>

The two new proposed sanctions are:

- Preventing a Member from claiming any money from the House for a specified period.
- Denying a Member from using the facilities of the House for a specified period. This would include dining and banqueting facilities, car parking, the library and research services, ICT equipment, supplies, network accounts and support, bookable meeting rooms, desk space, stationery and pre-paid envelopes.

As these new sanctions are not related to the writ of summons, they could be applied for any defined period irrespective of the point in the life of the Parliament at which the sanctions were applied. The House Committee does not suggest any limitation to what the defined period could be for either sanction. The period would be for the Privileges and Conduct Committee to decide in each case¹³.

In addition to the power to suspend a Member for the remainder of a session, the Lords may also censure a Member.

Guidance

The Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct does make reference to the narrow scope of the sanctions that can be applied to Members who are found to be in breach of the Code:

In the case of a breach of the Code, the options available to the Sub-Committee in its report to the Committee for Privileges and Conduct include:

- That the Code has been breached but that no action or sanction is appropriate. Where the Member concerned has volunteered appropriate remedial action (such as corrected disclosure or a personal apology to the House), the Sub-Committee may report to the Committee for Privileges and Conduct that it sees no need for the matter to be reported to the House because the remedial action itself involves public acknowledgement of the mistake.
- That the Code has been breached; that the Member's conduct should be drawn to the attention of the House in a report from the Committee for Privileges and Conduct; and, where appropriate, that the Committee for Privileges and Conduct should recommend to the House that the Member be required to take action to regularise the position.
- That the Code has been breached and that the Committee for Privileges and Conduct should recommend to the House that the Member be suspended from the House for a specified period of time not longer than the remainder of the current Parliament¹⁴.

7 Sanctions and guidance - Scottish Parliament

The Scottish Parliament's Code of Conduct provides guidance in relation to the application of sanctions. There are particular offences in relation to a failure to declare registrable interests under the Interests of Members of the Scottish Parliament Act 2006. Apart from potential criminal offences, the Parliament can recommend sanctions under the terms of this Act:

¹³ <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldhouse/91/9102.htm>

¹⁴ <http://www.publications.parliament.uk/pa/ld/ldcond/code.pdf>

9.53 The Interests of Members of the Scottish Parliament Act 2006, at section 15, states:

(1) If a member—

(a) has, or had, a registrable interest in any matter and has failed to register it in accordance with section 3, 5 or 6; or

(b) has a declarable interest in any matter and has failed to declare that interest in accordance with section 13, the Parliament may, in such manner as it considers appropriate in the particular case, prevent or restrict that member from participating in any proceedings of the Parliament relating to that matter.

The Interests of Members of the Scottish Parliament Act 2006, at section 16, states:

Where a member fails to comply with, or contravenes, any of the provisions made by or under section 3, 5, 6, 13, 14 or 15, the Parliament may, in such manner as it may determine, exclude that member from proceedings in the Parliament for such period as it may consider appropriate¹.

The guidance also highlights a number of specific offences where certain sanctions would apply:

Sanctions in relation to conduct at a meeting of the Parliament or committee meeting	<p>If the Presiding Officer decides that a member is in breach of Rule 7.3 of the Standing Orders, set out in Section 7.3 (Volume 2) of the Code, the Presiding Officer may order that member to be excluded from the Chamber for a period not beyond the end of the next sitting day. In the case of a committee or sub-committee, the decision is for its Convener, who may exclude the member for the rest of the committee meeting at which the exclusion is made.</p> <p>The Parliament may decide, on a motion of the Parliamentary Bureau, to exclude the member for a further period.</p>
Sanctions in relation to a breach of the Reimbursement of Members' Expenses Scheme	<p>Where the SPCB finds that a member has made improper use of an allowance the SPCB may report this to the Standards, Procedures and Public Appointments Committee. The Standards, Procedures and Public Appointments Committee may then recommend to the Parliament that any of the member's rights and privileges be withdrawn, including under the Reimbursement of Members' Expenses Scheme Resolution the removal of all or part of the member's allowances.</p>
Sanctions in relation to Cross-Party Groups	<p>The MSP who signs the declaration on compliance with the rules on Cross-Party Groups on behalf of a group will be held primarily responsible for a group's conduct. If the Standards, Procedures and Public Appointments Committee considers that a group has failed to comply with any of the rules on Cross-Party Groups it may withdraw a group's recognition as a Cross-Party Group, with consequent loss of access to the Parliament's facilities and any privileges generally accorded to recognised Cross-Party Groups. Each individual MSP however, remains responsible for all matters relating to that member's own conduct as a member of a Cross-Party Group.</p> <p>Any individual failure to comply with, or contravention of, the rules on Cross-Party Groups by a member could lead to the Standards, Procedures and Public Appointments Committee recommending a withdrawal of that member's rights and privileges.</p>

Sanctions in relation to treatment of staff	If the SPCB decides to refer a complaint about the treatment of staff to the Standards, Procedures and Public Appointments Committee, the Standards, Procedures and Public Appointments Committee may recommend to the Parliament that any of the member's rights and privileges be withdrawn.
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Withdrawal of rights and privileges

The guidance also deals with breaches where no specific sanction has been set out.

9.68 Standing Orders Rule 6.4.2, in relation to the remit of the Standards, Procedures and Public Appointments Committee, states:

Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.

9.69 The Standards, Procedures and Public Appointments Committee may recommend to the Parliament that any of a member's rights and privileges should be withdrawn. **This would be in relation to any breach of the Code for which no specific sanction is set out in the paragraphs above** (emphasis added). As appropriate, the Committee may also wish to make such a recommendation, in addition to other sanctions, described above, having been imposed.

9.70 As laid down in Schedule 3, paragraph 2 of the Scotland Act, the rights and privileges which the Parliament may consider for withdrawal are a member's rights and privileges as member. The Parliament may consider the following to be appropriate in particular cases:

- exclusion of a member from proceedings of the Parliament generally or specifically, for example, proceedings at particular meetings of the Parliament or its committees;
- exclusion from other activities which a member might normally have a right to attend, such as Cross-Party Groups;
- withdrawal of a right of access as a member to the Parliamentary complex;
- withdrawal of a right of access as a member to Parliamentary facilities and services;
- removal of representational, ceremonial and related privileges which a member might normally enjoy as a member;
- withdrawal of a member's allowance or salary or any part of an allowance or salary.

9.71 The Parliament will decide on a case by case basis what rights and privileges will be withdrawn from a member and the duration of withdrawal¹⁵.

Advice from standards clerks

In its guidance to Members on registering financial interests, the Code of Conduct places significance on the advice given by standards clerks:

If a member is uncertain about whether or not to register an interest the Standards clerks' advice should be sought (in writing, where possible). Where the SPPA Committee agrees with the conclusion of a Stage 2 complaint report from the Standards Commissioner that a breach of the Interests of Members of the Scottish Parliament Act 2006 has occurred (in relation to Section 3(1) or section 5(2) of that Act), the SPPA Committee will take into account whether the member followed any advice provided to the member by the Standards clerks (on whether that interest required registration) when considering whether or not to recommend sanctions.

The Committee will also take into account whether the circumstances as disclosed by the member to the Standards clerks (and upon which the Standards clerks have given advice) are the same as those disclosed to the Standards Commissioner during investigation of the complaint.

Where the member has sought advice from the Standards clerks within 30 days of acquiring an interest and has acted in accordance with that advice (having fully disclosed the circumstances of the interest) the SPPA Committee would not generally expect to recommend sanctions on any breach found by the Standards Commissioner.

Members should be aware that this statement of intent does not prevent the Standards Commissioner or the Procurator Fiscal from finding that a member has breached the Act.

Standards, Procedures and Public Appointments Committee, 8 September 2009 (Session 3)¹⁶.

8 Sanctions and guidance - National Assembly for Wales

In May 2013 the Standards of Conduct Committee in the National Assembly for Wales published its report on proposed modifications to the sanctions available to the Assembly. Some of the key points from the report were:

Discretion

- The (Standards of Conduct) Committee should remain free to take a discretionary approach to interpreting the sanctions available and applying them on a case by case basis.
- Some guidance for Members on the use of sanctions is important, but the Complaints Procedure should refer to sanctions that the Committee “may” not “must” apply, and make it clear that the Committee would take account of all the circumstances in each case.

Repeat offences

- Repeat offending should have more serious consequences and the sanctions regime should allow for this...guidance in the Complaints Procedure to accompany the sanctions regime should take account of the handling of repeat offences.

Intent

- The sanctions regime should also allow the Committee the discretion to recommend a sanction that takes account of intent i.e. whether a breach is deemed to have been committed intentionally or not, and whether any dishonesty or deceit is involved.

Requirement for an apology

- A Member would be expected to apologise to the complainant and/or the Assembly for a breach of the Code of Conduct, either orally or in writing. However in some circumstances the Member may not wish to apologise. Therefore the Committee is of the view that its report to the Assembly provides an opportunity to express its view of the seriousness of any breach it finds, including expressing disapproval, regardless of whether or not the Member subsequently chooses to issue a personal apology.

Censure

- The Committee did not recommend any change to the existing provisions to ‘censure’ a Member. Standing Order 22.10 provides that a report of the Standards of Conduct Committee, made under Standing Order 22.9, may include a recommendation to censure

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http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/CodeofConduct_05032013_complete.pdf

a Member for failing to comply with any of the matters encompassed in Standing Order 22.2(i).

Extending the sanction of exclusion

- The Committee considered that the sanction of exclusion should be available in circumstances other than those to which it currently applies. Whilst it did not foresee a future occasion on which it might choose to recommend this sanction other than in relation to a breach of the rules on financial and other interests, it thought it appropriate for this sanction to be available for consideration.

Withdrawal of rights and privileges

- The Committee recommended that it should have the discretion to withdraw rights and privileges other than the removal of salary associated with exclusion i.e. preventing a Member from having access to the Assembly Estate, or representing the Assembly in any other capacity during a period of exclusion. The full recommendation was:

The Standards of Conduct Committee recommends that the Assembly's Standing Orders should:

- i) enable the Standards of Conduct Committee to recommend the sanction of exclusion for a breach of the Code of Conduct for Assembly Members that does not relate to Standing Order 2 – Financial and Other Interests of Members;
- ii) reflect the provisions of the current Standing Order 2.10 by not stating any minimum or maximum time period for exclusion;
- iii) enable the Standards of Conduct Committee to recommend withdrawal of rights and privileges other than the removal of salary that is associated with exclusion².

In October 2013 the Assembly approved changes to Standing Orders giving effect to the proposals from the Standards of Conduct Committee. The Standards of Conduct Committee now has a wider range of sanctions that it can apply in circumstances where a Member has been found in breach of the Code of Conduct:

A report under Standing Order 22.9 may include a recommendation to:

- (i) censure a Member;
- (ii) withdraw any rights and privileges from a Member as set out in the procedures for the investigation of complaints established under Standing Order 22.2(iv);
- (iii) exclude a Member from any Assembly proceedings for a specified period;

or any combination of the above, for failing to comply with any of the matters encompassed within Standing Order 22.2(i)¹⁷.

Guidance on sanctions relating to particular breaches

In deciding what sanction(s) to recommend to the Assembly, the Committee will make a judgement based on the specific circumstances of the case in question. It will consider the severity of the breach, the extent to which it may have brought the Assembly into disrepute, and whether the case in question is a repeat offence, or shows persistent conduct which may be considered to show contempt for Assembly colleagues, the rules or the institution. The Committee will also take account of intent, i.e. whether a breach is deemed to have been committed intentionally or not, and whether any dishonesty or deceit is deemed to have been involved¹⁸.

¹⁷ Standing Orders of the National Assembly for Wales

¹⁸ <http://standardscommissionerwales.org/wp-content/uploads/2013/10/FINAL-agreed-09.07.13-e-Procedure-for-dealing-with-complaints-against-assembly-members.pdf>

9 Sanctions and guidance - Oireachtas

The Ethics in Public Office Acts make provision for the setting up of a register of interests for members of Dáil Éireann. Under the Acts, a member is obliged to give the Clerk of the Dáil a written statement of his or her registrable interests and other required information, within 30 days of the registration date.

The Acts further provided for the setting up of the Select Committee on Members' Interests of Dáil Éireann, to draw up and publish guidelines to assist members in compliance with the terms of the Acts, to draw up a code of conduct for non-office holders and to investigate alleged contraventions of the Acts as regards statements of interest.

The Committee has to prepare a Code of Conduct for non-office holders and issue guidelines in relation to the registration of their interests. The Committee also has to investigate alleged contraventions of the provisions of the Acts and provide advice to Members on request.

The Committee has to publish guidelines for Members on the steps they need to take to comply with the Acts. These guidelines are prepared in consultation with the Standards in Public Office Commission (SIPO).

The Committee also has to consult with the SIPO in drafting Codes of Conduct for Members who are non-office holders. The Code outlines the standards of behaviour expected from Members mainly, it would appear, in relation to financial affairs – the Code itself is admissible in any proceedings before a court or other tribunal, committee or commission.

When a Committee report, or a report received from SIPO, is laid before the House, the Committee can put forward a motion that the House takes the following action or actions:

- Notes the report
- Censures the office holder or other Member concerned
- Suspends the office holder or other Member for 30 sitting days or, if the contravention is continuing, until such time as the offender takes steps to comply with the Acts
- In certain circumstances a suspension may be accompanied by a financial penalty¹⁹

There is no mention of a correlation between a particular sanction being applied in the case of a specific offence.

However, if the Committee finds that the Member acted in good faith or believed that they were complying with guidelines and advice, the Committee will not recommend censure or suspension.

The guidance issued by the Committee²⁰ relates to the register of financial interests, but it does not refer to any sanctions that are applicable for failure to register relevant interests or in circumstances where the Code of Conduct has been breached – the sanctions, as referenced above, are outlined in the 'Functions of the Committee' document.

(Footnotes)

1 http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/CodeofConduct_05032013_complete.pdf

2 <http://www.senedd.assemblywales.org/documents/s17349/Report%2004-13%20to%20the%20Assembly%20on%20Sanctions%20-%20May%202013.pdf>

19 Functions of the Committee on Members' Interests: <http://www.oireachtas.ie/documents/committees29thdail/Functions.doc>

20 <http://www.oireachtas.ie/parliament/media/committees/membersinterests/Final-guidelines-2014-for-circulation.pdf>



Northern Ireland
Assembly

Research and Information Service Briefing Paper

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NIAR 639-11

Tim Moore, Ray McCaffrey & Dearbhla O'Rourke

Parliamentary privilege

Key Points

- Parliamentary privilege, which at Westminster dates back several centuries and has evolved through custom, practice and law, refers to the rights and immunities enjoyed by the Houses of Parliament. While the privilege is Parliament's rather than the individual member's, it does attach to the activities of an MP in carrying out some but not all of their Parliamentary functions.
- Key elements of parliamentary privilege are Parliament's right to regulate its own proceedings (otherwise known as its exclusive cognisance or exclusive jurisdiction) and protection for Members and others from being subjected to any penalty, civil or criminal, in any court or tribunal for what is said in the course of proceedings in Parliament (freedom of speech).
- It has been observed that parliamentary privilege, as operated at Westminster, does not extend to any of the devolved legislatures as these are 'creatures of statute'. Whilst the devolution legislation gives the legislatures some statutory protections (e.g. regarding defamation and liability for contempt of court) these do not equal the breadth of parliamentary privilege enjoyed at Westminster.
- Underlining the statutory restrictions on the Assembly to regulate its own proceedings, Schedule 3 of the Northern Ireland Act 1998 provides that disqualification for membership of the Assembly, privileges, powers and immunities of the Assembly, its members and committees greater than those conferred by the same Act are reserved matters.
- Closely related to the concept of privilege is the concept of contempt and the term contempt is sometimes used interchangeably with the term 'breach of privilege'. Whilst any breach of the privileges of the House of Commons is a contempt, contempts exist which are not breaches of privileges.
- The devolved legislatures may not claim a jurisdiction in relation to contempt in the way that is done by the UK Parliament. The devolution legislation does, however, contain a number of offences relating to actions which might interfere with the functioning of the

Assembly, for example failure in certain circumstance to attend a committee or produce papers. In addition, other actions which interfere with the functioning of the Assembly may constitute offences in law outside the devolution legislation.

- The House of Commons' Committee on Standards and Privileges, which has been described as '*...both the guardian of the Houses privileges and custodian of the standards of conduct of Members of the House*', plays a role in the investigation of complaints relating to standards and to matters relating to privilege. The Parliamentary Standards Commissioner, however, appears to play a role only in regard to the former.
- Each of the devolved legislatures has a standards committee and standards commissioner who is responsible for investigating alleged breaches of the codes of conduct. The Northern Ireland Assembly's Committee on Standards and Privileges, however, is the only committee of the devolved legislatures with a remit under Standing Orders to investigate breaches of privilege.

Standing Order 70 of the Northern Ireland Assembly, which reflects the procedure in the House of Commons for handling breaches of privilege, provides, amongst other things, that '*... a specific matter affecting the privilege of the Assembly shall be referred to the Committee on Standards and Privileges*'. In spite of similarities in the legal protections and immunities provided for in the relevant legislation governing the three devolved legislatures, there is no comparable Standing Order relating to privilege in the Scottish Parliament or National Assembly for Wales. Standing Order 70 has been taken from the Standing Orders of the 1973 Northern Ireland Assembly, which had privilege equivalent to that of the House of Commons, and therefore appears as an anomaly when compared with the Standing Orders of the Scottish Parliament and National Assembly for Wales.

- A range of actions which are not being breaches of the relevant codes for Members or which relate to the activities of non-members may also merit investigation and, where appropriate, some form of disciplinary action. Where these relate to parliamentary resources (including staff and buildings), the Assembly Commission may undertake such investigations.

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1 Introduction

This paper looks at a number of aspects of parliamentary privilege and the extent to which it applies in the legislatures in the UK and Republic of Ireland. In particular, the paper addresses the following:

- The concept of parliamentary privilege and contempt in the House of Commons
- Parliamentary privilege in the Oireachtas
- Parliamentary privilege and contempt in the devolved legislatures
- The role of committees and commissioners for standards in considering matters of privilege and contempt

2 The concept of parliamentary privilege in the UK Parliament

It should be noted that both Houses of Parliament enjoy privilege. However, for the purposes of this paper it is the privileges of the House of Commons that are referred to.

Erskine May, accepted as the most authoritative text on Parliamentary practice in the UK, defines parliamentary privilege as 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. In terms of the specific elements that constitute parliamentary privilege, DOD's Handbook of House of Commons Procedure states that:

The ancient privileges of the Commons which are claimed by the Speaker at the beginning of each Parliament are:

- freedom of speech
- freedom from arrest
- freedom of access to the sovereign
- that the most favourable construction should be placed on all the House's proceedings

The other significant privileges held by the House collectively are the right to:

- provide for its own proper constitution (that is to determine who may be its Members)
- regulate its own proceedings (otherwise known as its exclusive cognisance)
- compel witnesses to attend and give evidence
- exercise penal jurisdiction (that is to punish those who attack or disregard its privileges or who commit contempts against it).¹

As regards privilege it has been noted that 'While the privilege is Parliament's rather than the individual member's, it is clear that it can and does attach to the activities of an MP in carrying out some of his Parliamentary functions'.²

Freedom of speech and exclusive cognisance, as the two key elements of parliamentary privilege today, are considered below. It has been noted, however, that they are not two separate privileges, as the right to freedom of speech is a part of a wider privilege and there are no dividing lines between the two.³ The relationship between breach of privilege and contempt is also considered below.

Freedom of speech

- The privilege of MPs to be free from questioning 'out of parliament' dates back at least to the reign of Richard II. Article IX of the 1689 Bill of Rights, which has been described as the single most important parliamentary privilege, states:

Freedom of speech and debates on proceedings ought not to be impeached or questioned in any court or place out of Parliament.

- Article IX affords legal immunity ('ought not to be questioned') to Members for what they say or do in proceedings of Parliament. A first report by the Joint Committee on Parliamentary Privilege (the Joint Committee report), published in 1999, stated that this legal immunity is 'comprehensive and absolute and Article IX should therefore be confined to activities justifying such a high degree of protection, and its boundaries should be clear'⁴.
- The Joint Committee report also stated 'The modern interpretation is now well established: that Article IX and the principle it encapsulates protects Members of both Houses from being subjected to any penalty, civil or criminal, in any court or tribunal for what they have said in the course of proceedings in Parliament.' This extends as much to the 'member who knows what he is saying is untrue as the member who acts honestly and responsibly'⁵. It also protects officers of Parliament and those non-members who participate in the proceedings of Parliament, for example witnesses giving evidence to a committee of Parliament.

Freedom of speech in debate

Erskine May notes that consideration has been given to imposing constraints on the exercise of freedom of speech in circumstances where statements made could be found defamatory or even criminal. However, various committees of Parliament have rejected this, while

1 DOD's Handbook of House of Commons Procedure – Seventh Edition 2009 paras 4.3.2 and 4.3.6

2 R v Chaytor and Others [2010] UKSC 52, 3 W.L.R 1707

3 As above

4 Joint Committee on Parliamentary Privilege, First Report, 1999: <http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4303.htm>

5 Joint Committee on Parliamentary Privilege, First Report, 1999: <http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4303.htm> para 38

stressing the need for Members to exercise their privileges responsibly. Furthermore, in 2002 the European Court of Human Rights concluded that the absolute nature of parliamentary privilege did not violate articles 6 or 8 (right to a fair hearing and right to privacy) of the European Convention on Human Rights, however objectionable the statements complained of.⁶

Section 13 of the Defamation Act 1996 allows a member of either House to waive parliamentary privilege for the purposes of defamation hearings. This legislative provision was made in response to a libel action brought by Nigel Hamilton against the Guardian newspaper over allegations that he had accepted cash to ask questions in Parliament. In its defence the Guardian attempted to call evidence about Mr. Hamilton's conduct and motives in tabling parliamentary questions and early day motions. The judge found that this was contrary to Article IX and stopped the proceedings on the grounds that it would not be fair to allow the plaintiffs to sue for libel if the defendant newspaper was not permitted to justify what it had written. The Joint Committee report noted that a fundamental flaw of Section 13 was that it undermined privilege because freedom of speech is the privilege of the House as a whole and not of the individual member in his own right, although an individual member can assert and rely on it.⁷

A place out of Parliament

The Joint Committee report noted that 'interpretation of this expression has never been the subject of a court decision' but added that 'to read the phrase as meaning literally anywhere outside Parliament would be absurd...freedom for the public and the media to discuss parliamentary proceedings outside Parliament is as essential to a healthy democracy as the freedom of Members to discuss what they choose within Parliament'.⁸

A place out of Parliament has generally been accepted to encompass tribunals and the Joint Committee recommended 'a statutory enactment to the effect that place out of Parliament means any tribunal having power to examine witnesses on oath, coupled with a provision that Article IX shall not apply to a tribunal appointed under the Tribunals of Inquiry (Evidence) Act 1921 where both houses so resolve at the time the tribunal is established'.⁹

Proceedings in Parliament

Whilst no comprehensive definition of 'proceedings in parliament' exists, Erskine May provides a useful starting point:

The primary meaning of proceedings, as a technical parliamentary term...is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision. An individual member takes part in proceedings usually by speech, but also by various recognised forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee...Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Strangers (non-members) also may take part in the proceedings of a House, for example by giving evidence before it or one of its committees, or by securing presentation of a petition.¹⁰

6 Erskine May, 'Parliamentary Practice', 23rd edition, p.97, Lexis Nexis 2004

7 Joint Committee on Parliamentary Privilege, First Report, 1999: <http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4303.htm>

8 As above (para 91)

9 As above

10 Erskine May, 'Parliamentary Practice', 23rd edition, pp110-111, Lexis Nexis 2004

Not all the responsibilities of MPs necessarily relate to proceedings in Parliament. Commenting on constituency work Erskine May notes that:

Correspondence with constituents or official bodies, for example, and the provision of information sought by Members on matters of public concern will very often, depending on the circumstances of the case, fall outside the scope of 'proceedings in parliament' against which a breach of privilege will be measured.¹¹

In addition, as the expenses scandal made clear, conduct of a member of Parliament is not privileged merely because it occurs within the House of Commons. In December 2010, the Supreme Court ruled¹² that four former Members of Parliament could not claim parliamentary privilege in criminal proceedings relating to the parliamentary expenses scandal. The court emphasised that parliamentarians could never expect to be protected from submitting dishonest expense claims, as it was not a 'proceeding in Parliament'.

The stark reality is that the defendants are alleged to have taken advantage of the allowances scheme designed to enable them to perform their important public duties as Members of Parliament to commit crimes of dishonesty to which parliamentary immunity or privilege does not, has never, and, we believe, never would attach¹³.

Exclusive cognisance

Exclusive cognisance or exclusive jurisdiction means control of Parliament over its own affairs and encompasses the principle that what happens in Parliament is a matter for control by Parliament alone. The Joint Committee commenting on exclusive cognisance observed that:

Parliament must have sole control over all aspects of its own affairs: to determine for itself what the procedures shall be, whether there has been a breach of its procedures and what then should happen...acceptance by the executive and the courts of law that Parliament has the right to make its own rules, and has unquestioned authority over the procedure it employs as legislator, is of scarcely less importance than the right to freedom of speech. Both rights are essential elements in parliamentary independence.¹⁴

It has also been noted that exclusive cognisance derives from the doctrine of the separation of powers which in the UK constitution:

...is restricted to the judicial function of government, and requires the executive and the legislature to abstain from interference with the judicial function, and conversely requires the judiciary not to interfere with or to criticise the proceedings of the legislature.¹⁵

The Courts, however, do have a role in determining questions surrounding issues of privilege, as recent cases have shown. Addressing parliamentary privilege and the role of the courts and the House of Commons, the Attorney General in a memorandum expressed the view that:

It is clear that the determination of whether material is inadmissible as evidence in a criminal trial by virtue of Article IX is a matter for the court. Article IX is statute law and its interpretation, as with any other statute, is a matter for the courts. It is a question of law both

11 As above p143

12 The jurisdiction of courts in matters of privilege is considered later in this paper.

13 Supreme Court ruling and judgment 'R v Chaytor and Others', 10 December 2010: http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0195_Judgment.pdf

14 Joint Committee on Parliamentary Privilege, First Report, 1999 (para ??)
<http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4303.htm>

15 R v Chaytor and Others [2010] UKSC 52, 3 W.L.R 1707

whether particular material constitutes ‘proceedings in Parliament’ and whether the use that the material is being put to amounts to the impeaching of questioning of such proceedings.¹⁶

In terms of the House of Commons itself, the Attorney General also underlined that it may ‘seek to intervene in any proceedings, under the name of the privileges of the house and had done so in a number of recent cases’.¹⁷

3 Contempt

The Joint Committee report noted that: ‘Besides the areas in which the House claims a specific privilege—in particular, freedom of speech and freedom from civil arrest—it also claims a jurisdiction in contempt, against those who by their actions interfere improperly with the discharge of its functions’.¹⁸ The report then goes on to cite Erskine May’s definition of 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.¹⁹

Addressing parliament’s disciplinary and penal powers in matters of privilege or contempt, the Joint Committee report stated that these:

...are part of the control exercised by Parliament over parliamentary affairs. Parliament has long held these powers, over non-members as well as Members. Most institutions exercise a degree of discipline over their members. So long as the disciplinary offences and the punishments are reasonable, and the procedures are fair, this is unexceptionable. 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 in response.

Such interference, whether by Members or non-members, is known as ‘contempt of Parliament’. Violations of Members’ rights and privileges are also known as ‘breaches of privilege’. In this report we use the expression ‘contempt of Parliament’, as this focuses attention on the underlying mischief: interfering with Parliament in carrying out its functions.

Addressing the issue of contempt further, the Joint Committee report goes on to state that:

Contempts comprise any conduct (including words) which improperly interferes, or is intended or likely improperly to 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.

The Joint Committee report also provided the following comprehensive, though not definitive, list of types of contempt:

16 ‘Parliamentary Privilege – Role of the Courts and the House of Commons’ - Memorandum to the Leader of the House of Commons (Rt Hon Harriet Harman QC MP) submitted by the Attorney General (Baroness Scotland QC) 3rd April 2009

17 As above

18 As above (para 24)

19 As above

- 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
- 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.

The report noted that in the case of Members the following, additionally, would 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.

At times 'breach of privilege' and 'contempt' appear to be used as interchangeable terms, or at least any intended distinction between the two is unclear. It has been argued, however, that there is a difference and that the difference is significant. Evidence submitted in 1968 to the Select Committee on Parliamentary Privilege, for example, addressed the difference in some detail, stating that:

The difference between breach of privilege and contempt is of more than terminological interest since it touches on a major issue of principle about the limits to the Houses' powers. Though the right to commit for contempt might itself as matters stand be classified as one of the privileges of the House, it is not amongst those specifically claimed by the Speaker at the beginning of each Parliament. Modern commentators have tended to deprecate the practice of speaking of all offences punished by the House as breaches of privilege on the ground that the power to punish for contempt is in principle not confined to those offences which can be identified as infringements of some specific head of privilege (Freedom of Speech, Freedom from Arrest and Molestation etc.). It might perhaps be imagined that if the true essence of contempt is that it "prevents the House from carrying out its work ... as any legislature is entitled to" and if the function of the House is that of unimpeded debate and legislation, there cannot be a great many acts which are contemptuous but which "cannot be identified as a breach of privilege"—either the privilege of freedom of debate and proceedings or the right to be free from molestation (given the wide interpretation which the House has placed upon "proceedings" and "molestation" in its resolutions). Nevertheless there are acts and affronts punished as contemptuous which do not in a direct sense either infringe the privilege of free debate nor directly "prevent the House from carrying out its work". The Clerk of the House in the words just quoted was answering Sir Kenneth Pickthorn who remarked that he had "been taught often the distinction between contempt and breach, but I always forget it as soon as I am taught it". In the past the House itself does not at all times seem to have drawn the distinction very clearly. Various forms of disobedience to the House's orders, for example, were stigmatised in the Journals sometimes as contempt and sometimes as unwarranted interferences with its privileges. The forms of recalcitrance in issue, however—refusals to attend as witnesses, non-compliance with rules about petitioning or unlicensed publication of debates—were plainly connected with the House's proceedings and classifiable as impediments, as almost any conceivable order by a legislative body naturally would be. More recently reflections on the House or its Members have usually been labelled by the Committee of Privileges as contempts (cf. the *Junor* and *Hogg* cases with the cases of *Jordan* and *Strauss*). But the insistence on an ambit for contempt which is not in principle restricted to acts infringing established heads of privilege raises the very question which has notoriously been in issue between the courts and Parliament. Its historical significance has been in its reinforcement of the House's claim to be the sole interpreter of the content and application of its privileges. It has never lain easily with the view that, at least where the House states the grounds for a committal, the courts are competent to decide whether the House has exceeded the limits of its known powers.²⁰

More specifically, DOD's Handbook of House of Commons Procedures notes that:

Contempts are often conflated with breaches of privilege. Any breach of the privileges of the House is a contempt. However, a contempt may be an action which, while not in breach of one of the privileges of the House, is an act of disobedience to its commands, is a libel against one of its Members or officers, is an attempt to obstruct or impede it in the performance of its functions, or is an attack on its authority and dignity.²¹

Regarding specific acts of contempt, evidence from the Clerk of the House to the Standards and Privileges Committee in February 2010 noted that actions of contempt which have been proceeded against include:

- impugning the conduct of a Member and threatening him or her with further exposure if he or she took part in debates;
- threatening to communicate with a Member's constituents to the effect that, if they did not reply to a questionnaire, they should be considered as not objecting to certain sports;

20 Evidence submitted by Study of Parliament Group to the Select Committee on Parliamentary Privilege and printed with its Report of Session 1967-68, HC 34, as Appendix V to the Minutes of Evidence (pp 187-95). <http://www.spg.org.uk/spgev20.htm> (accessed 14th January 2011)

21 DOD's Handbook of House of Commons Procedure – Seventh Edition 2009 para 4.3.8

- publishing posters containing a threat regarding the voting of a Member in a forthcoming debate;
- informing a Members that to vote for a particular bill would be treated as treasonable by a future administration;
- summoning a Member to a disciplinary meeting of his trade union in consequence of a vote given in the House
- threatening to end investment by a public corporation in a Member's constituency if the Member persisted in making speeches along the lines of those in a preceding debate²².

However, addressing the use of disciplinary and penal powers in relation to contempt, the Joint Committee report noted that:

The exercise of the House's penal jurisdiction in the very wide area of contempt is of course moderated by the resolution of 1977, which derived from the 1966-67 inquiry, that the jurisdiction will be exercised as sparingly as possible and only when the House is satisfied that it is essential to act in order to provide reasonable protection from improper obstruction causing or likely to cause substantial interference with its functions.²³

4 Parliamentary privilege in the Oireachtas

It has been noted that, whilst the concept of parliamentary privilege was not fully adopted by the post-1922 state, the Irish Constitution²⁴ protects the right of parliamentary self regulation and there are limits to the extent of judicial intervention. Article 15.10 of the Irish Constitution states that:

Each House shall make its own rules and Standing Orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its Members, and to protect itself and its Members against any person or persons interfering with, molesting or attempting to corrupt its Members in the exercise of their duties.

As regards freedom of speech, Article 15.12 states that:

All official reports and publications of the Oireachtas or of either House thereof and utterances made in either House wherever published shall be privileged.

Standing Order 59 in the Dáil outlines how 'defamatory utterances' in the house will be dealt with, including provision for referral to the Committee on Procedure and Privileges:

59.(1) A member shall not make an utterance in the nature of being defamatory and where a member makes such an utterance it may be prima facie an abuse of privilege...

(2)(a) If the defamatory nature of the utterance is apparent at the time it was made during the course of proceedings, the Ceann Comhairle shall direct the utterance be withdrawn without qualification.

(b) If the member refuses to withdraw the utterance without qualification the Ceann Comhairle shall treat the matter as one of disorder: Provided that the member may claim that the matter be referred to the Committee on Procedure and Privileges in which case no further action shall be taken thereon by the Ceann Comhairle at that point.

In circumstances where an utterance is referred to the Committee, the Committee will decide whether the issue is serious enough to take forward, or if it should be dismissed. If taken forward, the Committee may invite the member who made the utterance and such

22 Evidence to the Committee on Standards and Privileges, February 2010

23 Joint Committee on Parliamentary Privilege, First Report, 1999 (para 29)

24 <http://www.constitution.ie/reports/ConstitutionofIreland.pdf>

other Members as the Committee may deem appropriate to appear before the Committee to put their case. The Committee may decide to take no further action or it may require the member to explain to the house the reason for making the statement and withdraw it without qualification. If the member refuses to cooperate, the Ceann Comhairle will reprimand the member at the commencement of business on the next sitting day.

A member may also give the Ceann Comhairle prior notice of his or her intention to make a statement which may be defamatory, but which the member believes is in the public interest to be made. In these circumstances, the prior notice will be considered when applying the provisions outlined above.

Addressing the power of the courts or other authorities of Members of the Oireachtas, Standing Order 15.13 states that:

The Members of each House of the Oireachtas shall, except in case of treason as defined in this Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.

The Standing Orders of the Dáil also allow a person who believes they have been defamed in the course of proceedings to request that an appropriate response be incorporated in the official report. Such a request will be considered initially by the Ceann Comhairle who may refer it to the Committee on Procedure and Privileges.

The issue of privilege arose during the Mahon Tribunal which examined allegations of political corruption in the Republic of Ireland. The then Taoiseach, Bertie Ahern, took legal action against the Tribunal arguing that it could not ask questions about statements he made in the Dáil or even refer to those statements while he was giving evidence to the Tribunal. The High Court ruled in favour of Mr. Ahern:

A consideration of the terms of Article 15.13 and the relevant case law demonstrate that the article protects a member of the national Parliament from both direct and indirect attempts to make such a person amenable to anybody other than the Houses themselves in respect of any utterance made in such Houses...Drawing Mr. Ahern's attention to statements made by him in Parliament which are inconsistent with statements made outside it, may incorporate a suggestion that the words spoken in Parliament were untrue or misleading. That is not permissible...I do not accept the contention of the Tribunal that the purpose of such an exercise is to ensure that the evidence before the Tribunal is complete. Rather, there is a clear suggestion which imputes impropriety to Mr. Ahern in respect of utterances made in Parliament. The court cannot permit the Tribunal to engage in such activity...Before departing from this topic, and so there can no doubt about it, I repeat that Mr. Ahern's counsel accepts that the Tribunal may record in its report that statements were made by him in Parliament. It may reproduce those statements in whole or in part in its report. It may not, however, suggest that such words were untrue or misleading or inspired by improper motivation. It will be for the reader of the report to draw his own conclusions.²⁵

5 Parliamentary privilege and contempt in the devolved legislatures

Addressing the issue of parliamentary privilege in the three devolved legislatures, it has been noted that: 'It is important to appreciate that parliamentary privilege, as operated at Westminster, does not extend to any of these parliaments/assemblies, which are creatures

25 Ahern -v- Judge Mahon & Ors, judgment delivered 8th May 2008: <http://www.courts.ie/Judgments.nsf/23fd4a34bad801d980256ec50047a0a8/6753897f5b81709c80257450002e4122?OpenDocument>

of statute'.²⁶ The same author also noted that: 'The decision not to extend privilege to these devolved bodies by legislation stands in contrast to the privileges of the House of Commons conferred on the Stormont Parliament under the Government of Ireland Act 1920'.²⁷

Furthermore:

The decision not to confer privilege...was not the subject of major debate during the passage of the devolution legislation, and so the reasoning behind this policy change was not explored in any depth...the devolution legislation gave the new bodies some statutory protection for the issuing of reports, the summoning of witnesses and the regulation of their Members in varying degrees. But these statutory powers do not equal the breadth of parliamentary privilege enjoyed by the Commons. They are also reviewable by the courts...moreover, changes to this broad framework are dependent on legislation at Westminster...since the devolution legislation is amendable by the UK Parliament only. The devolved bodies are not in a position to clarify their own powers²⁸.

The issue of the relationship between the courts and the legislature, which is fundamental to the concept of parliamentary privilege, was addressed in the context of the Scottish Parliament in 1999, when the courts were asked in effect to rule on the extent to which they could intervene in the proceedings of the Parliament. The matter related to a proposed Member's Bill, the introduction of which was challenged on the grounds that the MSP promoting the Bill had breached Members' interests rules by accepting outside assistance in the drafting of the Bill. Although the court initially recognised the Parliament as a statutory entity, it was nevertheless prepared to rule that it should be able to determine its own rules and procedures. However, on appeal the Lord President outlined his reasons for reversing the original decision, in a ruling which also has relevance to the Northern Ireland Assembly and National Assembly for Wales:

The (original ruling) gives insufficient weight to the fundamental character of the Parliament as a body which – however important its role – has been created by statute and derives its powers from statute. As such, it is a body which, like any other statutory body, must work within the scope of those powers. If it does not do so, then in an appropriate case the court may be asked to intervene and will require to do so, in a manner permitted by the legislation. In principle, therefore, the Parliament like any other body set up by law is subject to the law and to the courts which exist to uphold that law...Some of the arguments of counsel for the first respondent appeared to suggest that it was inconsistent with the very idea of a parliament that it should be subject in this way to the law of the land and to the jurisdiction of the courts which uphold the law...On the contrary, if anything, it is the Westminster Parliament which is unusual in being respected as sovereign by the courts...While all United Kingdom courts which may have occasion to deal with proceedings involving the Scottish Parliament can, of course, be expected to accord all due respect to the Parliament as to any other litigant, they must equally be aware that they are not dealing with a parliament which is sovereign²⁹.

Scottish Parliament

The Presiding Officer of the Scottish Parliament issued guidance on the matter of parliamentary privilege in August 1999 (see Annex 1). In summary, the bulletin makes clear that any privilege enjoyed by the Scottish Parliament is conferred by or under the Scotland Act

26 The regulation of parliamentary standards – a comparative perspective', The Constitution Unit, University College London, May 2002 p 18

27 As above

28 'The regulation of parliamentary standards – a comparative perspective', The Constitution Unit, University College London, May 2002

29 Opinion of the Lord President 16 February 2000, Reclaiming Motion for Petitioners, Whaley, Adams and Furness v Lord Watson of Invergowrie (The Scottish Parliament http://www.scotcourts.gov.uk/opinions/p2055_99.html)

1998 and that the term “parliamentary privilege” as understood in the Westminster context cannot be applied to proceedings in the Scottish Parliament.

The guidance highlights that ‘Any privileges (i.e. legal protections and immunities) applicable to the Parliament are those conferred by or under the Scotland Act 1998. In this context the guidance highlights the following:

Section 28 (5) which prevents the validity of proceedings in relation to a bill being questioned once it becomes an Act.

Section 40 which limits the types of remedies, which can be sought against the parliament and which also confers certain protections in relation to defamation and contempt of court.

Section 41 which confers absolute privilege for the purposes of the law of defamation on anything said in the Scottish Parliament and on any statement published under the authority of the Parliament.

Section 42 which disapplies the rule of strict liability for contempt of court in relation to publications made in, or in reports of, proceedings of the Scottish Parliament in relation to a Bill or subordinate legislation.

In addition to the legal protections and immunities or privileges which it confers upon the Scottish Parliament, the Scotland Act 1998 also creates a number offences relating to actions which might interfere with the functioning of the Scottish Parliament:

Section 25 makes it an offence for a person who is required to attend the Parliament to give evidence or to produce necessary documents to fail to do what is required by the notice served on him in response to a notice under section 24(1).

Section 26 - This section deals with various matters relating to the giving of evidence and production of documents to the Parliament including administering the oath to witnesses, the creation of a criminal offence where a person refuses to take the oath and the payment of allowances and expenses. It applies to everyone who gives evidence or produces documents to the Parliament, not just those who do so in response to a notice under section 24(1)³⁰.

Outside of the provisions contained within the Scotland Act 1998, the Scottish Parliament may not claim a jurisdiction in relation to what might be considered contempts in the way that is done at the House of Commons. The Scottish Parliament may though rely on offences in law outside the devolution legislation to protect it from interference which would impact upon its work.

The National Assembly for Wales

As is the case of the Scottish Parliament, any privilege enjoyed by the National Assembly for Wales is conferred by or under the Government of Wales Acts and the term “parliamentary privilege” as understood in the House of Commons context cannot be applied to its proceedings.

The legal protections and immunities of the National Assembly for Wales, which mirror those of the Scottish Parliament, are contained largely in sections 41-43 of the Government of Wales Act 2006. Section 93 also contains provision similar to Section 28 (5) of the Scotland Act 1998 which prevents the validity of proceedings in relation to a bill being questioned once it becomes an Act.

Sections 39 and 40 of the 2006 Act, which create offences relating to actions which might interfere with the functioning of the National Assembly for Wales, mirror those relating to the Scottish Parliament.

The Northern Ireland Assembly

A relatively comprehensive historic background to the Assembly and parliamentary privilege is contained in a House of Commons Library Research Paper prepared in relation to the Northern Ireland Bill (as the Northern Ireland 1998 Act was at the time of its writing). The paper notes that:

Under the Government of Ireland Act 1920 Stormont enjoyed Parliamentary privilege equivalent to that of Westminster:

18.-(1) The powers, privileges, and immunities of the Senate and House of Commons of Northern Ireland, and of the Members and of the committees thereof, shall be such as may be defined by Act of the Parliament in question, and, until so defined, shall be those held and enjoyed by the Commons House of Parliament of the United Kingdom and its Members and committees at the date of the passing of this Act.

Through Stormont's lifetime it followed Westminster procedure, practice and precedents. The Northern Ireland Constitution Act 1973 conferred equivalent privileges on the Northern Ireland Assembly:

26.-(1) The Powers, privileges and immunities of the Assembly and of the Members and committees thereof shall be the same as those for the time being held and enjoyed by the House of Commons and its Members and committees but this subsection has effect subject to section 25(7) above and to any provision made by Measure³¹.

As is the case of the Scottish Parliament and the National Assembly for Wales, any privilege enjoyed by the Assembly is conferred by or under the relevant devolution legislation and the term "parliamentary privilege" as understood in the House of Commons context cannot be applied to proceedings of the Assembly.

The legal protections and immunities of the Assembly, which mirror those of the Scottish Parliament and the National Assembly for Wales, are contained largely in section 50 of the Northern Ireland Act 1998. Section 5 of that Act also contains provision similar to Section 28 (5) of the Scotland Act 1998 which prevents the validity of proceedings in relation to a bill being questioned once it becomes an Act. It should be noted that freedom of speech for Members applies only to the law of defamation. Therefore, it does not protect Members from the operation of the law in relation to other matters, for example incitement to racial hatred.

Section 50 - Privilege

(1) For the purposes of the law of defamation, absolute privilege shall attach to—

- (a) the making of a statement in proceedings of the Assembly; and
- (b) the publication of a statement under the Assembly's authority.

(2) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter—

- (a) in the course of proceedings of the Assembly which relate to a Bill or subordinate legislation; or
- (b) to the extent that it consists of a fair and accurate report of such proceedings which is made in good faith.

(3) In this section—

"statement" has the same meaning as in the Defamation Act 1996;

"the strict liability rule" has the same meaning as in the Contempt of Court Act 1981.

Schedule 3 of the Northern Ireland Act provides that disqualification for membership of the Assembly; privileges, powers and immunities of the Assembly, its Members and committees greater than those conferred by section 50 are reserved matters.

The Assembly's Standing Order 70 sets out how 'matters of privilege' can be raised by Members and dealt with by the Speaker. It is worth noting, that in spite of similarities in the legal protections and immunities created in the relevant legislation governing the three devolved legislatures, there is no comparable Standing Order relating to privilege in the Scottish Parliament or NAFW. When drafting Standing Orders for the 1998 Northern Ireland Assembly, the Committee on Standing Orders "obtained the Standing Orders of a number of Parliaments and legislatures, including the House of Commons at Westminster, the European Parliament and Dail Éireann, to use as a guide. Following discussion, the Committee decided to use the Standing Orders drawn up for the use of the 1973 Northern Ireland Assembly as a base on which to build"³². As a result Standing Order 70 mirrors Standing Order 46 of the 1973 Northern Ireland Assembly, to which a different level of privilege attached. Standing Order 70 appears to be somewhat of an anomaly.

Standing Order 70 of the Northern Ireland Assembly

- 1) Any member who wishes to raise a matter of privilege shall give the Speaker notice of his or her intention and acquaint the Speaker of the details of the matter in writing.
- (2) At any time after any questions have been disposed of, other than when a division is in progress, a member who has given notice and details as above may rise in his or her place and claim to move that a specific matter affecting the privilege of the Assembly shall be referred to the Committee on Standards and Privileges.
- (3) If in the opinion of the Speaker a prima facie case of breach of privilege has been made out by a member under paragraph (1) of this Standing Order and if it also appears to the Speaker that the matter has been raised at the first available opportunity then the Speaker shall so inform the Assembly and refer the matter to the Committee on Standards and Privileges. Provided that when a matter of privilege is raised of which the Speaker has not received sufficient notice, the Speaker may defer informing the Assembly of his or her decisions on the matters aforesaid until the next sitting day.
- (4) Any member complaining to the Assembly of a statement in a newspaper, book or other publication as a breach of privilege shall hand in to the Speaker a copy of the newspaper, book, publication or any other medium containing the statement in question.

Standing Order 70 does, however, bear similarities to the procedure for raising alleged breaches of privilege at the Commons, which is described below³³. The issue of privilege has been raised on a number of occasions in the chamber in various contexts, as the following table illustrates:

Table 1: Examples of matters of privilege raised in the Assembly

Date	Reference
14 September 1998	Initial Presiding Officers ruling that under Paragraph 8 of the Schedule to the Northern Ireland (Elections) Act 1998, the privilege given to Members speaking in the House is qualified privilege. It is not the absolute privilege which pertains in other assemblies, and which will pertain when the Assembly takes power on the appointed day as set out in the Northern Ireland Bill.
14 December 1999	Speakers ruling that "prior to devolution there was no statutory requirement in respect of the Register" of Members Interests and that Members should be careful when raising matters of privilege on the floor of the House, in response to point of order from Norman Boyd.

32 'Progress report from the Committee on Standing Orders', October 1998 <http://www.niassembly.gov.uk/globalassets/documents/committees/1998-2003/standing-orders/reports/progress-report-from-the-committee-on-standing-orders-nnia4.pdf>

33 Erskine May, 'Parliamentary Practice', 23rd edition, Lexis Nexis 2004

22 February 1999	Initial Presiding Officers ruling on the investigation into the remarks made by Edwin Poots on 16 February 1999 on page 94 which found that although the remarks were 'disparaging', they were not abusing the privilege of the House, in response to point of order from Peter Robinson.
22 February 1999	Initial Presiding Officers ruling on the appointment of a Committee on Standards and Privileges, in response to points of order from Ian Paisley, Ian Paisley Jnr and Patrick Roche on whether remarks suggesting Sinn Fein has links with the IRA are an abuse of privilege.
7 October 2002	Speakers ruling that "I caution Members and remind them that in criminal matters the sub judice rule applies strictly from the moment a person is charged until the verdict and sentence have been announced. Members must also be aware that as regards parliamentary privilege covering what they say in the Chamber, it applies to the law of defamation and not to other matters. It will not give them protection, for example, in matters of contempt of court..."
3 March 2009	Debate on a motion brought by Lord Morrow on the need to preserve the confidentiality of information brought to them by constituents or sources

It appears, however, that only one matter has been referred by the Speaker to the Committee on Standards and Privileges under Standing Order 70.

In October 2002, Mr. Peter Robinson forwarded a letter to the Speaker of the House regarding a breach of Privilege surrounding events that took place in Parliament Buildings on 2nd October 2002. On this day there was a police search carried out on Sinn Fein offices in the building. Peter Robinson's letter was in reference to, on the same day, two members of Sinn Fein, an MLA and a Minister, allegedly being seen bringing members of the media into the building without adhering to the proper security procedures.

On Monday 7th October several Members raised points of order in the Assembly in regards to the events of October 2nd. In response to a statement made by Dr. Ian Paisley, the Speaker acknowledged that his colleague Mr. Robinson had deposited a letter regarding a breach of privilege through the proper procedure but also highlighted that *"There are many complex matters involved. Several bodies in the Assembly may have responsibilities with regard to this matter. The Assembly Commission is one, the Committee of Standards and Privileges in another, and the Speakers Office is another. Those are just three examples"*³⁴. The Speaker later confirmed that he had referred Mr. Robinson's letter to the Committee on Standards and Privileges, however he also emphasised that it was up to the committee to decide if they would discuss the matter or take it further. Mr Paisley Jr. asked the Speaker, with reference to Standing Orders 61 and 63, if the Keeper of the House was entitled to take action against intruders of the building. The Speaker made the point that those who are invited into the Building by Members of the Assembly are not perceived as intruders. However he also noted that *"The way in which visitors enter the Building may be a breach of privilege or order"*³⁵. He further added that this issue has already been raised by Peter Robinson in his letter and it is being looked in to. Mr Robinson raised a point of Order in regards to the speakers response to Mr. Paisley Jr. and requested the Speaker to *"clarify, or reflect upon...your definition of an intruder"*³⁶ as it may have repercussions that would affect the work of the Committee on Standards and Privileges when dealing with his letter regarding the breach of privilege. The Speaker emphasised that the definition and interpretation is not as simple as those who were ushered into the building were pass holders.

34 Northern Ireland Assembly, Monday 7th October 2002, available online; <http://archive.niassembly.gov.uk/record/reports/021007.htm#2>

35 As

Above

36 As Above

With regard to the police searches the speaker made the Assembly aware that there were aspects that he was unable to speak about on the Floor of the House as there was an active legal investigation on going. However, in response to a query by Mr. Beggs, the Speaker also stressed that being a Member or an employee in Parliament buildings does not make you immune from the law.

The Assembly was suspended on 14th October 2002 and therefore this matter was taken no further.

6 The role of committees and commissioners for standards in considering matters of privilege and contempt

This section of the paper considers the role that committees and commissioners play in considering matters of privilege and contempt.

It should be noted that there is a difference between the privileges enjoyed by individual Members of a legislature and the concept of 'parliamentary privilege'. For example, if a Member is found to be in breach of the Code of Conduct, the standards committee of that legislature may decide, as a sanction, to withdraw that Member's rights and privileges for a specified period. This could include their rights to salary and allowances or exclusion from using facilities.

House of Commons

Following the Nolan Report in 1995-96, the Privileges Committee and the Members' Interests Committee were merged into the Committee on Standards and Privileges. The role of the previous Privileges Committee was to take evidence on behalf of the House to determine whether and to what extent a breach of privilege or contempt of the House had taken place. The current Committee is described in DOD's Handbook of House of Commons Procedure³⁷ as '*...both the guardian of the House's privileges and custodian of the standards of conduct of Members of the House*'.

The remit of the Committee is set out in Standing Order 149 and includes:

- to consider matters relating to privileges
- to oversee the work of the Parliamentary Commissioner for Standards
- to examine the compilation, maintenance and accessibility of the register for Members' financial interests and other relevant registers
- the review of the registers
- to consider complaints brought to the Committee's attention by the Parliamentary Commissioner for Standards in relation to the registering or declaring of interests and alleged breaches of any code of conduct approved by the House
- to recommend modifications to the code of conduct as necessary

The procedure for complaints relating to privilege or contempt is as follows:

A Member who believes that a breach of privilege or contempt of the House has occurred should raise the matter at the earliest opportunity by writing to the Speaker setting out the grounds of complaint. The Speaker will promptly reply in writing, indicating whether he proposes to give the matter the precedence over other business accorded to matters of privilege. If he does decide to grant it such status, he will announce that decision in the House; the Member seeking to raise the matter would then table a motion in appropriate terms which would appear on the following day's Order Paper at the head of all other

37

DOD's Handbook of House of Commons Procedure – Seventh Edition 2009 para 4.2.1

business. The motion would normally be to refer the alleged breach or contempt to the Committee on Standards and Privileges for investigation and report.³⁸

The Committee is currently conducting an inquiry into the hacking of MPs' mobile phones, which was referred to it by the House on 9th September as a matter relating to privilege. The inquiry is not looking at specific allegations, but rather is considering whether the alleged hacking of the phones constitutes a contempt of Parliament.

Addressing the role of the Committee in relation to matters of privilege, the Attorney General in her April 2009 memorandum to the Leader of the House of Commons expressed the view that:

While the committee has the function of considering specific matters of privilege referred to it by the house, it does not itself determine whether material is subject to parliamentary privilege – it only makes a recommendation for the house to decide the matter by resolution... the fact that the House resolves that a particular material or categories of material are “proceedings in Parliament” within the meaning of Article IX of the Bill ...would not automatically have any effect on the admissibility of the material in a criminal trial. The material will only be inadmissible if the courts consider the use to which it is put amounts to the “impeaching or questioning” of parliamentary proceedings.

In addition to the work of the Committee on Standards and Privileges, the Commons has recently appointed a ‘*Committee on issue of privilege relating to police searches on the Parliamentary Estate and internal processes of the House Administration for granting permission for such action*’. Following the search of a Member's office in the Parliamentary Estate by the police and the seizure of material, the Committee was appointed by the House of Commons on 13th July 2009 to ‘...review the internal processes of the House Administration for granting permission for such action, to consider any matter relating to privilege arising from the police operation, and to make recommendations for the future’. The Committee concluded that it did not consider that anything the police did amounted to a breach of privilege or a contempt of the House but the conduct of the police in this matter clearly fell below acceptable standards.³⁹

Commissioner for Parliamentary Standards

The Commissioner for Parliamentary Standards is appointed by the House and works to the Standards and Privileges Committee. This maintains the self-regulation of the Commons but introduces an independent element. As noted above, the Committee may also undertake its own investigations when a possible breach of privilege or contempt of the House is an issue. The Commissioner appears to play no role in these investigations.

Dail Éireann

Standing Order 99 establishes the Committee on Procedure and Privileges. Part of its remit is to:

- Consider matters of procedure generally and to recommend any additions or amendments to Standing Orders that may be deemed necessary
- Consider and report, as and when requested to do so, as to the privileges attaching to Members

In May 2010, the Committee published a report on parliamentary standards. The report followed an offensive remark made by a TD in the House on 11 December 2009 which led to general disorder. In investigating the issue, the Committee noted an incident in 1947 which had similarities to the situation that occurred in December 2009. At that time, the Committee on Procedure and Privileges found that:

38 As above para 4.3.12

39 <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmpriv/62/6211.htm>

The issue of the challenge by one Deputy and its acceptance by another was a breach of privilege on the part of both Members which, by virtue of the fact that an unseemly incident took place almost within view of the House while in session, was contempt of an aggravated nature⁴⁰.

The 2010 incident was investigated further by the sub-committee on privileges. The Sub-committee noted the almost immediate apology issued by the TD in question and considered that it would be appropriate to:

- restate, in an effective way, the standards of behaviour expected of Members; and
- seek to identify changes to procedures intended to ensure that, where disorder arises, its impact on the conduct of business is minimised

The Committee wrote to the TD in question ‘unreservedly condemning his totally unacceptable behaviour in the Dáil’ and copied the letter to every TD. The Sub-committee also noted a growing tendency to disregard Standing Orders and that compliance needed to improve.

The Scottish Parliament and National Assembly for Wales

Privilege has not emerged as a significant issue for the respective standards committees or standards commissioners in Scotland and Wales since the advent of devolution. Standing Orders establishing the respective standards committees in Scotland and Wales do not mention privilege as being part of their remit and to date neither the Scottish nor Welsh committees have been asked to address the issue. This is largely due to the very limited scope of privilege as it exists in the Scottish Parliament and National Assembly for Wales. Therefore, unlike the House of Commons, there are no separate mechanisms for the investigation of alleged breaches of privilege. However, whereas in the House of Commons the leaking of a committee report would be considered a breach of privilege, in Scotland and Wales such action would be an offence against the Code of Conduct and would fall under the remit of the standards commissioners for investigation⁴¹.

As mentioned earlier, a comparison of the Standing Orders relating to the standards committees in the devolved institutions shows that that the reference to privilege in Northern Ireland may be an anomaly when compared to the Scottish Parliament and National Assembly for Wales, with the focus of the committees’ work being the codes of conduct and register of Members’ interests.

40 Report of the Committee on Procedure and Privileges

41 Section 7.4 of the Code of Conduct of the Scottish Parliament and section 4 of the Code of Conduct of the National Assembly for Wales deal with issues of confidentiality.

Table 1: Standing Orders establishing the standards committees in the devolved institutions

Scottish Parliament	National Assembly for Wales	Northern Ireland Assembly
<ul style="list-style-type: none"> the practice and procedures of the Parliament in relation to its business; whether a member's conduct is in accordance with these Rules and any Code of Conduct for Members, matters relating to Members' interests, and any other matters relating to the conduct of Members in carrying out their Parliamentary duties; the adoption, amendment and application of any Code of Conduct for Members; and matters relating to public appointments in Scotland. 	<ul style="list-style-type: none"> Standing Order 31 (Financial and other Interests of Members) Any Assembly resolution relating to the financial or other interests of Members Standing Order 32 (Recording of Membership of Societies) Any Assembly resolution relating to Members' standards of conduct Any code or protocol made under Standing Order 1.13 and in accordance with section 36(6) of the Act; and Standing Order 31A (Recording of the Employment of Family Members with the Support of Commission Funds) 	<ul style="list-style-type: none"> to consider specific matters relating to privilege referred to it by the Assembly; (b) to oversee the work of the Clerk of Standards; to examine the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interests established by the Assembly; and to review from time to time the form and content of those registers; (c) to consider any matter relating to the conduct of members, including specific complaints in relation to alleged breaches of the Code of Conduct which have been drawn to the committee's attention; (d) to recommend any modifications to the Code of Conduct; (e) to consider any reports of the Assembly Commissioner for Standards; (f) to perform the functions described in Standing Orders 69B and 69C; (g) to make reports (including reports to the Assembly) on the exercise of any of its functions or any other matter listed above.

6 Conclusion

It is important to exercise caution when relying on the concept of parliamentary privilege as it exists at the House of Commons when considering the relatively limited freedoms enjoyed by the devolved legislatures. The Scottish Parliament, National Assembly for Wales and the Northern Ireland Assembly are 'creatures of statute' and are therefore answerable to the courts for their actions in a way that the UK Parliament is not. Any notion of privilege in the devolved institutions extends only to freedom of speech and as stated there are limitations on this. Given that the Assembly itself does not enjoy parliamentary privilege comparable to the House of Commons, Standing Order 70 of the Northern Ireland Assembly which reflects the procedure in the House of Commons for handling breaches of privilege, would appear to be an anomaly.

It may be useful to draw a distinction between ‘parliamentary privilege’ and the rights and privileges enjoyed by individual Members. Although parliamentary privilege in the House of Commons context does not extend to the devolved legislatures, the Members of the respective institutions still enjoy certain rights and privileges, such as access to the facilities of the legislature. These may be withdrawn by the respective standards committees if a Member is found to have committed a breach of the Code of Conduct.

It is also important to be aware of the dangers of using the language of parliamentary privilege in the devolved legislatures. For example, a privileged document in the context of the House of Commons may be more appropriately referred to as a confidential document in the devolved legislatures (even though legal professional privilege may attach to the document). The investigation of any leak of such a document in the devolved legislatures not being a breach of parliamentary privilege (or contempt) but rather a breach of confidentiality. Depending on the specifics of the case, such a matter could be handled by the Standards and Privileges Committee, the Chairs Liaison Group, a specific Assembly committee, or the Assembly Commission Regarding the Commission, in many cases it will be the appropriate body to investigate circumstances, where a member or non-member has made inappropriate use of parliamentary resources (e.g. IT, e-mail system, meeting or dining rooms) or in other ways misbehaved on parts of the Parliament Buildings complex.

Annex 1 – Business bulletin of the Scottish Parliament, 6 August 1999

At the meeting of the Parliament on Wednesday 23 June 1999, Mrs Margaret Ewing raised the question of “parliamentary privilege”. The Presiding Officer wishes to offer the following guidance to members.

The starting point is that the Parliament, its members and staff are not beyond the law. Any “privileges” (i.e. legal protections and immunities) applicable in relation to the Parliament are those conferred by or under the Scotland Act 1998. The Parliament does not derive rights by reference to privileges which exist (whether by statute or otherwise) at Westminster and there is no concept of “parliamentary privilege” in relation to the Scottish Parliament or its members in the sense understood at Westminster.

The Scotland Act has a number of provisions designed to give sufficient protection to the Parliament to enable it properly to conduct its business. It prevents the validity of proceedings in relation to a Bill being questioned once the Bill becomes an Act of the Scottish Parliament (section 28(5)). It also limits the types of remedy, which can be sought against the Parliament (section 40). In addition it confers certain protections in relation to defamation and contempt of court and these are the subject of this guidance.

Defamatory statements

Section 41 of the Scotland Act provides that for the purposes of the law of defamation any statement made in “proceedings of the Parliament” and the publication under the authority of the Parliament of any statement is absolutely privileged. This means that any such statement cannot form the basis of an action for defamation. “Statement” in this context means “words, pictures, visual images, gestures or any other method of signifying meaning”.

This section is intended to ensure that Members are free to debate and the Parliament to report on matters of public interest without fear of an action for defamation being raised. Although it provides absolute protection in that context, it does not shield members from the operation of the law in relation to other matters, for example incitement to racial hatred.

Contempt of court

The proceedings of the Parliament, unlike those at Westminster, are subject to the law of contempt of court. Rule 7.3.2 of the Standing Orders (Order in the Chamber) includes a requirement that members shall not conduct themselves in a manner which would constitute a contempt of court (or indeed which would constitute a criminal offence).

The Contempt of Court Act 1981 establishes a “strict liability” rule. This is “the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular proceedings regardless of intent to do so”. This rule applies (with certain exceptions) to publications “which create a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced”.

Section 42 of the Scotland Act provides that the strict liability rule does not apply in relation to any publication made (a) in “proceedings of the Parliament” in relation to a Bill or subordinate legislation or (b) to the extent that it consists of a fair and accurate report of such proceedings made in good faith. “Publication” in this context includes “any speech, writing, programme included in a programme service or other communication in whatever form, which is addressed to the public at large or any section of the public”.

This section is intended to ensure that the Parliament is not prevented from legislating on any matter simply because anything said or done in the proceedings might be treated as a contempt of court under the strict liability rule. It is also designed to ensure that those reporting such proceedings are not hampered in their work of keeping the public properly informed.

Proceedings of the Parliament

Sections 41 and 42 of the Scotland Act refer to “proceedings of the Parliament”. This expression is not defined in the Scotland Act, except to clarify that as well as proceedings at meetings of the Parliament, it includes proceedings of committees and sub-committees of the Parliament (section 126(1)).

The equivalent of the phrase “proceedings of the Parliament” in Westminster is “proceedings in Parliament”. There is no comprehensive definition of the term at Westminster although some matters are defined in section 13 of the Defamation Act 1996. This is one of the matters upon which the Joint Committee on Parliamentary Privilege commented in its report published on 9 April 1999. At Westminster, “proceedings in Parliament” has generally been broadly interpreted and, although a definitive view cannot be given, it is expected that a similar broad construction will be placed on the expression “proceedings of the Parliament” in the context of the Scottish Parliament. For example, it is considered that in addition to proceedings during meetings of the Parliament, committees and sub-committees, “proceedings of the Parliament” also covers the lodging of PQs and giving notice of motions and amendments. Provided that a particular statement can be construed as being made in the context of proceedings of the Parliament, it will benefit from the protection given by the relevant section of the Scotland Act.

Publication of statements under the authority of the Parliament

Members may also wish to note Article 4 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Standing Orders and Parliamentary Publications) Order 1999. This makes provision protecting a person against whom legal proceedings have been brought concerning a statement published by that person where the statement is published or has been published under the authority of the Parliament. It requires the court, on production of a certificate by the Clerk of the Parliament, to make an order bringing those proceedings to an end.

The expression “publication under the authority of the Parliament” is relevant for the purposes of section 41 of the Scotland Act (defamatory statements) and article 4 (above). Article 5 of the Order provides that any statement required or authorised to be published in pursuance of any of the rules set out in the Standing Orders should be treated as published under the authority of the Parliament.

Note

This guidance cannot and must not be regarded as a comprehensive statement on this complex area of law, which is expected to develop over time. The senior staff of the Parliament will be happy to provide further advice and assistance as required.

Annex 2 – Legal protections and immunities

The Government of Wales Act 2006	Scotland Act 1998	Northern Ireland Act 1998
<p>Section 93 (3) refers to the validity of Assembly Measures in relation to proceedings in the Assembly.</p> <p><i>“(3)The validity of an Assembly Measure is not affected by any invalidity in the Assembly proceedings leading to its enactment.”¹</i></p>	<p>Section 28 (5) refers to the validity of Acts in relation to proceedings in Parliament.</p> <p><i>“(5) The validity of an Act of the Scottish Parliament is not affected by any invalidity in the proceedings of the Parliament leading to its enactment.”²</i></p>	<p>Section 5 (5) refers to the validity of Acts in relation to proceedings in Parliament.</p> <p><i>“(5) The validity of any proceedings leading to the enactment of an Act of the Assembly shall not be called into question in any legal proceedings.”³</i></p>
<p>Section 42 of The Government of Wales Act 2006 outlines guidelines referring to Defamation “42.Defamation (1) For the purposes of the law of defamation—</p> <p>(a)any statement made in Assembly proceedings, and.</p> <p>(b)the publication under the authority of the Assembly of any statement,</p> <p>is absolutely privileged.</p> <p>(2)The Welsh Ministers may by regulations make provision for and in connection with establishing in any legal proceedings that any statement or publication is absolutely privileged by virtue of subsection (1).</p> <p>(3)No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.</p> <p>(4)In this section “statement” has the same meaning as in the Defamation Act 1996 (c. 31).”⁴</p>	<p>Section 41 of the Scotland Act 1998 refers to “Defamatory Statements”</p> <p><i>“41 Defamatory statements. E+W+S+N.I.</i></p> <p><i>(1)For the purposes of the law of defamation—</i></p> <p><i>(a)any statement made in proceedings of the Parliament, and</i></p> <p><i>(b)the publication under the authority of the Parliament of any statement,</i></p> <p><i>shall be absolutely privileged.</i></p> <p><i>(2)In subsection (1), “statement” has the same meaning as in the M1Defamation Act 1996.”⁵</i></p>	<p>Section 50(1) of the Northern Ireland Act 1998 which refers to Privilege in respect of defamation.</p> <p><i>“(1) For the purposes of the law of defamation, absolute privilege shall attach to—</i></p> <p><i>(a) the making of a statement in proceedings of the Assembly; and</i></p> <p><i>(b) the publication of a statement under the Assembly’s authority.”⁶</i></p>

<p>Section 43 of The Government of Wales Act 2006 refers to “Contempt of Court”</p> <p><i>“43 (1) The strict liability rule does not apply in relation to any publication—</i></p> <p><i>(a) made in, for the purposes of, or for purposes incidental to, Assembly proceedings, or</i></p> <p><i>(b) to the extent that it consists of a report of Assembly proceedings which either is made by or under the authority of the Assembly or is fair and accurate and made in good faith.</i></p> <p><i>(2) In subsection (1)—</i></p> <p><i>“the strict liability rule”, and</i></p> <p><i>“publication”,</i></p> <p><i>have the same meaning as in the Contempt of Court Act 1981 (c. 49)”⁷</i></p>	<p>Section 42 of the Scotland Act refers to “Contempt of Court”</p> <p><i>“42 Contempt of court.</i></p> <p><i>E+W+S+N.I.</i></p> <p><i>(1)The strict liability rule shall not apply in relation to any publication—</i></p> <p><i>(a)made in proceedings of the Parliament in relation to a Bill or subordinate legislation, or</i></p> <p><i>(b)to the extent that it consists of a fair and accurate report of such proceedings made in good faith.</i></p> <p><i>(2)In subsection (1), “the strict liability rule” and “publication” have the same meanings as in the M1Contempt of Court Act 1981.”⁸</i></p>	<p>Section 50(2) of the Northern Ireland Act 1998 which refers to Privilege in respect of “contempt of court under the strict liability rule”.</p> <p><i>“(2) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter—</i></p> <p><i>(a) in the course of proceedings of the Assembly which relate to a Bill or subordinate legislation; or</i></p> <p><i>(b) to the extent that it consists of a fair and accurate report of such proceedings which is made in good faith.”⁹</i></p>
<p>Section 43 of the Government of Wales Act 2006 also refers to the “strict liability rule”</p> <p><i>“(1) The strict liability rule does not apply in relation to any publication—</i></p> <p><i>(a) made in, for the purposes of, or for purposes incidental to, Assembly proceedings, or</i></p> <p><i>(b) to the extent that it consists of a report of Assembly proceedings which either is made by or under the authority of the Assembly or is fair and accurate and made in good faith.</i></p> <p><i>(2) In subsection (1)—</i></p> <p><i>“the strict liability rule”, and</i></p> <p><i>“publication”,</i></p> <p><i>have the same meaning as in the Contempt of Court Act 1981 (c. 49)”¹⁰</i></p>	<p>Section 42(2) of the Scotland Act refers to the “strict liability rule”</p> <p><i>“(2) In subsection (1), “the strict liability rule” and “publication” have the same meanings as in the M1Contempt of Court Act 1981.”¹¹</i></p>	<p>Section 50(3) of the Northern Ireland Act 1998 refers to the “strict liability rule”</p> <p><i>“(3) In this section—</i></p> <p><i>“statement” has the same meaning as in the M11 Defamation Act 1996;</i></p> <p><i>“the strict liability rule” has the same meaning as in the M12 Contempt of Court Act 1981.”¹²</i></p>

(Footnotes)

- 1 The Government of Wales Act 2006, Section 93, available online: <http://www.legislation.gov.uk/ukpga/2006/32/part/3/crossheading/power>
- 2 The Scotland Act 1998, Section 28 (5), available online: <http://www.legislation.gov.uk/ukpga/1998/46/section/28>

- 3 The Northern Ireland Act 1998, Section 5, available online: <http://www.legislation.gov.uk/ukpga/1998/47/part/II/crossheading/general>
- 4 The Government of Wales Act 2006, Section 42, Defamation, available online; <http://www.legislation.gov.uk/ukpga/2006/32/section/42>
- 5 The Scotland Act, 1998, available online: <http://www.legislation.gov.uk/ukpga/1998/46/section/41>
- 6 The Northern Ireland Act, 1998, available online: <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2045126>
- 7 The Government of Wales Act 2006, Section 43, Contempt of Court, available online: <http://www.legislation.gov.uk/ukpga/2006/32/part/1/crossheading/legal-issues>
- 8 The Scotland Act, 1998, available online: <http://www.legislation.gov.uk/ukpga/1998/46/section/42>
- 9 The Northern Ireland Act, 1998, available online: <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2045126>
- 10 The Government of Wales Act 2006, Section 43, Contempt of Court, available online: <http://www.legislation.gov.uk/ukpga/2006/32/part/1/crossheading/legal-issues>
- 11 The Scotland Act, 1998, available online: <http://www.legislation.gov.uk/ukpga/1998/46/section/42>
- 12 The Northern Ireland Act, 1998, available online: <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2045126>



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Codes of Conduct, contempt and developments in relation to the rules on Members' Interests in UK legislatures

1 Introduction

This briefing paper has been prepared for the Committee on Standards and Privileges to inform its review of the Code of Conduct for Members of the Northern Ireland Assembly. The Committee has asked for information on the following issues:

- Examples of rules in other legislatures not already included in the Northern Ireland Assembly's Code of Conduct
- An overview of the concept of 'contempt' in the UK Parliament
- Any significant developments in the last five years or any significant differences (compared to the Northern Ireland Assembly) in relation to requirements on Members' interests (registration, declaration and advocacy rules) at the other legislatures in the UK

2 Context

A report produced by the Organisation for Security and Cooperation in Europe (OSCE) *Background Study: Professional and Ethical Standards for Parliamentarians (2012)* provided a framework within which reform of parliamentary ethics should take place. The report highlighted that it was important to assess what rules already exist and what other aspects of the context are relevant to reforms. It stated that such a 'context' is defined by four "interrelated layers of norms", three of which are applicable in this context:

1. **International norms:** there is no global regulation of parliamentary conduct and no right way of setting or enforcing rules. The 1990s and 2000s did see a move towards enshrining certain principles of good practice in democratic governance.
2. **Parliamentary norms:** any reform of parliamentary standards regulations also needs to take into account existing codes of conduct for legislators or parliamentary staff, rules of procedure, standing orders of the parliament, parliamentary resolutions, and guides and manuals for legislators.
3. **Social norms and the role of political parties:** The aforementioned layers of codified norms – international, constitutional, parliamentary – rest ultimately on certain specific social norms – customary and uncoded rules that govern behaviour in groups and society. It is also the fact that political parties can exert their role as ethical gatekeepers in various ways by:
 - introducing codified ethical standards into their party programmes
 - scrutinising ethically sensitive information regarding candidates during the candidate selection process and, as a consequence, acquiring legitimacy in the eyes of the electorate
 - creating a mechanism (i.e. party disciplinary committees) to allow the members and electorate to engage directly in the ethical filtering process of its political representatives. In this way political parties could also perform as ethical educators, raising awareness about ethics in the wider society¹.

Rules-based or principles-based?

The same OSCE report highlighted the different approaches to drafting a code of conduct, citing the ‘rules-based’ or ‘principles-based’ codes: “A rules-based code sets out specific behavioural prescriptions, and is likely to be lengthy. A principles-based code lists only the principles and values which (Members) should follow and to which they should aspire”².

In a 2011 consultation document, the Parliamentary Commissioner for Standards at the House of Commons noted that a “rules-based approach can be complex and hard to follow, encouraging an overly legalistic approach to standards and running the risk of failing to cover every eventuality”, while a principles-based code “can set a clear and simple framework, but allows room for differences in interpretation which can create uncertainty and controversy”³.

However the OSCE report argues that the two types of code need not be mutually exclusive: “Any code of conduct must be based on certain principles, even if they are implicit, and most will contain some behavioural prescriptions. Moreover, short principles-based codes of conduct are frequently accompanied by manuals or handbooks, which go into great explanatory detail”⁴. The report cites the example of the House of Commons Code of Conduct, which although short, is accompanied by a detailed guide.

3 Rules in other legislatures

Codes of Conduct in EU Member States

In 2011 the Office for the Promotion of Parliamentary Democracy at the European Parliament published a report on parliamentary ethics⁵. The following section provides a summary of some of the key points.

1 Background Study: Professional and Ethical Standards for Parliamentarians (2012) <http://www.osce.org/odihr/98924>

2 As above

3 Review of the Code of Conduct, UK Parliament, 2011

4 <http://www.osce.org/odihr/98924>

5 http://www.europarl.europa.eu/pdf/oppd/Page_8/codes_of_conduct_FINAL-ENforweb.pdf

Most national parliaments require their members to declare all outside financial interests. Declaring non-financial outside interests is mandatory in some member states (UK France and most new member states), optional in others (Belgium, Denmark, Finland, the Netherlands) and absent in Luxembourg.

In some countries, such as Greece, MPs must declare property belonging to family members (spouse, children). This obligation can extend to the declaration of other benefits and gifts for family members.

In the UK, Republic of Ireland and Germany, parliamentarians are required to disclose the existence of a potential conflict of interest. So, for example, in the House of Commons “any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, should be declared in debate or other proceedings”. However, British, Irish and German legislators are still allowed to vote on the matter in which they have declared an interest. By contrast, Sweden’s Parliament adopted a prohibition of conflict of interests in 1999, stipulating that a member may not participate in the deliberations of the Chamber or be present at a meeting of a committee on a matter which concerns them personally or a close relative.

Regarding registration and declaration of interests, some member states are content with simple declarations, while others require more formal and detailed reporting. In some cases, declarations only need to be made at the beginning and end of a term of office, in other cases each time a (significant) change occurs or on the occasion of every parliamentary debate where there is a potential conflict of interest. The register may be kept by a parliamentary committee (UK), or by an external body (Belgium).

The Northern Ireland Assembly’s Code of Conduct and accompanying guidance is a comprehensive document in comparison to other examples of similar documents. In the main, Codes of Conduct deal mainly with the declaration and registration of financial interests.

Nevertheless, below are some specific provisions found in other codes that are not included, or not addressed to the same extent, in the Northern Ireland Assembly’s Code (notwithstanding that existing law in Northern Ireland may cover some of these provisions):

Provisions in other Codes of Conduct

Table 1: Examples of provisions in other codes of conduct

Scottish Parliament	Duty as a representative 3.1.5 Members should be accessible to the people of the areas for which they have been elected to serve and represent their interests conscientiously.
Scottish Parliament	Section 6 deals with Cross-Party Groups, including registration, operation of cross-party groups and the need to comply with the Code of Conduct. The Northern Ireland Assembly has separate rules on All-Party Groups (APGs) which highlight that failure to comply with those rules could be considered a breach of the Code of Conduct – is there scope for a new provision within the Code emphasising the rules on APGs?
Scottish Parliament	Section 8 deals with engagement with constituents and offers guidance on how to deal with unreasonable and aggressive behaviour. This section also offers guidance on the use of social media, including staff access to social media accounts.

National Assembly for Wales	<p>Prohibition of Voting in Relation to Registrable Interests</p> <p>8. A Member is prohibited from voting in any proceedings of the Assembly if, in relation to any interest which is required to be registered, a particular decision of the Assembly or a Committee might result in a direct financial advantage to the Member greater than that which might accrue to persons affected by the decision generally.</p>
United States Congress	<p>Employment of persons</p> <p>9. A Member, officer, or employee of the House of Representatives shall not discharge or refuse to hire any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex (including marital or parental status), handicap, age, or national origin, but may take into consideration the domicile or political affiliation of such individual.</p>
Various	<p>Some Codes contain a specific provision in relation to the unauthorised disclosure of parliamentary documents. This is covered in Standing Orders but is not addressed directly in the existing Code of Conduct.</p> <p>See for example US House of Representatives Code of Conduct:</p> <p>Before any Member, officer, or employee of the House of Representatives may have access to classified information, the following oath (or affirmation) shall be executed:</p> <p>"I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service with the House of Representatives, except as authorized by the House of Representatives or in accordance with its Rules."</p>
New South Wales	<p>Recognition of Independent Members and those aligned to political parties</p> <p>6 Duties as a Member of Parliament</p> <p>It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.</p>

Table 2 overleaf provides an overview of approaches in other countries with regard to regulating the behaviour of elected members. As can be seen, not all Parliaments adopt a Code of Conduct, relying instead on other internal procedures or existing law.

Table 2: Overview of other countries' approach to regulating parliamentary ethics⁶

Country	Legal basis	Regulatory body	Principles
Austria	<ul style="list-style-type: none"> • No Code of Conduct • Federal law on the Rules of procedure of the National Council • Special legislation relating to incompatibilities and financial interests • Penal Code 	<ul style="list-style-type: none"> • The Committees on Incompatibilities of the National and Federal Councils are competent for matters relating to incompatibilities and financial interests • Possible that the President's Conference (advisory body) discuss such matters in an informal manner 	<ul style="list-style-type: none"> • Freedom of speech • Incompatibility with certain commercial activities • Obligation to declare private employment • Anti-corruption principles • Limited transparency of activities
Belgium	<ul style="list-style-type: none"> • No Code of Conduct in the strict sense at the federal level (deontological code for the members of parliament from the Flemish community) • 1931 Federal law on incompatibilities and disqualifications concerning former ministers and former members of parliament • 1995 Federal law relating to the requirement to file a list of previous occupations and a declaration of property 	<ul style="list-style-type: none"> • Joint Committee of Chamber of Representatives and Senate regarding financing of party accounts 	<ul style="list-style-type: none"> • Freedom of speech guaranteed by the Constitution • Limitations to the concurrent holding of offices • Limitations to concurrent sources of public incomes (1.5 x parliamentary salary) • Registration of property

Country	Legal basis	Regulatory body	Principles
Bulgaria	<ul style="list-style-type: none"> • Constitution of the Republic of Bulgaria • Rules of organisation and procedure of the National Assembly • Law on prevention and disclosure of conflicts of interest • Law for the publicity of the property of persons occupying high state office 	<ul style="list-style-type: none"> • Anti-corruption, Conflict of Interest and Parliamentary Ethics Committee • Court of Auditors 	<ul style="list-style-type: none"> • Freedom of speech • Office of MP incompatible with other elective or government office or position in civil service • Obligation to declare financial interests • Obligation to reveal and avoid conflicts of interest
Finland	<ul style="list-style-type: none"> • No Code of Conduct in the strict sense • Constitution of Finland • Parliament's Rules of Procedure • Criminal Code • 2002 resolution to fight against corruption 	<ul style="list-style-type: none"> • The Speaker • Speaker's Council • Plenary Session 	<ul style="list-style-type: none"> • Independence • Freedom of speech guaranteed • Voluntary declaration of non-parliamentary activities, paid or unpaid, and financial interests • Transparency with regard to parliamentary behaviour • Dignity and non-offensive behaviour • Conflict of interest: disqualification from consideration of and decision-making in matters pertaining to him/her personally
Germany	<ul style="list-style-type: none"> • Rule 19 of the Rules of Procedure, in conjunction with Annex 1 of the Rules of Procedure setting out the Code of Conduct for members of the Bundestag 	<ul style="list-style-type: none"> • No permanent bodies • The president of the Bundestag has investigative powers and the right to take non-formal regulatory measures, such as admonition of members, their exclusion from meetings and the imposition of coercive fines 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Obligation to declare gifts with a value exceeding 5,000euro • Obligation to declare previous activities and other financial and professional interests • Information provided pursuant to declarations on interests to be made public • Obligation to declare donations with a value exceeding 5,000euro; donations exceeding 10,000euro in one calendar year shall be published by the president, with the amount and origin stated

Country	Legal basis	Regulatory body	Principles
Netherlands	<ul style="list-style-type: none"> • Law on compensation of members 1968 • Law on Incompatibilities States-General and European Parliament 	<ul style="list-style-type: none"> • Committee of the Integrity of the Kingdom • Self-regulation of institutions • Ordinary courts • Political parties supervision for misdemeanours which are not criminal in nature • Inland Revenue Office 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Integrity • Obligation to declare public or private work, paid or unpaid • Obligation to declare non-parliamentary income over a certain level
Poland	<ul style="list-style-type: none"> • Principles of Deputies' Ethics (applicable only to the Sejm) • 1996 Act on the Exercise of the mandate of a Deputy or Senator 	<ul style="list-style-type: none"> • Deputies' Ethics Committee (Sejm) • Presidium of the Sejm 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Respect for the rule of law • Obligation to declare financial interests • Obligation to notify any additional engagement • Restrictions regarding undertaking any additional engagements • Obligation to declare any gift • Impartiality • Openness • Conscientiousness • Accountability • Regard for the good name of the Sejm
Spain	<ul style="list-style-type: none"> • Rules of Procedure of the Congress and of the Senate • Institutional Act on electoral regulation • Joint resolution of the Congress and the Senate regarding the registration of interests, 1995 • Penal Code • Act on conflicts of interest by members of the government and high-ranking officials of the state administration • 2009 Joint resolution of the Congress and the Senate on the registration of interests 	<ul style="list-style-type: none"> • Committee on the Status of Deputies • Committee on Incompatibilities • Specialised anti-fraud and anti-corruption units within the State Legal Department • Special Prosecutor for financial offences (bribery) 	<ul style="list-style-type: none"> • Freedom of speech guaranteed • Incompatibility with other functions • Abusing MP status for private activities prohibited • Declaration of financial and non-financial interests and of property • Respect for the rule of law

Country	Legal basis	Regulatory body	Principles
Sweden	<ul style="list-style-type: none"> • No Code of Conduct in the strict sense • Act on the registration of MPs' commitments and financial interests 	<ul style="list-style-type: none"> • No dedicated regulatory body 	<ul style="list-style-type: none"> • Promotion of democratic values, fundamental freedoms and rule of law • Non-discrimination • Freedom of speech guaranteed • Obligation to declare contractual and financial interests • MPs' participation in debates in which they have a personal interest is prohibited

This section provides more information on selected Parliaments and their attempts (or lack of) at regulating the conduct of Members.

Australia

Attempts to introduce a code of conduct for parliamentarians have been the subject of much debate in the Australian parliament for over 30 years. In 2008 both the Committee for Privileges and Members' Interests and the Speaker called for the topic to be revisited. The Committee Chair subsequently called for any Code to be "broad in nature and to reflect key principles and values as a guide to conduct, rather than being a detailed, prescriptive code"⁷.

To date, no Code of Conduct has been adopted.

France

Ethical principles and rules of conduct are a recent development within the French Parliament. What rules existed focused on legal prohibitions, such as a ban on Members exploiting their position to promote a financial, industrial or commercial undertaking and the ban on Members receiving France's highest decorative honours.

Code of Conduct

The Assembly adopted a Code of Conduct in April 2011 and appointed a Commissioner for Ethical Standards to enforce the Code. A model declaration of interests was also drafted.

The Code of Conduct comprises a preamble and six articles. It provides that:

...in all circumstances, members of the National Assembly must uphold the public interest for which they have responsibility; compliance with this principle is a precondition for ensuring citizens' confidence in the activities of their representatives in the National Assembly; they are called upon to uphold six principles:

Article 1 - The general interest: Members of the National Assembly must act in the sole interest of the nation and the citizens they represent, to the exclusion of any satisfaction of a private interest or acquisition of a financial or material benefit for themselves or their families;

Article 2 - Independence: Under no circumstances must members of the National Assembly find themselves in a situation of dependence upon a natural or legal person who could divert them from complying with their duties as set out in this Code;

Article 3 - Objectivity: Members of the National Assembly may not take action in a personal situation except in consideration solely of the rights and merits of the person in question;

Article 4 - Accountability: Members of the National Assembly shall be accountable for their decisions and actions to the citizens they represent. To this end, they must act in a transparent manner in the exercise of their duties;

Article 5 - Integrity: Members of the National Assembly have a duty to disclose any personal interest that could interfere with their public activity and take all steps to resolve any such conflict of interest for the sole benefit of the general interest;

Article 6 - Exemplarity: All members of the National Assembly shall, in the exercise of their office, promote the principles set out in this Code.

Canada

In 2004, the House of Commons adopted the Conflict of Interest Code for Members of the House of Commons to guide Members in the ethical discharge of their duties. The Code also applies to Ministers, Ministers of State and Parliamentary Secretaries when they are acting as Members of the House and not as public office holders. It sets down what constitutes private interests, potential conflicts of interest and disclosure requirements for both Members and their families. It also establishes the rules of conduct and procedures for resolving conflicts. The Code has four objectives:

- a. maintain and enhance public confidence and trust in the integrity of Members as well as the respect and confidence that society places in the House of Commons as an institution;
- b. demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case;
- c. provide greater certainty and guidance for Members in how to reconcile their private interests with their public duties and functions; and
- d. foster consensus among Members by establishing common standards and by providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan adviser⁸.

European Parliament

A Code of Conduct has been in place for Members of the European Parliament since 2012, replacing the previous Rules of Procedure. The Code places obligations on MEPs to declare financial interests and to obtain clearance for any activities with potential to cause a conflict of interest. The introduction of the new Code followed the 'cash for amendments' scandal of 2011.

The Code obliges Members to:

Act with 'disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament's reputation'; and

'act solely in the public interest and refrain from obtaining or seeking to obtain any direct or indirect financial benefit or other reward'.

In addition, MEPs shall not:

- a. enter into any agreement to act or vote in the interest of any other legal or natural person that would compromise their voting freedom, as enshrined in Article 6 of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage and Article 2 of the Statute for Members of the European Parliament,
- b. solicit, accept or receive any direct or indirect financial benefit or other reward in exchange for influencing, or voting on, legislation, motions for a resolution, written declarations or questions tabled in Parliament or any of its committees, and shall consciously seek to avoid any situation which might imply bribery or corruption.

The Code goes on to define conflicts of interest and provides more information on declarations of financial interests by Members, gifts and hospitality and the procedure to be followed for investigating alleged breaches of the Code.

United States – House of Representatives

The Constitution of the United States provides each House of Congress with the sole authority to establish rules, judge membership requirements, and punish and expel Members. From 1789 to 1967, the House of Representatives dealt with disciplinary action against Members on a case-by-case basis, usually by way of ad-hoc committees which would investigate alleged cases of wrongdoing. Scandals in the 1960s prompted the creation of permanent ethics committee and the writing of a Code of Conduct for Members, officers, and staff of the House. In 1967, the House first established a permanent ethics committee, the Committee on Standards of Official Conduct, which was renamed the Committee on Ethics in 2011⁹.

The Committee is the only House Committee to contain equal numbers of Democrats and Republicans. It has a staff of 24, many of whom serve as Counsel to the Committee¹⁰.

In 2008 the House created the Office of Congressional Ethics (OCE) to review allegations of impropriety by Members, officers, and employees of the House and, when appropriate, to refer “findings of fact” to the Committee on Standards of Official Conduct. The OCE board of directors comprises six board members and two alternates. Current Members of the House, federal employees, and lobbyists are not eligible to serve on the board¹¹.

The OCE has been reauthorized at the beginning of each subsequent Congress. The Senate has not established a comparable office.

The Code of Official Conduct applies to Members of the House of Representatives. It is a relatively brief document, but is supported by the very detailed ‘House Ethics Manual¹²’ which provides guidance for Members on complying with the rules. The first two rules of the Code are:

1. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.

9 Congressional Research Service *House Committee on Ethics: A brief history of its evolution and jurisdiction*, 2011 <http://ethics.house.gov/sites/ethics.house.gov/files/HouseCommitteeEthics3%202011%20Straus.pdf>

10 Committee staff: <http://ethics.house.gov/committee-staff>

11 Congressional Research Service *House Committee on Ethics: A brief history of its evolution and jurisdiction*, 2011 <http://ethics.house.gov/sites/ethics.house.gov/files/HouseCommitteeEthics3%202011%20Straus.pdf>

12 House Ethics Manual: http://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf

2. A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof¹³.

The remaining rules deal with financial disclosure and receipt of gifts and hospitality, official travel, treatment of classified documents etc.

Complaints alleging misconduct or House rules violations by House Members or staff can only be filed with the Committee on Ethics by a Member of the House. Alternatively, complaints can be filed by a person who is not a Member, but must be accompanied by written certification by a Member that the information is “submitted in good faith and warrants the review and consideration of the committee.”

Prior to 1997, members of the public (under certain conditions) as well as Members of the House could file a complaint against a Member, officer, or employee of the House. In September 1997, the House amended the rule to prohibit complaints filed by non-Members.

Discipline and sanctions

There is no precise description in the Rules of the House of Representatives of the specific types of misconduct or ethical improprieties which might subject a Member to the various potential disciplines. The Rules adopted by the House Committee on Ethics provide simply that:

With respect to the sanctions that the Committee may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member or dismissal of an officer or employee is appropriate for the most serious violations. A recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit; and a recommendation of a denial or limitation of a right, power, privilege or immunity of a Member is appropriate when the violation bears upon the exercise of holding such a right, power, privilege or immunity¹⁴.

The House can discipline its Members for violations of statutory law, including crimes; for violations of internal congressional rules; or for any conduct which the House of Representatives finds has discredited the institution. Each house of Congress has disciplined its Members for conduct which has not necessarily violated any specific rule or law, but which was found to breach its privileges, demonstrate contempt for the institution, or which was found to discredit the House or Senate¹⁵.

4 Contempt of Parliament

The Joint Committee on Parliamentary Privilege reported in 1999 that “Besides the areas in which the House claims a specific privilege—in particular, freedom of speech and freedom from civil arrest—it also claims a jurisdiction in contempt, against those who by their actions interfere improperly with the discharge of its functions¹⁶.

The report then goes on to cite Erskine May’s definition of 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 results¹⁷.

¹³ <http://ethics.house.gov/publication/code-official-conduct>

¹⁴ House Committee on Ethics, Rule 24(g)

¹⁵ Congressional Research Service Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives, 2013: <http://www.fas.org/sgp/crs/misc/RL31382.pdf>

¹⁶ Joint Committee on Parliamentary Privilege, First Report, 1999
<http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4303.htm>

¹⁷ Erskine May p251

Addressing parliament's disciplinary and penal powers in matters of privilege or contempt, the Joint Committee report stated that these:

...are part of the control exercised by Parliament over parliamentary affairs. Parliament has long held these powers, over non-members as well as Members. Most institutions exercise a degree of discipline over their members. So long as the disciplinary offences and the punishments are reasonable, and the procedures are fair, this is unexceptionable.

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 in response.

Such interference, whether by Members or non-members, is known as 'contempt of Parliament'. Violations of Members' rights and privileges are also known as 'breaches of privilege'. In this report we use the expression 'contempt of Parliament', as this focuses attention on the underlying mischief: interfering with Parliament in carrying out its functions¹⁸.

Addressing the issue of contempt further, the Joint Committee report goes on to state that:

Contempts comprise any conduct (including words) which improperly interferes, or is intended or likely improperly to 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 closed¹⁹.

The Joint Committee report also provided the following comprehensive, though not definitive, list of types of contempt:

- 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
- 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

18 Joint Committee on Parliamentary Privilege, First Report, 1999
<http://www.parliament.the-stationery-office.co.uk/pa/jt199899/jtselect/jtpriv/43/4303.htm>

19 As above

- 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 committee²⁰

5 Developments within the last five years – Members' Interests

House of Commons

The previous Commissioner recommended in his final annual report (2011-12) several changes to the way in which Members' Interests were recorded:

- reduce the number of registration categories, from 12 to 10 (with one rather than three employment categories);
- rationalise the thresholds in the registration categories to make them simpler and more logical, and express them as rounded cash sums rather than proportions of Members' salary;
- increase the threshold for registering employment payments to £100, but halve the threshold for gifts, benefits and hospitality to £300;
- require all Members to register in a new category the details of any family members involved in public sector lobbying;
- tighten the lobbying rules so that Members receiving outside payment may not initiate parliamentary proceedings or approach Ministers, other Members or public officials in the interests of those from whom they receive such reward or consideration; while continuing to allow Members to take part in (but not initiate) such proceedings and meetings as long as they do not act for the exclusive benefit of those paying them;
- impose restrictions on parliamentary lobbying by former Members by extending the lobbying rules to them for two years in respect of approaches to Ministers, other Members or public officials; and requiring former Members to register for two years any occupation or employment which involves them or their employer in contact with Ministers, other Members or public officials²¹

The Committee on Standards and Privileges accepted most of these recommendations, but to date they have not reached the floor of the House.

Scottish Parliament

In 2010 the Standards, Procedures and Public Appointments Committee undertook an inquiry into possible changes to the Schedule to the Interests of Members of the Scottish Parliament Act 2006 and Section 2 of the Code of Conduct. It proposed changing the number of categories of registrable interest from 8 to 5 and clarifying the definitions of these 5 categories, for example to amend the definition of remuneration so that members are no longer required to register certain minor interests; remove Electoral Expenses category, since the interests are already captured in members' returns to the Electoral Commission; and to fix the registration threshold for gifts at the start of a session rather than raising it whenever members' salaries increase.

20 <http://www.publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4302.htm>

21 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomstan/317/317.pdf>

These changes were agreed by the Parliament in January 2011 and came into effect from the start of the subsequent parliamentary session²².

Members' Interests Bill

In April 2013 the Standards, Procedures and Public Appointments Committee launched a consultation on a new Members' Interest Bill. The impetus for this was the passage of the Scotland Act 2012, which gave the Scottish Parliament the power to consider fully the Members' Interest regime. Following the consultation the Committee has agreed not to make any changes to the existing criminal offences for failure to register or declare financial interests. The proposed bill will seek to:

- expand the Parliamentary sanctions available to the Parliament for breaches of the members' interests requirements, including for paid advocacy;
- extend the scope of the criminal offence of paid advocacy; and
- improve the transparency and accessibility of information on MSPs' significant financial interests by requiring certain political activities, currently reported to the Electoral Commission, to be registered with the Scottish Parliament.

The Committee is currently developing the detail of the proposals to inform drafting instructions for the bill²³.

National Assembly for Wales

The last major revision to the guidance on registering Members' Interests was published in 2006.

6 Conclusion

The Code of Conduct for Members of the Northern Ireland Assembly and the accompanying guidance is comprehensive when compared to other Codes. There are broad similarities across Codes in relation to freedom of speech, transparency, openness and financial interests. The majority of Codes of Conduct are primarily concerned with the declaration and registration of financial interests and conflicts of interests that could prevent elected representatives from performing their duties effectively.

This paper highlighted some examples of provisions from other codes that are currently absent or not addressed to the same extent in the Northern Ireland Assembly's Code, although provision may exist in law or in other guidelines issued by the Assembly.

The research also addressed the issue of 'contempt'. Contempt in a political context is most closely associated the UK Parliament and forms part of the rights and privileges enjoyed by that institution. It is not replicated in the devolved institutions. The Northern Ireland Assembly, Scottish Parliament and National Assembly for Wales are creatures of statute and have more limited privileges. In the context of unauthorised disclosure of documents, this can be addressed through the Code of Conduct – the Code in the National Assembly for Wales specifically prohibits the unauthorised disclosure of Assembly documents.

There have been some developments in relation to Members' Interests in recent years in UK legislatures. Perhaps the most interesting of these is the current consultation on a new Members' Interests Bill at the Scottish Parliament. If passed, this legislation will expand the sanctions available to the Parliament for breaches of the registration requirements and enhance the transparency and accessibility of information on MSPs financial interests.

22 <http://archive.scottish.parliament.uk/s3/committees/stanproc/reports-11/stpr11-03.htm>

23 <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/62116.aspx>



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

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NIAR 358-14

Ray McCaffrey

Rules on the receipt of gifts and hospitality

Overview of the paper

What does the paper do?

The paper sets out the position on the receipt of gifts and hospitality in other legislatures, the Judiciary and the Civil Service.

What is the background to the paper?

The Assembly's Committee on Standards and Privileges commissioned this paper to inform its review of the Assembly's Code of Conduct. As part of this review, the Committee is considering issues raised in a report by the Group of States Against Corruption (GRECO).

What is GRECO and what does it do?

GRECO was established in 1999 by the Council of Europe to monitor States' compliance with the organisation's anti-corruption standards. As part of its work, it carries out evaluations via questionnaires and visits to countries. It then drafts reports which include recommendations to those countries to improve levels of compliance with the particular areas under consideration. Its latest evaluation explored the prevention of corruption in respect of Members of Parliament, judges and prosecutors. The UK Parliament and the devolved institutions were included as part of this work.

What did the research find?

All of the organisations/institutions that the research was asked to consider place restrictions and provide at least some guidance on the acceptance of gifts and hospitality by office holders. The guidance in some legislatures is more detailed than in others, and the reporting thresholds are set at different levels, but there is a clear desire to ensure that the receipt of gifts and hospitality is monitored to ensure that it does not influence, or be seen to influence, the work of legislators, Ministers, civil servants and the judiciary.

Are Ministers in the Northern Ireland Executive bound by rules on gifts and hospitality?

The Northern Ireland Ministerial Code states that Ministers must ensure they comply with any rules on the acceptance of gifts and hospitality that may be offered. They are also subject to the Assembly's rules on registration, declaration and lobbying in the same way as other Members. The research could not find any publicly available document that elaborates on the rules applicable to Ministers i.e. any thresholds. Gifts and hospitality registers are publicly available for senior management of the Civil Service, up to and including Permanent Secretaries.

Have the UK legislatures made any changes in light of the GRECO report?

The House of Commons and House of Lords have taken steps to reduce the threshold value for acceptance of gifts and provide clearer guidance for Members. The Lords Committee on Privileges and Conduct has produced two reports in 2014 that proposed changes to certain aspects of the Code of Conduct in relation to, among other things, the receipt of gifts. The reports were approved by the House.

The Commons Committee on Standards published a report in December 2012 with a similar aim to that of the Lords. The report has yet to be debated.

The Scottish Parliament's Standards, Procedures and Public Appointments Committee is currently reviewing the Interests of Members of the Scottish Parliament Act 2006. It will take into account GRECO's recommendations as part of this review.

A July 2013 paper for the National Assembly for Wales' Standards of Conduct Committee addressed the GRECO report. It set out the Assembly's position on gifts and hospitality. Furthermore, the Assembly's Standards Commissioner is undertaking a review of the Code of Conduct and is currently focusing on the registration and declaration of interests guidance for Assembly Members.

What is the situation outside the UK? Are restrictions in place elsewhere?

Dail Eireann, the United States Congress and the General Assembly of Maryland all have in place rules and guidance relating to the acceptance of gifts and hospitality. The House of Representatives and the US Senate have detailed and extensive guidance for its legislators that is not replicated in the other legislatures in terms of its level of detail.

The European Parliament has only relatively recently agreed a Code of Conduct. Subsequent 'Implementing Measures' set the threshold at which gifts must be declared at EUR150.

1 Introduction

This research paper was requested by the Committee on Standards and Privileges as part of its review of the Northern Ireland Assembly's Code of Conduct. The Committee asked for information on the following issues:

- The general ban in relation to gifts and applicable to UK Ministers, civil servants and judges;
- Any rules or guidance for Northern Ireland Executive Ministers in relation to the receipt and recording of details of gifts and hospitality;
- An update on the position at the House of Commons, House of Lords, Scottish Parliament and National Assembly for Wales in relation to the receipt of gifts by Members; and
- The position in Dail Eireann, the US Congress, the European Parliament and the General Assembly of Maryland in relation to the receipt of gifts and hospitality by Members.

2 The general ban in relation to gifts and applicable to UK Ministers, civil servants and judges

UK Ministers

The Ministerial Code contains guidance to Ministers serving in the UK Government on the acceptance of gifts and hospitality¹. The relevant section of the Code is reproduced below:

1 UK Ministerial Code: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61402/ministerial-code-may-2010.pdf accessed 21 May 2014

- It is a well-established and recognised rule that no Minister should accept gifts, hospitality or services from anyone which would, or might appear to, place him or her under an obligation. The same principle applies if gifts etc. are offered to a member of their family.
- This is primarily a matter which must be left to the good sense of Ministers. But any Minister in doubt or difficulty over this should seek the advice of their Permanent Secretary and the independent adviser on Ministers' interests where appropriate.
- Gifts given to Ministers in their Ministerial capacity become the property of the Government and do not need to be declared in the Register of Members' or Peers' Interests. Gifts of small value, currently this is set at £140, may be retained by the recipient. Gifts of a higher value should be handed over to the department for disposal unless the recipient wishes to purchase the gift abated by £140. There is usually no customs duty or import VAT payable on the importation of official gifts received overseas. HMRC can advise on any cases of doubt. If a Minister wishes to retain a gift he or she will be liable for any tax it may attract. Departments will publish, at least quarterly, details of gifts received and given by Ministers valued at more than £140.
- Gifts given to Ministers as constituency MPs or members of a political Party fall within the rules relating to the Registers of Members' and Lords' Interests.
- If a Minister accepts hospitality in a Ministerial capacity, the Minister should notify their Permanent Secretary. Departments will publish, at least quarterly, details of hospitality received by Ministers in a Ministerial capacity. Hospitality accepted as an MP or Peer should be declared in the Register of Members' or Lords' Interests respectively. Registration of hospitality would normally be required for hospitality around £650 in value for the Commons and £500 for the Lords.

Details of the gifts and hospitality received by Ministers is published on a quarterly basis on the website of the Cabinet Office².

Civil Servants

The Constitutional Reform and Governance Act 2010 placed the Civil Service on a statutory footing. The Civil Service Code, published in 2010, sets out the values and expected of civil servants. Under the heading 'Standards of behaviour', the Code states:

You (the civil servant) must not: accept gifts or hospitality or receive other benefits from anyone which might be reasonably be seen to compromise your personal judgement or integrity³.

There is also additional guidance on civil servants receiving hospitality that provides more information on the acceptance of hospitality:

The following should be considered before accepting hospitality:

Purpose

- Accepting hospitality should be in the interests of Departments and help further Government objectives

Proportionality

- Any hospitality accepted should not be over-frequent or over-generous. Accepting hospitality frequently from the same organisation could lead to a perception that the work of the department is being influenced by the objectives of a single organisation
- On the same basis, any hospitality accepted should not seem lavish or disproportionate to the nature of the relationship you have with the provider

² See for example: <https://www.gov.uk/government/publications/co-ministerial-gifts-hospitality-travel-and-meetings-october-to-december-2013>

³ Civil Service Code: <http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>

Conflict of interest

- There are strict rules in place for those responsible for procurement or management of contracts, but even if you are not directly involved in financial, contractual or regulatory matters connected to the organisation, it is essential to consider the relationship has with Departments
- You should consider whether the organisation is bidding for work or grants from Departments, or if it is under investigation or had criticism
- You should also consider whether it is appropriate to accept hospitality from a source if it is also a taxpayer-funded organisation

Further guidance on recording hospitality

Recording hospitality

Staff, including those on short term or agency contracts, should record all instances of hospitality accepted from organisations outside of Government. This includes any instance involving a personal friend where the purpose of the hospitality was to cover business and/or was paid for by the individual's company expense account. When recording instances of hospitality, staff should also record whether they were accompanied by any guests at the expense of the source of the hospitality. There is no need to record minor refreshments or sandwich lunches.

In general, it is not necessary to record hospitality received from others within HM Government or the Devolved Administrations, the Palace, nondepartmental public bodies and overseas governments. Hospitality received from universities, local authorities and police forces should be declared. More detailed guidance will be set out in departmental staff handbooks.

Northern Ireland Civil Service

Guidance issued by the Department of Finance and Personnel and applicable to all members of the Civil Service sets out the standards expected of civil servants:

The general principle is that all gifts offered should be refused. However seasonal, promotional or trivial gifts (such as calendars, diaries, pens etc), which bear Company names and/or logos of the provider of the gift and have a value of less than £50, may be accepted by individuals without the need for these to be reported or approved in advance. A token gift may be accepted if it is presented by an organisation, however, these and the acceptance of any other gifts must have been approved by management (see paragraph 2.17) and must be declared by the member of staff in their Departmental/Agency register.

More expensive or substantial items, valued at £50 or more and gifts of lottery tickets, cash, gift vouchers or gift cheques, cannot on any account be accepted. All gifts offered (apart from those which are trivial or inexpensive), even if they are declined/returned need to be recorded in the register⁵.

The Judiciary in England and Wales

The Guide to Judicial Conduct provides guidance to members of the Judiciary in England and Wales⁶. It covers a range of topics including independence, impartiality and integrity. Within this, it addresses the receipt of gifts and hospitality and distinguishes between a judge in his or her role as a member of the judiciary and activities that take place outside the court:

4 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61190/guide-hospitality.pdf

5 Department of Finance and Personnel, Acceptance of gifts and hospitality: http://www.dfpni.gov.uk/index/finance/afmd/afmd-key-guidance/afmd-daos/daodfp1006_revised_sept_09-2.pdf

6 Guide to Judicial Conduct: http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/judicial_conduct_2013.pdf

8.8 Gifts, Hospitality and Social Activities

8.8.1 Gifts and Hospitality. Caution should be exercised when considering whether to accept any gift or hospitality that may be offered. It is necessary in this context to distinguish between accepting gifts and hospitality unrelated to judicial office, for example from family and close friends, and gifts and hospitality which in any way relate, or might appear to relate, to judicial office. In relation to the latter category, judges should be on their guard against any action which could be seen to undermine their impartiality. Judges should be wary, therefore, of accepting any gift or hospitality which might appear to relate in some way to their judicial office and might be construed as an attempt to attract judicial goodwill or favour.

8.8.2 The acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances. For example a judge who makes a speech or participates in some public or private function should feel free to accept a small token of appreciation. It may include a contribution to charity in the manner explained in the Memorandum on Conditions of Appointment and Terms of Service (October 2000).

“The Lord Chancellor regards it as inappropriate for a judge to receive a fee personally for giving a lecture.

However, where a judge gives a lecture for a commercial undertaking there is no objection, if he considers that it would be appropriate, to his requesting that any fee otherwise payable be paid to a charity of his choice. To avoid any liability for tax, a judge should try to ensure that payment is made direct to the charity. Where this is not possible, e.g. accounting reasons, and the charity would otherwise lose out, a judge may accept the payment himself, provided that he is prepared to pay the tax on that sum and make the payment directly to the charity himself. There is no objection to a judge accepting reimbursement of the cost of any necessary travel and accommodation necessitated by attending a suitable lecture, conference or seminar.”

8.8.3 By way of further example, the acceptance of invitations to lunches and dinners by legal and other professional and public bodies or officials, where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation, is entirely acceptable.

8.8.4 Caution should be exercised when invited to take part in what may be legitimate marketing or promotional activities, for example by barristers’ chambers or solicitors’ firms, or professional associations, where the object of judicial participation may be perceived to be the impressing of clients or potential clients.

8.8.5 It is also axiomatic that judges must not exploit the status and prestige of judicial office to obtain personal favours or benefits.

8.8.6 Where a judge is in doubt as to the propriety of accepting any gift or hospitality he or she should seek the advice of the head of the appropriate jurisdiction.

The Bangalore Principles

The Bangalore Principles of Judicial Conduct were implemented in 2001. They originated from a United Nations initiative with the participation of the UN Special Rapporteur on the Independence of Judges and Lawyers. A group of senior judges from the Commonwealth countries prepared a draft code of judicial conduct which were discussed and revised before being endorsed at the 59th session of the UN Human Rights Commission at Geneva in April 2003⁷. The principles are:

1. Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects
2. Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made

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Judiciary of England and Wales, *Guide to Judicial Conduct*, March 2013: http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/judicial_conduct_2013.pdf

3. Integrity is essential to the proper discharge of the judicial office
4. Propriety, and the appearance of propriety, are essential to the performance of all of the activities of the judge
5. Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office
6. Competence and diligence are prerequisites to the due performance of judicial office

Propriety

Section 4 of the Bangalore Principles provides guidance on propriety. Paragraph 14 states:

- (14) A judge and members of the judge's family⁸, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- (15) A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- (16) Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

In Northern Ireland there exists A Statement of Ethics For the Judiciary in Northern Ireland⁹. This essentially replicates the Bangalore Principles.

3 Any rules or guidance for Northern Ireland Executive Ministers in relation to the receipt and recording of details of gifts and hospitality

Ministers in the Northern Ireland Executive are bound by the Ministerial Code, which has statutory footing. The Code addresses the issue of the receipt of gifts and hospitality at paragraph 1.5(viii):

1.5 The Ministerial Code of Conduct is as follows. Ministers must at all times:

- (i) observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds;
- (ii) be accountable to users of services, the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met;
- (iii) ensure that all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that departments and their staff conduct their dealings with the public in an open and responsible way;

⁸ "Judge's family" is defined as spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household. Judge's spouse is further defined as a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

⁹ A Statement of Ethics for the Judiciary in Northern Ireland: <https://www.courtsni.gov.uk/SiteCollectionDocuments/Northern%20Ireland%20Courts%20Gallery/About%20Us/Statement%20of%20Ethics%20revised%205%20August%202011.pdf>

- (iv) follow the seven principles of public life set out by the Committee on Standards in Public Life;
- (v) comply with this Code and with rules relating to the use of public funds;
- (vi) operate in a way conducive to promoting good community relations and equality of treatment;
- (vii) not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their private interests;
- (viii) ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered; and**
- (ix) declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or indirect pecuniary interests which members of the public might reasonably think could influence their judgement are listed in the Register of Interests.

The research could not find any evidence of publicly available rules that apply to Ministers.

Ministers are also subject to the Assembly's Code of Conduct:

Northern Ireland Ministers and junior Ministers are subject to the rules of registration, declaration and lobbying in the same way as other Members. The requirements of the Assembly's Code of Conduct also continue to apply to the conduct of Ministers¹⁰.

However, the Assembly will not investigate breaches of the Ministerial Code of Conduct or in circumstances where a breach of the Assembly's Code "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"¹¹.

4 An update on the position at the House of Commons, House of Lords, Scottish Parliament and National Assembly for Wales in relation to the receipt of gifts by Members

House of Commons

What did GRECO say?

GRECO recommends (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts.

What is the current position?

The Code of Conduct together with the Guide to the Rules sets out categories of registerable interests that Members must comply with. Category 5 lists Gifts, benefits and hospitality as items that must be registered:

¹⁰ <http://www.niassembly.gov.uk/your-mlas/code-of-conduct/>

¹¹ As above

Category 5

Gifts, benefits and hospitality (UK): Any gift to the Member or the Member's spouse or partner, or any material benefit, of a value greater than one per cent of the current parliamentary salary from any company organisation or person within the UK which in any way relates to membership of the House or to a Member's political activity.

Therefore any gift, or other benefit received by Members, must be registered if it relates to membership of the House and which is given free or at a cost below that generally available to members of the public, if its value exceeds 1% of the parliamentary salary. Furthermore, Members must register any gift or benefit in kind if it is received by a company in which the Member or his or her spouse/partner has a controlling interest.

The cumulative value of gifts and benefits received from a single source in the course of a calendar year have to be registered, even if each single gift or benefit is of a lesser value.

The guide goes on to outline other instances where gifts and benefits should be registered:

- If they are received by another person on behalf a Member
- If they are received from another MP

Gifts and benefits received in a personal capacity do not have to be registered, although the Member must use their own judgement to ensure that any gifts or benefits could not be construed as being linked to their role as an MP or to political activity.

What has changed since the GRECO recommendations?

The Committee on Standards published a report *Proposed Revisions to the Guide to the Rules* relating to the conduct of Members in December 2012¹², based on proposals from the Parliamentary Commissioner for Standards. The Committee's report took account of what was then the draft GRECO report when making its recommendations.

In relation to gifts, the revised Guide "clarifies and harmonises the rules in relation to registering gifts, benefits and hospitality given to third parties in relation to a Member's membership of the House or a Member's political activities". It would lower the thresholds for registering gifts by over a half. The new requirement would be to register gifts of over £300 received from a single source in a single year. The definition of gifts is wide, and includes hospitality and material benefits.

The report has not yet been debated.

House of Lords

What did GRECO say?

GRECO recommends (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts.

What has changed since the GRECO report was published?

In recent months the House of Lords has approved two reports from the Privileges and Conduct Committee which have proposed amendments to the Code of Conduct. The 13th

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Standards and Privileges Committee - Third Report *Proposed Revisions to the Guide to the Rules relating to the conduct of Members* <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstnprv/636/63602.htm> December 2012

report of the Committee, *Amendments to the Code of Conduct and the Guide to the Code*¹³, directly addressed the issue of gifts:

The Committee on Standards in Public Life and GRECO both invite the House to consider lowering the threshold for registering gifts. We see merit in this suggestion and we recommend that the threshold for the registration of gifts, benefits and hospitality to Members from third parties should be reduced from £500 to £140. This would bring it into line with the threshold in the Ministerial Code¹⁴.

That report also proposed a revision to the guide to the Code of Conduct to provide clearer guidance to Members on lobbyists:

“Dealing with lobbyists

30A The Committee on Standards in Public Life has concluded that lobbying has an important part to play in securing “the democratic right to make representations to government and to have access to the policymaking process [which] is fundamental to the proper conduct of public life and the development of sound policy.”¹⁵ Many organisations play an important role in informing members of the House of Lords. However, some lobbying can give rise to a suspicion of improper influence over Parliament. Members must have regard to such public perceptions. Members’ dealings with lobbyists should always be governed by the principles of integrity and openness.

30B Members should take particular care not to give the impression of giving greater weight to representations because they come from paid lobbyists; representations should be given such weight as they deserve based on their intrinsic merit. Members must in their dealings with lobbyists observe the prohibitions on paid advocacy and on the provision of parliamentary advice or services for payment or other reward. Members should decline all but the most insignificant or incidental hospitality, benefit or gift offered by a lobbyist.¹⁶”

The 15th report of the Committee, published in May 2014, addressed GRECO’s recommendation that a Code of Conduct for Members’ staff should be drafted. Within the Code drafted by the Committee, it stated that:

any gift (e.g. jewellery) or benefit (e.g. hospitality, services or facilities) received in the course of a calendar year, if the value of the gift or benefit exceeds £140 and if it relates to or arises from the individual’s work in Parliament (though excluding gifts or benefits from the member who sponsors the individual)¹⁷.

Scottish Parliament

What did GRECO say?

iii. (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts. The devolved institutions of Scotland,

13 House of Lords Committee for Privileges and Conduct, 13th Report of session 2013-14: *Amendments to the Code of Conduct and the Guide to the Code*, January 2014: <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldpriv/123/123.pdf>

14 As above

15 As above

16 House of Lords Committee for Privileges and Conduct, 15th Report of session 2013-14: *Further amendments to the Code of Conduct and the Guide to the Code of Conduct*, May 2014: <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldpriv/182/182.pdf>

17 Code of Conduct for Members of the Scottish Parliament: http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/CodeofConduct-5thEdMay2014_3rdRevision.pdf

Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation.

What is the current position?

Under the categories of registerable interest in the Scottish Parliament's Code of Conduct, it states:

Any gift, the value of which on the date the gift is made, exceeds 1% of a member's salary at the beginning of the current parliamentary session (rounded down to the nearest £10 – currently £570), must be registered where the gift also meets the prejudice test in section 3(2) of the Act. Gifts which exceed the threshold but do not meet the prejudice test do not need to be registered.

This category applies to a gift of any tangible item such as glassware or jewellery, to gifts of money or residential property and to other benefits such as hospitality, or tickets to sporting and cultural events. The category also covers benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

The category covers gifts received directly by a member and gifts received by any company in which a member has a controlling interest, or by a partnership of which the member is a partner. It covers both gifts received in a member's capacity as an MSP and gifts received in a private capacity. However, it does not cover gifts to spouses and cohabitees. It is also expected that most gifts from friends and family will not meet the prejudice test and will therefore not require to be registered.

Sections 5.1.6 and 7.2.6 of the Scottish Parliament's Code of Conduct state:

5.1.6 The Section of the Code on General Conduct (Section 7) sets out the standards expected in relation to acceptance of hospitality, gifts and benefits. In addition to this and the statutory provisions in the Act, members:

- should not accept any paid work which would involve them lobbying on behalf of any person or organisation or any clients of a person or organisation;
- should not accept any paid work to provide services as a Parliamentary strategist, adviser or consultant, for example, advising on Parliamentary affairs or on how to influence the Parliament and its members. (This does not prohibit a member from being remunerated for activity, which may arise because of, or relate to, membership of the Parliament, such as journalism or broadcasting, involving political comment or involvement in representative or presentational work, such as participation in delegations, conferences or other events.);
- should decline all but the most insignificant or incidental hospitality, benefit or gift if the member is aware that it is offered by a commercial lobbyist. Section 7 of the Code on General Conduct states that a member should not accept any offer that might reasonably be thought to influence the member's judgement in carrying out Parliamentary duties. Since the basis on which many people believe that commercial lobbyists sell their services is by claiming to provide clients with influence over decision-makers, it might reasonably be thought that acceptance of a benefit of any significance from such a source could influence a member's judgement in carrying out Parliamentary duties. (If a member only becomes aware of its source after receiving hospitality, a benefit or gift, then the member should consider reimbursing the costs of any hospitality or benefit or returning any gift.)

7.2.6 Over and above compliance with the statutory provisions, members should treat with caution any offer of hospitality, a gift, a favour or benefit. Members are not prohibited from accepting reasonable hospitality or modest tokens of goodwill, particularly where refusal could cause offence. But a member should not accept any offer that might reasonably be thought to influence the member's judgement in carrying out Parliamentary duties. The value of any benefit, its connection to a member's Parliamentary duties, its source, the

transparency of its receipt and the frequency of receipt of similar offers may all be factors which could be relevant to this judgement. (Members should also have regard to the standards in relation to acceptance of hospitality and gifts set out in the section of the Code on lobbying and access to MSPs at paragraph 5.1.6, as well as the requirement to register gifts set out at section 2.3 of the Code.)¹⁸

What has changed since the GRECO recommendations?

The Standards, Procedures and Public Appointments Committee has completed a consultation on a new Bill which would amend the Interests of Members of the Scottish Parliament Act 2006. The Committee intends to consider the recommendations in the report during the course of its consideration of its Members' Interests Bill¹⁹.

National Assembly for Wales

What did Greco say?

iii. (i) providing clearer guidance for Members of the House of Commons and the House of Lords concerning the acceptance of gifts, and (ii) that consideration be paid to lowering the current thresholds for registering accepted gifts. The devolved institutions of Scotland, Wales and Northern Ireland should be invited similarly to take action in accordance with the recommendation.

What is the current position?

In July 2013 the Standards of Conduct Committee considered a paper on the GRECO report's comments on the devolved institutions, specifically the National Assembly of Wales. The paper set out the approach taken by the Assembly to registering gifts:

The guidance to Assembly Members on registering interests includes a section on registering gifts – category (iv). The Assembly does not take the same approach as the Commons, as every gift is considered separately against the threshold, even if received from the same source. The Standards of Conduct Committee decided in the past not to adopt this 'cumulative' approach to registering gifts. The guidance also asks Assembly Members to note that registration below the prescribed threshold could "lead to unfavourable comparisons being drawn between those who properly meet the requirements of the Act and standing orders and those who choose to exceed them."

Category (v) of the register also requires any remuneration or material benefit from a public or private company to be registered – and there is no threshold for this. Any gifts or hospitality which are not registrable under category (iv) above, but given by a company with contractual links with the Assembly, would need to be identified in this category.

The Welsh Ministerial Code discourages the acceptance of gifts by Welsh Ministers, requires that all gifts are notified to the Ministerial Services Division and that details of gifts over the value of £260 are published (consistent with the threshold for all Assembly Members). Any change to the conditions of the Welsh Ministerial Code is a matter for the First Minister²⁰.

Guidance on registering interests

The National Assembly for Wales has produced guidance on the registration, declaration and recording of Members' financial and other interests.

18 See point 2 of the Committee's Work Programme: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/58953.aspx>

19 <http://www.senedd.assemblywales.org/documents/s18930/SOC4-05-13-Paper%201%20-%20GRECO%20Recommendations.html?CT=2>

20 National Assembly for Wales Standards Commissioner: <http://standardscommissionerwales.org/>

Category 4: Gifts, hospitality, material benefits or advantage Gifts, hospitality, material benefits or advantage above a value specified in any resolution of the Assembly received by the Member or, to the Member's knowledge the Member's partner or any dependant child of the Member, from any company, organisation or person and relating to or arising out of membership of the Assembly.

The Assembly resolved on 10 May 2006 that the specified financial values above which gifts, hospitality and any other benefits must be registered/declared is 0.5 per cent of the basic gross annual Assembly salary for an Assembly Member.

Apart from gifts and hospitality, other material benefits or advantage might include relief from indebtedness, concessionary loans, provision of services, etc.

Any gift, or benefit, which in any way relates to membership of the Assembly and which is given gratis, or at a cost below that generally available to members of the public, should be registered/declared whenever the value of the gift or benefit is greater than the amount specified above. Any similar gift or benefit which is received by any company or organisation in which the Member or, to the Member's knowledge, the Member's partner or any dependant child of the Member, has a controlling interest should also be registered.

Gifts and material benefits in this category (and other categories) are exempt from registration/declaration if they do not relate in any way to membership of the Assembly. Consequently, gifts which are received by a Member on behalf of the Assembly as a whole do not need to be registered/declared provided they are handed over to the Assembly and a record is made of the Assembly's ownership of the gift. Whether this exemption applies in any particular case is in the first instance a matter for the individual Member to decide. If there is any doubt it should be registered.

What has changed since the GRECO recommendations?

The Standards Commissioner for National Assembly for Wales is currently undertaking a review of the Code of Conduct. The latest information from the Commissioner is that:

The Commissioner's review of the Code of Conduct for Members is continuing. He is currently focusing on reviewing the Registration and Declaration of Interests guidance for Assembly Members²¹.

5 The position in Dail Eireann, the US Congress, the European Parliament and the General Assembly of Maryland in relation to the receipt of gifts and hospitality by Members

Dail Eireann

The Code of Conduct for Members of Dail Eireann other than Office Holders restricts the receipt of gifts:

Paragraph 8 (i) Members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their duties.

8 (ii) Members may accept incidental gifts and hospitality²².

The accompanying guidelines for Members of Dail Eireann who are not Office Holders expands on the issue of gifts:

21 Standards in Public Office Commission: <http://www.sipo.gov.ie/en/Codes-of-Conduct/TDs/>

22 Guidelines for Members (of Dail Eireann) who are not Office Holders: <http://www.oireachtas.ie/parliament/media/committees/membersinterests/Final-guidelines-2014-for-circulation.pdf>

5. Gifts

You are required to disclose a gift, or gifts by the same person, given to you during the registration period concerned where the value, or the aggregate value respectively, exceeded EUR650.

“Gift”, for purposes of registration of interests excludes –

(a) a donation as defined by the Electoral Act 1997 (as amended)

(b) a gift given to you for purely personal reasons, by a relative or friend of yours, a relative or friend of your spouse or civil partner, relative or friend of your child (meaning a son or daughter of any age) or relative or friend of your spouse’s or civil partner’s child unless acceptance of the gift could have materially influenced you in the performance of your functions as a member

(c) any political allowances paid out under legislation

Gifts given to you by your political party are registrable where these are over and above the normal services and supports provided generally by the party to members²³.

United States Congress

House of Representatives

The House Gift Rule

The House gift rule provides that a Member, officer, employee may not knowingly accept any gift except as provided in the rule. The rule is comprehensive i.e. a House Member or staff person may not accept anything of value from anyone – whether in one’s personal life or one’s official life – unless acceptance is allowed under one of the rule’s provisions.

The rule includes one general provision on acceptable gifts, and 23 provisions that describe additional, specific kinds of gifts that may be accepted.

- The general gift rule provision states that a Member, officer, or employee may not accept a gift from a registered lobbyist, agent or a foreign principal, or private entity that retains or employs such individuals.
- The general provision goes on to state that a Member, officer, or employee may accept from any other source virtually any gift valued below \$50, with a limitation of less than \$100 in gifts from any single source in a calendar year. Gifts having a value of less than \$10 do not count toward the annual limit.
- The other 23 categories of acceptable gifts are descriptive categories, not tied to any specific dollar figure. Among those categories are, for example, international materials, commemorative items, and free attendance at certain kinds of events.

Gifts are defined in broad terms, for example a gratuity, favour, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred²⁴.

The House has also produced detailed and extensive guidance on the receipt of gifts which cannot be reproduced here²⁵.

23 House Gift Rule: <http://ethics.house.gov/gifts/house-gift-rule>

24 See Chapter 2 of the House Ethics Manual: http://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf

25 Us Senate Rules on Gifts: <http://www.ethics.senate.gov/public/index.cfm/gifts>

US Senate

The Senate rules on the acceptance of gifts and hospitality are in many ways similar to those of the House. A Member, officer or employee may accept a gift, other than cash or cash equivalent, if it is valued at less than \$50, provided that the source of the gift is not a registered lobbyist, foreign agent, or private entity that retains or employs such individuals. The cumulative value of gifts that can be accepted from any one source in a calendar year must be less than \$100, although generally gifts having a value of less than \$10 do not count towards the annual limit.

Gifts from lobbyists are prohibited, unless a specific exemption exists.

Gifts from relatives are permissible, no matter what their value is, as are gifts from friends, unless there is reason to believe that the gift was offered because of the Member's official position.

Gifts from colleagues are acceptable, but gifts offered to more senior members of staff from those of a lower grade are prohibited under federal law. The Senate Ethics Committee has ruled that gifts can be accepted among and between Members, officers or employees when such gifts are given voluntarily or on special occasions when gifts would usually be exchanged.

A Member, officer or employee can accept a gift of personal hospitality (including food, lodging or entertainment) provided by an individual, other than a lobbyist or foreign agent, at that person's residence.

The US Constitution prohibits government officials, including Members of Congress, from accepting any present of any kind from a foreign state or representative without the consent of Congress. Congress relaxed this to an extent via the Foreign Gifts and Donations Act (FDGA) which authorises acceptance of a gift of minimal value (currently no more than \$100, when given as a gift or souvenir. Gifts in excess of \$100 can be accepted, but not retained, when refusal would cause embarrassment, but such gifts are deemed to be accepted on behalf of the United States and must be handed over to the Secretary of the Senate within 60 days for disposal.

The FDGA allows acceptance of foreign travel and related expenses if the travel occurs entirely outside the United States²⁶.

As with the House, the Senate has produced a significant amount of guidance on the issue of gifts. The Senate Manual published in 2003²⁷ is the authority on this, but subsequent updates have also been produced²⁸.

General Assembly of Maryland

The 2014 Ethics Guide²⁹ sets out the position on the receipt of hospitality and gifts:

26 Senate Ethics Manual: http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=f2eb14e3-1123-48eb-9334-8c4717102a6e

27 See for example: <http://www.ethics.senate.gov/public/index.cfm/guidance?ID=4ec521aa-5a1b-4296-98b8-4c5a3bbcac19>

28 General Assembly of Maryland, 2014 Ethics Guide: <http://cdm266901.cdmhost.com/utills/getdownloaditem/collection/p266901coll7/id/4454/filename/4463.pdf/mapsto/pdf>

29 Implementing Measures for the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interests, April 2013: http://www.europarl.europa.eu/pdf/meps/926701_1_EN_IM_DEF.pdf

Acceptance and Prohibition of Gifts

A member of the General Assembly may not solicit any gift for personal use. Solicitations on behalf of charities, community groups, and other non-profit recipients are subject to restrictions that are discussed below.

Unless the gift is specifically exempted, a member may not knowingly accept a gift if the member knows or has reason to know that the gift is from:

- A regulated lobbyist (which, by law, includes the direct employer of a lobbyist);
- A person doing business or seeking to do business with the General Assembly; or
- A person who has a specific financial interest that may be affected, in a manner distinguishable from the general public, by an action of the General Assembly.

A member of the General Assembly may accept certain specifically exempted classes of gifts from any source, including lobbyists, so long as the gift would not impair the member's impartiality and independence of judgment. Even if exempted, however, a gift of "significant value" should not be accepted if it gives the appearance of impairing the legislator's impartiality and independence of judgment, or if the legislator believes it was designed to impair his or her impartiality and independence of judgment.

Disclosure of Gifts

Unless exempted from disclosure (such as with meals offered to all members of a legislative unit), a legislator must disclose a gift in excess of \$20 in value or a series of gifts from the same donor totalling \$100 or more during a calendar year. The nature of the gifts, their value (if known), and the donor's identity must be reported on the

legislator's annual financial disclosure statement, which must be filed by April 30 each year. A gift to a legislator's spouse or dependent child, made by a donor scrutinized under the Ethics Law, will generally be deemed a gift to the legislator.

There also exist classes of gift that a legislator can accept from any source. These include food and beverages, tickets and free admission to certain events, hospitality associated with conferences, ceremonial or insignificant gifts, gifts from government entities along with other exceptions.

However, even within these categories there are caveats and exemptions that the legislator must be aware of when deciding whether to accept the gift or hospitality. The full guidance on these issues has been reproduced at Appendix 1.

Ethics Opinion

The Joint Committee on Legislative Ethics published an Ethics Opinion (included within the 2014 Guide) which provides context to the rules. Below is a summary of the opinion's key points:

The Maryland Public Ethics Law places various restrictions on gifts offered to a Member of the General Assembly by a person whose interests may be directly affected by legislative action. The reason that some gifts are prohibited by Ethics Law is found in the statement of legislative intent...of the State Government Article, which states that the public's confidence and trust in the impartiality and independence of judgement of governmental officials "is eroded when the conduct of the State's business is subject to improper influence or even the appearance of improper influence"...

...Some situations are very clearly addressed by the law when it either bans or allows a specific class of gifts. In other cases, however, there are gaps or grey areas in the law. This Opinion is intended to expand upon the provisions of the gift law that are not sufficiently clear.

Members should note, however, that § 15-505(c)(1) absolutely prohibits a gift, even if it would otherwise be allowed under one of the statutory exceptions - if:

- (1) the gift would tend to impair the legislator's impartiality and independent judgment; or
- (2) as to a gift of significant value:
 - acceptance would give the appearance of impairing the legislator's impartiality and independent judgment; or
 - the legislator believes that the gift was given with the intent to impair his or her impartiality and independent judgment.

As with other aspects of the Ethics Law, members should consult with the General Assembly's Ethics Advisor if they have any questions about the acceptance or reporting of gifts.

...The Ethics Law is not intended to regulate every gift that a legislator may receive from any source. Instead, the law focuses on circumstances where the donor has a particular interest in legislative actions.

...Any individual or entity that is on the list of regulated lobbyists is explicitly subject to the gift prohibitions

European Parliament

In December 2011 the European Parliament approved a Code of Conduct for MEPs. The Code had been drafted following a Sunday Times undercover 'sting' in which four MEPs accepted payments for influencing legislation. Article 5 of the Code addresses the issue of gifts and hospitality:

Article 5 – Gifts or similar benefits

1. Members of the European Parliament shall refrain from accepting, in the performance of their duties, any gifts or similar benefits, other than those with an approximate value of less than EUR150 given in accordance with courtesy usage or those given to them in accordance with courtesy usage when they are representing Parliament in an official capacity.
2. Any gifts presented to Members, in accordance with paragraph 1, when they are representing Parliament in an official capacity shall be handed over to the President and dealt with in accordance with implementing measures to be laid down by the Bureau pursuant to Article 9.
3. The provisions of paragraphs 1 and 2 shall not apply to the reimbursement of travel, accommodation and subsistence expenses of Members, or to the direct payment of such expenses by third parties, when Members attend, pursuant to an invitation and in the performance of their duties, at any events organised by third parties.

The scope of this paragraph, in particular the rules designed to ensure transparency, shall be specified in the implementing measures to be laid down by the Bureau pursuant to Article 9.

In April 2013 the Bureau of the European Parliament published the implementing measures relating to gifts received in an official capacity. The measures clarify and set out in detail the provisions for accepting gifts and invitations offered to MEPs by third parties. In relation to gifts received in an official capacity, the measures provide guidance on the following:

- Definitions and scope: meaning of a gift; meaning of a Member acting in an official capacity

- Notification, handover and retention of gifts by Members: timeframe within which the President must be notified of receipt of gift, description of gift; circumstances under which the Member may retain the gift
- Storage and display of gifts: storage on Parliament's premises; sale of gifts
- Register of gifts: requirement for the Parliament to keep a register of gifts, including description and location of gift; publication of register
- Rectification clause: if a Member accepts a gift in good faith but becomes aware that its value exceeds EUR150, he or she must make a notification at the earliest opportunity and deposit the gift with the Parliament if it cannot be returned to the donor (i.e. for reasons of courtesy).

Appendix 1

Guidance on the receipt of gifts and hospitality for Members of the General Assembly of Maryland, excerpt from 2014 Guide on Legislative Ethics

Food and Beverages

- A legislator may accept food and beverages that are part of a reception or meal to which all members of a legislative unit have been invited. “Legislative unit” means the entire General Assembly, an entire chamber, a standing committee, or a county or regional delegation that is on a list issued by a presiding officer. Subcommittees are not legislative units, nor are caucuses. The reception or meal must be attended by the sponsor of the event or a representative of the sponsoring entity. A legislator need not report these gifts and the lobbyist/sponsor is not required to report the names of individual legislators attending.
- An individual legislator may accept food or beverages when offered at the time and geographical location of a meeting of a legislative organization that the legislator is attending at the General Assembly’s expense. (The Ethics Committee has allowed members paying their own way to the conference to utilize this exception as well.) The provision applies primarily to a reception sponsored by a lobbyist or interest group at the time of an NCSL or ERC conference. A legislator need not report these gifts and the lobbyist/sponsor is not required to report the names of individual legislators attending.
- An individual legislator may accept food or beverages during the interim from a donor (such as a business) that is located in a county that contains the legislator’s district. The meal must also be in a county that contains the legislator’s district, and the donor may not be an individual regulated lobbyist. An example of this would be a lunch that is offered to a legislator as part of a tour at a place of business. A legislator must report such a gift if its value exceeds \$20.
- Food that does not constitute “a meal or alcoholic beverages” is implicitly permitted under a general exception for unsolicited gifts not exceeding \$20. A legislator may accept a snack and/or non-alcoholic beverage in circumstances where it would be awkward for the legislator to pay his or her own cost, such as a meeting at which coffee and pastries were provided. In a restaurant or coffeeshop setting, a legislator should pay his or her own share of the bill. (A legislator may pay a lobbyist’s restaurant tab, but not vice-versa.)

Tickets and Free Admission

- A legislator may accept tickets and free admission for a charitable, cultural, or political event, from the sponsor of the event, if the legislator has been invited as a courtesy or ceremony of office. Sports tickets are never legal gifts from a nongovernmental donor although a legislator may purchase sports tickets for face value. A legislator need not report gifts of tickets and free admission if the value does not exceed \$20, unless the legislator accepts multiple tickets or free admissions from the same lobbyist with a cumulative value of \$100 or more in a calendar year. If the sponsor of the event invites all members of a legislative unit, a legislator need not report acceptance of a ticket or free admission, regardless of value unless the legislator accepts two or more tickets for free admissions in the calendar year and the cumulative value is \$100 or more.

Conferences

- A legislator may accept reasonable expenses for food, travel, lodging, and scheduled entertainment associated with a meeting or conference if the legislator is a scheduled speaker or scheduled panel member. If the anticipated value of the expenses is \$500 or more, and is being paid by a lobbyist (including an entity that employs a lobbyist), the legislator must notify the Ethics Committee by letter prior to attending the conference.
- Additionally, a legislator may accept reasonable expenses for food, travel, lodging, and scheduled entertainment to attend a legislative conference that has been approved by the

legislator's presiding officer. The intent of this provision is to allow payment of expenses, by sources other than the State, for attending conferences sponsored by legislative organizations. A legislator need not be a speaker or panel member at the conference in order to accept this gift. An example would be the "scholarships" offered by the American Legislative Exchange Council (ALEC). The provision does not apply to conferences sponsored by interest groups such as trade associations.

- The Ethics Committee has ruled that payment of expenses to attend other meetings and conferences, or to participate in educational travel, will be permitted if the donor is neither a regulated lobbyist nor an entity that has substantial interests before the General Assembly. An example of this would be travel for which the expenses are paid by a foreign government or by a foundation that does not engage in legislative activities in Annapolis.

Ceremonial or Insignificant Gifts

A legislator may accept ceremonial gifts or awards of insignificant monetary value and trivial items of informational value. A legislator may accept a plaque or similar award that is purely ceremonial regardless of value, but must disclose the gift if the value appears to be greater than \$20. Consumer items valued at more than \$20 are presumed not to be acceptable under this provision.

A legislator may accept miscellaneous unsolicited gifts (coffee mugs, caps), not exceeding \$20 in cost. Meals, alcoholic beverages, or sports tickets are not allowed under this exception.

Gifts from Governmental Entities

Gifts from governmental entities, whether federal, state or local, are not regulated under the Ethics Law. For example, a legislator may accept and need not report sports tickets from a governmental entity (e.g., the University of Maryland or the Maryland Stadium Authority). Likewise, a government sponsor may provide a meal to an individual legislator.

Other Exceptions

Gifts that are clearly offered in the context of a member's outside employment, and not because of his or her status as a legislator, are not restricted under the Ethics Law.

The Ethics Committee may exempt specific classes of gifts that are personal and private in nature.



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

27 June 2014

NIAR 409-14

Ray McCaffrey

Impact of rules on lobbying in relation to overseas visits

1 Introduction

This briefing note has been prepared for the Committee on Standards and Privileges following its meeting on 11 June 2014. During its discussion at that meeting, the issue was raised about how tighter rules on lobbying could potentially limit Members' ability to undertake study visits and other overseas trips as part of their duties as elected representatives.

This note sets out the position in other legislatures on the specific issue of overseas visits. It also includes examples taken from the relevant register of interests where Members have recorded overseas trips paid for by foreign governments/organisations.

The paper should be read in conjunction with paper NIAR 69/14, which outlines the rules on the receipt of gifts and hospitality.

2 What are the rules and do they limit overseas visits?

As discussed in previous papers, legislatures in the UK, Ireland and United States regulate interaction between elected representatives and lobbyists and impose reporting obligations for the receipt of gifts and hospitality. However, these rules do not impact on the ability of Members to undertake overseas visits sponsored by foreign governments or organisations. The following examples demonstrate that the House of Commons, House of Lords, Scottish Parliament and National Assembly for Wales have in place strict rules for the registration and reporting of such visits.

House of Commons

Category 6 of the Guide to the Code of Conduct¹ sets out the procedures for registering and reporting overseas visits:

- Name of donor
- Address of donor (the address of individuals will not be published)

Amount of donation (if there is no commercial equivalent, and the Member believes the value to have exceeded £1,500, the Member should provide a statement that he or she has been unable to ascertain the value of the donation but believes it to have been more than £1,500)

- Destination of Visit
- Date of Visit
- Purpose of Visit

Where only part of the cost was borne by an outside source (for example the cost of accommodation but not the cost of travel), those details should be stated briefly. When an overseas visit was arranged by a registered All-Party or parliamentary group or by a party backbench group, it is not sufficient to name the group as the sponsor of the visit: the Government, organisation, company or person ultimately meeting the cost should be specified.

Examples of overseas visits undertaken by MPs²

Adrian Bailey	<p>Overseas visits</p> <p>Name of donor: BASF plc</p> <p>Address of donor: PO Box 4, Earl Road, Cheadle Hulme, Cheshire SK8 6QG</p> <p>Amount of donation (or estimate of probable value): BASF paid directly for flights with a value of £320.95, accommodation with a value of £110.97 and hospitality, transfers and other incidentals with a value of £314.97; total £746.89</p> <p>Destination of visit: BASF Chemical complex, Ludwigshafen, Germany</p> <p>Date of visit: 23-24 July 2013</p> <p>Purpose of visit: Industry and Parliament Trust Industry visit to the BASF complex in Ludwigshafen. (Registered 29 August 2013)</p>
Robert Halfon	<p>Overseas visits</p> <p>Name of donor: Conservative Friends of Israel</p> <p>Address of donor: 45b Westbourne Terrace London W2 3UR</p> <p>Amount of donation (or estimate of the probable value): flights and accommodation etc to a value of £2,000</p> <p>Destination of visit: Israel and the West Bank</p> <p>Date of visit: 16-21 February 2014</p> <p>Purpose of visit: fact finding political delegation to Israel and the West Bank</p> <p>(Registered 18 March 2014)</p>

¹ House of Commons, Code of Conduct: <http://www.publications.parliament.uk/pa/cm/cmcode.htm>

² Register of Members' Interests, accessed 26 June 2014 <http://www.publications.parliament.uk/pa/cm/cmregmem/contents1415.htm>

Sir Malcolm Rifkind	<p>Overseas visits</p> <p>Name of donor: (1) MSC (2) Global Zero Operations</p> <p>Address of donor: (1) Prinzregentenstraße 7, D-80538 Munich (2) 1779 Massachusetts Avenue, Suite 615, Washington DC 20036</p> <p>Amount of donation (or estimate of the probable value): (1) Return flights to Munich, value flights £676 (2) hotel 3 nights approx £1,000</p> <p>Destination of visit: Munich Security Conference</p> <p>Date of visit: 30 January - 2 February 2014</p> <p>Purpose of visit: To attend Munich Security Conference (Registered 10 April 2014)</p>
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House of Lords

Category 7 of the Code of Conduct and accompanying guide sets out the position in relation to overseas visits. It states:

Members should enter in the Register the date, destination and purpose of the visit and the name of the government, organisation, or individual which met the cost. Where only part of the cost was borne by an outside source (for example the cost of accommodation but not the cost of travel), those details should be stated briefly. When an overseas visit was arranged by a registered All-Party or parliamentary group or by a party backbench group, it is not sufficient to name the group as the sponsor of the visit: the government, organisation, or person ultimately meeting the cost should be specified.

Examples of overseas visits by Peers³

The following are a few examples of the nature of overseas trips taken by peers:

Lord Ahmed	<p>Category 7: Overseas visits</p> <p>Visit to Chicago, USA, 17-21 April 2014; travel and accommodation was provided by Sound Vision and Radio Islam</p> <p>Visit to Kish Island, Iran, 3-5 May 2014, to attend International Muslim Business Forum; travel, food and accommodation were arranged and costs met by Imexpo</p> <p>Visit to Berlin, Germany, 13-16 March 2014, to speak at Institute of Cultural Diplomacy; all travel and accommodation paid by Kashmir Free Organisation</p> <p>Visit to Dallas, Texas, 31 January - 2 February 2014, to attend international conference organised by SoundVision Chicago, USA; all travel and accommodation costs were met by conference organisers</p> <p>Visit to Tehran, 17-21 January 2014, to attend the Majma Conference; all travel and accommodation paid by World Forum for Proximity of Schools of Thought (27th International Islamic Unity Conference)</p> <p>Visit to Toronto, 23-26 May 2014; all costs of travel and accommodation was paid by the Friends of Kashmir, Canada</p>
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Register of Lords' Interests, accessed 26 June 2014: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Baroness Garden of Frognal	<p>Category 7: Overseas visits</p> <p>Visit to Spain, 28-30 May 2014, at invitation of Diplocat (Public Diplomacy Council of Catalonia), as a member of a parliamentary fact-finding mission to Catalonia; cost of flights, internal travel and two nights' hotel accommodation met by Diplocat; cost of meals met by Diplocat, Catalanian Parliament and Mayor of Sant Cugat</p> <p>Visit to Japan, 13-19 May 2014, as a Director of UK-Japan 21st Century Group, to attend meetings in Tokyo and the Annual Meeting in Hakone; cost of business class flights, internal travel, 5 nights' hotel accommodation and conference costs, including meals, were met by UK-Japan 21st Century Group</p> <p>Visit to France, 12-13 June 2014, as member of delegation to Airbus, Toulouse for briefings and visit to aircraft assembly lines; cost of standard flights, one night's hotel accommodation and hospitality met by Airbus Industrie</p>
Lord Sassoon	<p>Category 7: Overseas visits</p> <p>Visit to Beijing and Tianjin, 12-18 January 2013, for Sixth UK-China Leadership for the Future Forum (meeting of UK parliamentarians with senior members of Communist Party of China); travel costs met by Barclays, BP and Rolls Royce; accommodation costs met by Communist Party of China</p>

Scottish Parliament

The Code of Conduct⁴ provides advice and guidance to MSPs on overseas visits:

Travel and subsistence

- 2.3.8 Members are not required to register the costs of travel and subsistence in connection with attendance at a conference or meeting if those costs are borne in whole or in part by the organiser of the conference or by one of the other parties attending the meeting. However, attendance at an overseas conference or meeting may require to be registered as an overseas visit.

2.4: Overseas Visits – Schedule, paragraph 7

A member has a registrable interest:

- (1) Where a member makes, or has made, a visit outside the United Kingdom and that visit meets the prejudice test.
- (2) Sub paragraph (1) does not apply to a visit, the travel and other costs of which—
 - (a) are wholly met—
 - (i) by the member;
 - (ii) by the member's spouse, civil partner or cohabitant;
 - (iii) by the member's mother, father, son or daughter;
 - (iv) by the Parliamentary corporation; or
 - (v) out of the Scottish Consolidated Fund; or
 - (b) were approved prior to the visit by the Parliamentary corporation.

"Prejudice test" an interest meets the prejudice test if, after taking into account all of the circumstances, that interest is reasonably considered to prejudice, or give the appearance

⁴ Scottish Parliament, Code of Conduct, accessed 26 June 2014: <http://www.scottish.parliament.uk/msps/12446.aspx>

of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

Guidance on overseas visits

- 2.4.1 A member is required to register and provide details of a visit outside the United Kingdom where the visit meets the prejudice test. For the purposes of registration, the date upon which a visit becomes registrable is the final day of any such visit. Under the terms of the Act, members then have 30 days to lodge a written statement with the clerks reflecting this interest.
- 2.4.2 Certain overseas visits are excluded from the requirement to register. These are visits, the travel and other costs of which are wholly met—
 - by the member;
 - by the member's spouse, civil partner or cohabitant;
 - by the member's mother, father, son or daughter;
 - by the Scottish Parliamentary Corporate Body (SPCB); or
 - out of the Scottish Consolidated Fund (for example, Ministerial visits).
- 2.4.3 There is also no need to register visits the costs of which were approved in advance by the SPCB.
- 2.4.4 There may be occasions when fees or expenses for work undertaken overseas fall into the remuneration rather than overseas visits category. Equally, certain overseas visits and related costs may fall within the gifts category. Members are advised to seek advice from the Standards clerks if they are uncertain about which category an interest should be registered in.
- 2.4.5 Visits within the United Kingdom and the provision of hospitality in the United Kingdom are not covered by this provision although members may register these on a voluntary basis if they believe that disclosure would be in the public interest. Depending on the value, and subject to meeting the prejudice test these may also fall within the gifts category. Similarly hospitality provided abroad not directly linked to the cost of the visit itself does not need to be registered under the overseas visits category. Again, however, members need to take account of the value of that hospitality as it may require to be registered as a gift.
- 2.4.6 Members should note that committee travel outwith the UK may fall to be registered. Members are advised to seek advice from the relevant committee clerk regarding prior approval by the SPCB. Members may also consult the Standards clerks for further advice on seeking SPCB approval for certain visits overseas.
- 2.4.7 Where registration is required, members should provide details of the dates, destination and purpose of the visit along with the name of any individual, business or organisation which met any of the costs. Members must also provide the principal business address of the business or organisation (but not that of a private individual) which met the costs of the trip and the nature of the business (but not that of a private individual). Members must provide details of the cost of the visit, ideally split between travel and expenses. Costs can be provided in the currency in which they were incurred, however members may also wish to include the estimated value in sterling and the date of the currency conversion upon which this estimate is based.
- 2.4.8 Members must also take steps to register any overseas visits that they have accidentally overlooked, or had not realised required to be registered, as soon as possible and in all cases, within seven days of becoming aware of it. Members should refer to Section 1.2.13 of Volume 2 of this Code for further guidance on late registration.

Examples of overseas visits by MSPs⁵

Clare Adamson	<p>Overseas visits</p> <p>From 7 October to 13 October 2012 I was part of a cross party delegation of MSPs who visited the Republic of China (Taiwan) at the invitation of the Director General, Taipei Representative Office (Edinburgh Office) in the UK, Ministry of Foreign Affairs, Republic of China Department (of 1 Melville Street Edinburgh, EH3 7PE).</p> <p>The delegation held meetings with a number of government departments, schools, trade and cultural organisations including the Taipei City authority, Ministry of Justice, Directorate of European Affairs, The Straits Exchange Foundation, Hinchu Science Park, Mayor of Tainan, Tainan Municipal Jhongsiao Junior High School, Changhua Christian Hospital, Tzu Chi Foundation, British Council, Taiwan Women's Centre, Green Energy and Environment research Laboratories, Industrial Technology Research Institute and Taiwan Handicraft Centre. The cost of the visit was £2,200 for return flights, £660 for hotel accommodation, £350 for meals and £70 for transport. All costs (which totalled £3,280) were met by the Department of Foreign Affairs, Republic of China (Taiwan).</p>
Claudia Beamish	<p>Overseas visits</p> <p>From 30 November to 4 December 2012, I visited Gaza, in order to meet with officials and members of the Palestinian public to discuss the political and humanitarian situation there. The costs of the visit, £850, were met by the Council for European Palestinian Relations (CEPR), an organisation established to promote dialogue and understanding between European and Arab policy-makers to address the Palestinian predicament (of Rue Montoyer 39, Brussels 1000, Belgium). [Registered 21 December 2012]</p>
Alison McInnes	<p>Overseas visits</p> <p>From 30 May to 1 June 2012 I travelled as a guest of Total E&P UK Ltd (an oil and gas company) to southwest France to visit Total's research centre in Pau and its gas field production site at Lacq. The purpose of the visit was to gain a greater insight into current research and, in particular, the Carbon Capture and Storage pilot project that is being conducted at Lacq. The costs of the visit, including travel, accommodation and meals, were approximately £834 and were met by Total E&P UK Ltd (of Crawpeel Road, Altens, Aberdeen, AB12 3FG). [Registered 7 June 2012]</p>

National Assembly for Wales

The Code of Conduct⁶ states:

Subject to any resolution of the Assembly, overseas visits made by the Member or, to the Member's knowledge, the Member's partner or any dependent child of the Member, relating to or arising out of membership of the Assembly where the cost of any such visit has not been wholly borne by the Member or by public funds.

Examples of overseas visits undertaken by AMs⁷

⁵ Register of Members' Interests, Scottish Parliament, accessed 26 June 2014

⁶ National Assembly for Wales Code of Conduct, accessed 26 June 2014: <http://www.assemblywales.org/memhome/pay-expenses-financial-interests-standards/cod-ydddygiad.htm>

⁷ Register of Interests, National Assembly for Wales, accessed 26 June 2014

Mark Drakeford	Overseas visits Cost of flights and accommodation for visit to Mondragon, Basque, Spain to research work of Mondragon Co-operative movement met by CoOperative Group Ltd
David Melding	Overseas visits Visit to Williamsburg, Virginia. USA (30 March – 6 April 2012) to deliver a series of lectures on Welsh and British politics. Costs met by College of William and Mary.
David Rees	Overseas visits Geneva, Switzerland (19-20 January 2014) to visit CERN and meet science researchers from Welsh universities – paid for by the Science and Technology Facilities Council and the Royal Society of Chemistry 8

Dail Eireann

Guidelines for Members of Dail Eireann who are not office holders state the reporting requirements for sponsored travel under the Electoral Acts:

Separate from the requirement to prepare statements and declaration of registrable interests pursuant to sections 5 & 7 of the Ethics Acts, the acceptance of free or sponsored travel also gives rise of reporting obligations as set out in the Electoral Act 1997, as amended (the Electoral Acts). The Standards in Public Office Commission has concerns about the implications under electoral legislation of the acceptance by Members of free or sponsored travel. Section 22(2)(a) of the Electoral Acts, defines a donation as any contribution given for political purposes. Section 22(2)(aa) defines political purposes as, inter alia –

to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to a policy or policies or functions of the Government or any public authority...

The donation of free/sponsored travel and accommodation may fall within the definition of a donation and such a donation is subject to the normal aggregation and reporting thresholds and donation limits. The maximum donation that may be accepted by a Member from an individual or a registered corporate donor in any calendar year is now €1,000 and all donations exceeding €600 in aggregate must be disclosed on the member's annual Donation Statement. It is an offence to supply a false or misleading donation statement; it is also an offence to fail to take the appropriate action in relation to a donation which is in excess of the prescribed limit.

The Standards Commission considers that members should take care to ensure that they do not breach the provisions of the Electoral Acts on the acceptance of donations. Any queries on this matter should be directed to the Standards Commission.

Example of overseas visit undertaken by a TD⁸

Robert Dowds	Travel facilities Flights Dublin – Israel via Istanbul, hotel accommodation in Jerusalem and meals while away (10-13 May 2013): Council for European – Palestinian Relations, 8 Duncannon Street, Golden Cross House, London WC2N 4JF, UK. Other Information Provided: Purpose of visit – to assess the living and political conditions faced by the Palestinian minority in Israel.
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3 Public and media scrutiny of overseas visits

The amount and nature of visits undertaken by MPs has been questioned by the media. In 2010, the BBC ran a story alleging that hundreds of MPs broke parliamentary rules by failing to declare interests after visits to foreign countries. The story alleged that:

The MPs - from Labour, the Tories and the Lib Dems - breached parliamentary regulations on more than 400 occasions. One former standards watchdog says it shows MPs cannot regulate themselves. Some MPs dismissed the breaches as technical errors or oversights⁹.

Other stories along similar lines have appeared in various media outlets at different times¹⁰.

9 http://news.bbc.co.uk/1/hi/uk_politics/8580183.stm, accessed 27 June 2014

10 See for example: Daily Telegraph <http://www.telegraph.co.uk/news/politics/9697752/MPs-1.5m-of-foreign-trips-revealed.html> 23 November 2012



Northern Ireland
Assembly

Research and Information Service Briefing Paper

Paper 000/00

11 February 2015

NIAR 94-15

Ray McCaffrey

Employment of/benefits received by “connected persons” in relation to elected representatives

The information contained in this briefing note should not be relied upon as legal advice or as a substitute for it.

Overview

The following tables provide an overview of the arrangements in the various legislatures. The detail of the provisions of the schemes is discussed in the body of the paper.

Table 1 - Members' expenses schemes

Legislature	Who administers the scheme?	Does the concept of "connected parties" or "connected persons" exist within the scheme?	Do Members have to record relationships with a connected party or person, including family members?	Is this information published?
House of Commons	The Independent Parliamentary Standards Authority.	Yes. IPSA defines a connected party as: •A spouse, civil partner or cohabiting partner of the member; •Parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew or niece of the member or of a spouse, civil partner or cohabiting partner of the member; or •A body corporate, a firm or a trust with which the MP is connected as defined in section 252 of the Companies Act 2006	Yes. IPSA requires Members to complete a <i>Connected Party Declaration</i> .	Yes. The information is collated and published as part of the MP's Annual Expenditure.
Scottish Parliament	The Scottish Parliamentary Corporate Body	Yes, but the Scottish Parliament Members' Expenses Scheme appears to draw a distinction between family members and connected parties. The Guidance accompanying the expenses scheme defines a close family member as a spouse, civil partner or co-habiting partner of the Member or a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece of the Member or his/ her spouse/ partner. A connected person is defined as a business partner, business associate of the Member or any organisation (other than a political party) in which the Member or a close family Member has an interest.	The scheme provides that a Member who submits a claim in respect of the cost of employing a close family member, whether individually or through a pool, must declare that relationship in a register. Reimbursement from parliamentary expenses in relation to connected persons is prohibited under the scheme.	Yes. The SPCB is required to make available for public inspection a register detailing employment of close family members and those of another member. In relation to employment of family of another MSP, the guidance states: "This information will be published in a register which will be publicly available. This register is entirely separate from the Register of Members' Interests maintained by the clerks

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National Assembly for Wales	The Assembly Commission has ultimate responsibility for the administration of the scheme, but the Remuneration Board sets the rate of pay and expenses for Assembly Members.	The term does not appear in the literature relating to the expenses scheme. However, the Assembly has in place strict requirements for the registration and notification of the employment of family members or family members of another member, where those persons receive Commission funds.	See Table 2.	to the Standards, Procedures and Public Appointments Committee. See Table 2.
Oireachtas	The Houses Commission.	No.	No, but see Table 2.	No, but see Table 2.

Table 2 - Registers of Members' Interests

Legislature	Does the concept of "connected parties" or "connected persons" exist within the Register of Interests?	Do Members have to record relationships with a connected party or person, including family members?	Is this information published?
House of Commons	No, but there is some overlap between the reporting requirements of the IPSA scheme and the Register of Interests, specifically with regards to family members.	The Register of Interests requires Members to register details of any family members (by blood or by marriage or a relationship equivalent to marriage) employed by them and remunerated through parliamentary allowances (for casual employment, this is subject to a threshold of 1% of a Member's annual parliamentary salary).	Yes. The Register of Interests is a publically available document and Part 2 of the Register deals specifically with Category 12 of registerable interests: Family members employed and remunerated through parliamentary allowances.
Scottish Parliament	No. The Code of Conduct contains guidance on registerable interests and the term does not appear in the guidance. However, as noted in Table 1, there is a requirement to register employment of family members	Not in the Register of Interests, but see Table 1.	See Table 1.

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National Assembly for Wales	and family members of other Members. This relates to the expenses scheme for Members, rather than the Register of Interests. No. However, the National Assembly for Wales differs from the other legislatures in that its Standing Orders detail the process to be followed for the registration of employment of family Members. Detailed separate guidance also exists to advise Members on this matter.	The Record of the Employment of Family Members is separate to the Register of Interests.	The Record of the Employment of Family Members is maintained in the Table Office. It is open to public inspection in the Table Office itself during opening hours. Copies of individual entries may be made available on request.
Oireachtas	A Member must also disclose any 'material interest' he/she, or a connected person might have in the proceedings of either House if they intend to vote or speak in such proceedings. The Standards in Public Offices Commission provides the following definition of connected persons: • a person is connected with an individual if that person is a relative of the individual ("relative", in relation to a person means a brother, sister, parent or spouse of the person or a child of the person or of the spouse); • a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust, • a person is connected with any person with whom he or she is in partnership, • a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it, • any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company	Yes, on the basis provided for in the column to the left.	The Register of Interests is a publicly available document

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1 Introduction

This paper has been prepared for the Committee on Standards and Privileges. It provides information on the following issues:

Whether the House of Commons, House of Lords, Scottish Parliament, National Assembly for Wales and the Oireachtas require their Members to:

- *Register details on their respective Register of Members' Interests of*
 - *Any connected parties (as per the Panel's definition) that they employ or who otherwise benefit from the Member's office expenditure;*
 - *Any connected parties of other Members that they employ or who otherwise benefit from the Member's office expenditure; and*
 - *Any lobbyists who they employed and who are remunerated through the Member's office cost expenditure*
- *Publish or Declare these details in any other format or at any other time (e.g. on the legislature's website or when submitting a claim)*
- *If it is the case that neither (a) nor (b) apply because the rules do not allow such a circumstance to arise then it would be useful if the research paper also provided these details.*

The Independent Financial Review Panel's (IFRP) definition of a "connected party" or "connected person", referred to in the first bullet point above, is:

- A family member or
- A person with whom the member is "Connected" within the meaning of section 252(2)(b), (c), (d) and (e) and section 254 of the Companies Act 2006 or
- A political party of which he is a Member
- Any organisation or entity in which the Member or a family member has a beneficial interest or in which the Member's political party has a beneficial interest¹.

What are sections 252 and 254 of the Companies Act?

Section 252 Persons connected with a Director	254 Director "connected with" a body corporate.
(b) a body corporate with which the director is connected (as defined in section 254);	(1) This section defines what is meant by references in this Part to a director being "connected with" a body corporate.
(c) a person acting in his capacity as trustee of a trust—	

¹ <http://ifrp.org.uk/wp-content/uploads/2012/03/The-Report-of-the-Independent-Financial-Review-Panel-March-2012.pdf>

<p>(i) the beneficiaries of which include the director or a person who by virtue of paragraph (a) or (b) is connected with him, or</p> <p>(ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person, other than a trust for the purposes of an employees' share scheme or a pension scheme;</p> <p>(d) a person acting in his capacity as partner—</p> <p>(e) a firm that is a legal person under the law by which it is governed and in which—</p> <p>(i) the director is a partner,</p> <p>(ii) a partner is a person who, by virtue of paragraph (a), (b) or (c) is connected with the director, or .</p> <p>(iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of paragraph (a), (b) or (c), is connected with the director.</p>	<p>(2) A director is connected with a body corporate if, but only if, he and the persons connected with him together—</p> <p>(a) are interested in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital, or</p> <p>(b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.</p> <p>(3) The rules set out in Schedule 1 (references to interest in shares or debentures) apply for the purposes of this section.</p> <p>(4) References in this section to voting power the exercise of which is controlled by a director include voting power whose exercise is controlled by a body corporate controlled by him.</p> <p>(5) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of this section.</p> <p>(6) For the avoidance of circularity in the application of section 252 (meaning of "connected person") —</p> <p>(a) a body corporate with which a director is connected is not treated for the purposes of this section as connected with him unless it is also connected with him by virtue of subsection (2)(c) or (d) of that section (connection as trustee or partner); and</p> <p>(b) a trustee of a trust the beneficiaries of which include (or may include) a body corporate with which a director is connected is not treated for the purposes of this section as connected with a director by reason only of that fact.</p>
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Financial probity and declaration of interests

There are two distinct aspects emerging from this query. The first is that most legislatures administer, or in the case of the House of Commons have administered on its behalf, a pay and allowances scheme. As part of this, Members are required to spend public money in a manner compliant with the rules of the scheme and to make declarations on, for example, employing family members.

Members are also required to abide by the Code of Conduct of their respective legislature and to register all relevant interests in the Register of Members' Interests. Members will also be expected to declare any relevant interest in parliamentary proceedings.

Lobbying

The research did not find specific reference to the employment of lobbyists who are remunerated through a Member's office cost expenditure. All of the legislatures have strict rules in place on the issue of lobbying and this is discussed further in research paper NIAR 29-14.

House of Lords

The research did not find any relevant material relating to the House of Lords for the purposes of this paper. The website of the House of Lords provides a summary of the system of financial support for Members:

Members of the House of Lords Most Members of the House of Lords do not receive a salary for their parliamentary duties but are eligible to receive allowances and, within certain limits, the travel expenses they incur in fulfilling their parliamentary duties. Members of the Lords who are not paid a salary may claim a flat rate attendance allowance of £150 or £300, or may choose to make no claim for each sitting day they attend the House.

This daily allowance replaces the separate Overnight Subsistence, Day Subsistence and Office Costs in the previous system. Members choose at which rate they wish to claim and entitlement is determined by attendance, not based on residence criteria.

Members who receive a Ministerial or Office Holders' salary are not entitled to claim the allowances based on attendance².

Furthermore, the Lords' *Code of Conduct and Guide to the Code of Conduct* states:

Members of the House of Lords do not receive a specific allowance for employing staff; consequently, the level of staff support for Members varies widely. Many staff working for Members obtain income from sources outside the House³.

2 House of Commons

Does the concept of “connected persons” or “connected parties” exist?

Only in relation to the Independent Parliamentary Standards Authority (IPSA), which is legislated to administer and regulates a pay and expenses scheme for Members of the House of Commons. The Register of Members' Interests is an internal matter for the House of Commons authorities.

IPSA's definition of 'connected party' is narrower than that used by the IFRP. IPSA defines a connected party as:

- A spouse, civil partner or cohabiting partner of the member;
 - Parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew or niece of the member or of a spouse, civil partner or cohabiting partner of the member;
- or

² <http://www.parliament.uk/mps-lords-and-offices/members-allowances/house-of-lords/holallowances/system-of-financial-support-for-members-of-the-lords/>

³ <http://www.publications.parliament.uk/pa/ld/ldcond/code.pdf>

- A body corporate, a firm or a trust with which the MP is connected as defined in section 252 of the Companies Act 2006⁴

Specifically, IPSA does not include:

- a political party of which he is a Member; or
- any organisation or entity in which the Member or a family member has a beneficial interest or in which the Member's political party has an interest

The IPSA definition clearly distinguishes between persons (family) and bodies (trusts, companies etc.)

Are Members required to register any connected parties (as per the Panel's definition) that they employ or who otherwise benefit from the Member's office cost expenditure?

IPSA

There are two separate reporting regimes that MPs must abide by. The Independent Parliamentary Standards Authority requires Members to complete a *Connected Party Declaration*. The information is collated and published as part of the MP's Annual Expenditure⁵.

House of Commons

Members must declare any relevant interests in the Register of Members' Interests:

The House has two distinct but overlapping and interdependent mechanisms for the disclosure of the personal financial interests of its Members: registration of interests in a Register which is open for public inspection; and declaration of interest in the course of debate in the House and in other contexts.

The main purpose of the Register is to give public notification on a continuous basis of those financial interests held by Members which might be thought to influence their parliamentary conduct or actions.

The main purpose of declaration of interest is to ensure that Members of the House and the public are made aware, at the appropriate time when a Member is making a speech in the House or in Committee or participating in any other proceedings of the House, of any past, present or expected future financial interest, direct or indirect, which might reasonably be thought by others to be relevant to those proceedings⁶.

Members must register details of any family members (by blood or by marriage or a relationship equivalent to marriage) employed by them and remunerated through

⁴<http://parliamentarystandards.org.uk/IPSAMPs/Scheme/schemeversion/Documents/MPs%E2%80%99Scheme%20of%20Business%20Costs%20and%20Expenses%20Sixth%20Edition.pdf>

⁵<http://www.parliamentary-standards.org.uk/AnnualisedData.aspx>

⁶<http://www.publications.parliament.uk/pa/cm201012/cmcode/1885/1885.pdf>

parliamentary allowances (for casual employment, this is subject to a threshold of 1% of a Member's annual parliamentary salary)⁷:

Any family members employed and remunerated through expenses or allowances available to support his or her work as a Member of Parliament. Family members should be regarded as including a spouse, civil partner or cohabiting partner of the Member and the parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew or niece of the Member or of a spouse, civil partner or cohabiting partner of the Member⁸.

It was noted by the then Commissioner that IPSA's definition of connected parties was wider than family members, as it also included bodies corporate and trusts with which the Member is connected. It was also recognised that there was considerable overlap between the two sets of information⁹.

The Standards Commissioner at the time did not consider that there were sufficient grounds to extend the registration requirement to the other "connected parties" in the IPSA definition¹⁰.

Are there any restrictions in relation to connected parties?

IPSA's *MPs' Scheme of Business Costs and Expenses* provides more information on the rules around connected parties:

- Staffing Expenditure may only be claimed for the salary of one employee who is a connected party, unless an MP employed more than one connected party on 7 May 2010. In that case the MP may continue to employ these connected parties until the parties in question cease to be employed or otherwise to provide staffing assistance
- Except to the extent permitted under paragraph 4.18¹¹, no costs may be claimed relating to an MP's rental of a property, where the MP or a connected party is the owner of the property in question
- MPs may rent accommodation from another MP, provided that the landlord MP is not a connected party. Only the tenant MP may claim the associated expenditure for that property
- No costs may be claimed relating to the purchase of goods or services, where the MP or a connected party is the provider of the goods or services in question

⁷ House of Commons Code of Conduct

⁸ As above

⁹ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstnprv/636/636.pdf>

¹⁰ As above

¹¹ 4.18 states 'For MPs claiming associated expenditure only, the annual Accommodation Expenditure budget is £8,850'

- Staffing Expenditure may be used to meet the following costs: modest reward and recognition payments (but these may not be claimed in respect of any connected parties);
- MPs choosing to sell their properties before the end of the transitional period must secure an independent valuation by a valuer regulated by the Royal Institution of Chartered Surveyors to establish any gain up to the point at which they place the property on the market:
 - If the property is sold for a sum higher than the valuation, this higher figure will be used to calculate any gain;
 - If the property is sold for a sum lower than the valuation, this lower figure will be used to calculate any gain unless the property is sold to a connected party as defined at 3.15 of the Scheme, in which case the sum at valuation will be used to calculate any gain.

Are Members required to register any connected parties of *other Members* that they employ or who otherwise benefit from the Member's office expenditure?

The Office of the Commons registrar confirmed that "there is no requirement for MPs to register the details of employees who are related to another MP"¹².

Is the information published?

As noted above IPSA publishes on its website the information required under its scheme. Information required by the House of Commons is published in the Register of Interests¹³.

3 The Scottish Parliament

Does the concept of "connected persons" or "connected parties" exist?

Yes, but the Scottish Parliament Members' Expenses Scheme appears to draw a distinction between family members and connected parties. The Guidance accompanying the expenses scheme states:

For the purposes of the Scheme, a close family member is defined as a spouse, civil partner or co-habiting partner of the Member or a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece of the Member or his/ her spouse/ partner.

¹² Correspondence with the Office of the Registrar.

¹³ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstnprv/636/636.pdf>

A connected person is a business partner, business associate of the Member or any organisation (other than a political party) in which the Member or a close family Member has an interest¹⁴.

The Interests of Members of the Scottish Parliament Act 2006 sets out the requirements for the registration of certain financial interests held by MSPs. It does not address the issue of connected parties.

Are Members required to register any connected parties (as per the Panel's definition) that they employ or who otherwise benefit from the Member's office cost expenditure?

According to the expenses scheme:

The new scheme provides that a Member who submits a claim in respect of the cost of employing a close family member, whether individually or through a pool, must now declare that relationship in a register¹⁵.

What are the restrictions in relation to family members and connected parties?

The guidance for the expenses scheme contains the following information on connected persons:

- A Member is not entitled to reimbursement of costs in respect of a local office if the Member leases office premises from or sub-lets any part of office premises to a close family member or connected person.
- A Member is not entitled to the reimbursement of costs in respect of a local office he/she leases from or sub-lets to a close family member or connected person. Again, this requirement will not be applied retrospectively and the Scottish Parliamentary Corporate Body has agreed that current leases may continue until the end of this Parliamentary session. A connected person is defined as a business partner or business associate of the Member or any organisation (other than a party political organisation) in which the Member concerned or close family member has an interest.
- Under paragraph 2.12(b) of the Reimbursement of Members Expenses Scheme Members are not permitted to claim for the reimbursement of costs associated with leasing a residential property in Edinburgh from a close family member, another Member or connected person (such as a business partner, business associate of the Member or any organisation (other than a political party) in which the Member or a close family Member has an interest).

¹⁴ http://www.scottish.parliament.uk/Allowancesandexpensesresources/Members_Expenses_Scheme_Guidance.pdf

¹⁵ http://www.scottish.parliament.uk/Allowancesandexpensesresources/Members_Expenses_Scheme.pdf

Although political parties are not included in the definition of connected parties, there are restrictions in place in relation to the expenses scheme:

- A Member who leases local office premises from a party political organisation must provide the SPCB with a report prepared by an independent surveyor providing a professional opinion as to the fair market rent for the premises concerned when leased on the same terms. The report should be sent to the Allowances Office. The costs of this survey can be met out of the Office costs provision.

Furthermore:

- A member shall not submit a claim which relates to party political activity and a member shall not enter into any arrangement which could give rise to a benefit to a party political organisation¹⁶

Are Members required to register any connected parties of other Members that they employ or who otherwise benefit from the Member's office expenditure?

Section 3.7 of the Expenses Scheme provides that a Member who submits a claim in respect of the cost of employing a close family member of another member, whether individually or through a pool, must declare that relationship in a register.

The Scheme requires that any declaration should be in writing and the SPCB has agreed that the information to be included in the declaration shall be:

- The name of the employing Member or pool
- The name of the other member
- The name of the member of staff
- The relationship the Member has with the member of staff
- The employment position held by the member of staff
- The date the employment commenced

Is the information published?

In accordance with paragraph 3.7 of the Reimbursement of Members' Expenses Scheme the SPCB is required to make available for public inspection a register detailing employment of close family members of another member.

In accordance with paragraph 3.7 of the previous Reimbursement of Members' Expenses Scheme the SPCB is required to make available for public inspection a register detailing the employment of close family members¹⁷.

¹⁶ Scottish parliament Members' Expenses Scheme

In relation to employment of family of another MSP, the guidance states: "This information will be published in a register which will be publicly available. This register is entirely separate from the Register of Members' Interests maintained by the clerks to the Standards, Procedures and Public Appointments Committee".

4 National Assembly for Wales

Does the concept of "connected persons" or "connected parties" exist?

The term "connected party" or "connected person" does not appear in the expenses scheme guidance for members of the National Assembly for Wales.

Nor does it appear in relation to the Register of Members' Interests.

The National Assembly for Wales differs from the other legislatures in that it makes provision in its Standing Orders for the registration of employment of family members. This is discussed below.

Are Members required to register any connected parties (as per the Panel's definition) that they employ or who otherwise benefit from the Member's office cost expenditure?

Standing Order 3 requires the National Assembly to maintain and publish a Record of those Members who at any time, with the support of Commission funds, employs, either directly or indirectly, a person whom that Member knows to be a family member of that Member *or of another Member*.

Members are required to make a notification under Standing Order 3 within 8 weeks of taking the oath or affirmation or within 4 weeks of: the first occasion on which a family member receives a payment with the support of Commission funds; the date on which the employee becomes a family member of that Member or of another Member, or the date when the Member first becomes aware of the fact that the employee is a family member of that Member or of another Member.

Determination on Members' Expenses

The Determination on Members' Pay and Allowances 2014 states¹⁸:

- A Member may not claim Office Costs Allowance in respect of an office, or part thereof which is leased or rented from a family member, business partner or business associate

¹⁷ <http://www.scottish.parliament.uk/msps/12453.aspx>

¹⁸ <http://www.senedd.assembly.wales/documents/s29730/Determination%20on%20Members%20Pay%20and%20Allowances%20-%20August%202014.pdf>

- A Member who rents or leases an office or part thereof from an organisation (including a trust in which the Member, or a family member, business partner or business associate of the Member, has a pecuniary interest) may not claim Office Cost Allowance in respect of the rent or lease of the office or part thereof unless the Members' Business Support team has agreed the proposal in advance of the agreement having been entered into.
- Approval may be given under paragraph 6.1.5 where the Member, family member, business partner or business associate has either a very small holding in a listed company or is a beneficiary of a major pension fund. The decision as to the size of a holding or a pension fund is at the discretion of the Members' Business Support team. Save that a Member, if dissatisfied with the decision made by the Members' Business Support team, may request that the matter be referred for a decision by the Chief Executive and Clerk in accordance with the procedure set out in paragraph 1.4.1¹⁹.

Are Members required to register any connected parties of other Members that they employ or who otherwise benefit from the Member's office expenditure?

See above information on Standing Order 3.

Is the information published?

The Record of the Employment of Family Members is maintained in the Table Office. It is open to public inspection in the Table Office itself during opening hours. Copies of individual entries may be made available on request.

5 Oireachtas

The Ethics Acts in the Republic of Ireland provide a framework for the disclosure of interests by, among others, members of Dail Eireann and Seanad Eireann (SIPO). The website of the Standards in Public Offices Commission/ Coimisiún um Chaighdeáin in Oifigí Poiblí (SIPO) provides the following information on the disclosure requirements as they apply to Members:

Members of the Houses of the Oireachtas (Members) must furnish an annual statement of their registrable interests to the Standards Commission. These are then

¹⁹ Any questions of entitlement to an allowance in accordance with this Determination are to be decided, in the first instance, by the Members' Business Support team, but a Member, if dissatisfied with the decision, may request that the matter be referred for a decision by the Chief Executive and Clerk. Before reaching a decision on any such question, the Chief Executive and Clerk may, if it is necessary or desirable to do so, seek clarification about the interpretation of this Determination from the Remuneration Board. In doing so, the Chief Executive and Clerk must avoid, so far as possible, disclosing the identity of the individual Member.

forwarded by the Standards Commission to the Clerk of the Dáil or Seanad, as appropriate. Each Clerk will then establish a register (known as the Register of Interests of Members of Dáil Éireann or the Register of Interests of Members of Seanad Éireann, as may be appropriate). A Member must also disclose any 'material interest' he/she, or a **connected person** might have in the proceedings of either House if they intend to vote or speak in such proceedings. Proceedings of the House include a Member's participation in a Committee of either House or a Joint Committee of the Houses. Disclosure of a material interest in proceedings is not required where that interest has already been disclosed in an annual statement of registrable interests of the Member which, or a copy of which, has been laid before the House²⁰.

SIPO also provides the following definition of "connected person":

Any question as to whether a person is connected with another shall be determined in accordance with the following provisions (a determination that one person is connected with another person means also that the other person is connected with the first-mentioned person):

- a person is connected with an individual if that person is a relative of the individual ("relative", in relation to a person means a brother, sister, parent or spouse of the person or a child of the person or of the spouse;)
- a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust,
- a person is connected with any person with whom he or she is in partnership,
- a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it,
- any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company²¹.

²⁰ <http://www.sipo.gov.ie/en/About-Us/Our-Policies/FOI-Manuals/Combined-Section-15-16-Manual/The-Ethics-Acts.html>

²¹ <http://www.sipo.gov.ie/en/About-Us/Our-Policies/FOI-Manuals/Combined-Section-15-16-Manual/The-Ethics-Acts.html>



Northern Ireland
Assembly

Appendix 7

Other Evidence Considered by the Committee

2014.06.16 Letter to OFMDFM from the Chair



COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254
Parliament Buildings
Stormont
Belfast
BT4 3XX

16th June 2014

First and deputy First Minister
Stormont Castle
Belfast
BT4 3XX

I write on behalf of the Committee on Standards and Privileges to establish what rules apply to Executive Ministers on the acceptance of gifts and hospitality.

The Committee is currently carrying out a review of the Assembly's Code of Conduct – I enclose for your information a copy of the Committee's issues paper on the review. As part of this review, the Committee shall consider whether there are any circumstances in which, or categories of person from whom, the receipt of a gift might be perceived as compromising the integrity of a Member. The Committee shall also consider whether it remains appropriate that Members only have to register those gifts received which have a value greater than 0.5% of the salary of a Member (currently £240).

The Committee has looked at the rules that apply to Members and additionally to Ministers in other places. When doing so the Committee noted that the Executive's Ministerial Code of Conduct provides (at paragraph 1.5 (viii)) that Ministers must at all times "ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered". However, the Committee's research has been unable to identify what these rules are and we would therefore be grateful if you would clarify the position in relation to all Executive ministers.

Of course Executive Ministers are also currently subject to the Assembly's rules in relation to the registration and declaration of interests in the same way as other Members. The Committee therefore believes that in reviewing these rules it should take into consideration any other such rules that apply to Ministers or any views that the Executive might have on what the Assembly's rules should be.

The Committee looks forward to considering your response on this, and indeed on any other matter on which you wish to comment in relation to our review of the Code of Conduct.

Yours sincerely

Alastair Ross MLA
Chairperson to the Committee on Standards and Privileges

Correspondence from OFMDFM dated 29 September 2014



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Mr Alastair Ross MLA
Chairperson
Committee on Standards and Privileges
Room 254
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COR/353/2014

29 September 2014

COMMITTEE ON STANDARDS AND PRIVILEGES: REVIEW OF NORTHERN IRELAND ASSEMBLY'S CODE OF CONDUCT

You recently wrote to us in the context of the Committee on Standards and Privileges current review of the Assembly's Code of Conduct for Members, to establish what rules apply to Executive Ministers on the acceptance of gifts and hospitality.

The Committee has noted that the Northern Ireland Executive Ministerial Code states, at Section 1.5 (viii), that Ministers must at all times 'ensure that they comply with any rules on the acceptance of gifts and hospitality that might be offered'. For the purposes of compliance with this requirement, Ministers are expected to continue to have regard to the principles underpinning the guidance on gifts and hospitality contained in the Northern Ireland Assembly Executive Committee Ministerial Code published in 2000. A copy of this section of the Code is attached.

The Committee will also be aware that Ministers are also required to act in accordance with the *Seven Principles of Public Life* set out by the Committee on Standards in Public Life, as referred to at Section 1.6 of the Ministerial Code. A number of provisions are relevant to this matter, extending as they do to the acceptance of gifts and hospitality by Ministers, namely:

Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

We have no further comments which we would wish to make on behalf of the Executive concerning additional rules that your Committee might seek to consider relating to the registration and declaration of interests, and we look forward to receiving the Committee's final report and recommendations following its review.

THE RT HON PETER D ROBINSON
First Minister

MARTIN McGUINNESS
deputy First Minister

**Excerpt from the Northern Ireland Assembly Executive Committee
Ministerial Code 2000**

Acceptance of Gifts and Hospitality

1. Ministers should avoid accepting any gift or hospitality which might, or might reasonably appear to, compromise their judgement or place them under an improper obligation. The same principle applies if gifts etc are offered to a member of their family.
2. This is primarily a matter for decision by Ministers. But any Minister in doubt or difficulty over this should seek the guidance of the Secretary to the Executive Committee. The rules applying to the acceptance of gifts from donors with whom a Minister has official dealings are as follows:
 - a. Each Minister's Private Office should keep a Register of Gifts and Hospitality recording both offers made and acceptances / refusals. Receipt of gifts should, in all cases, be reported to the Permanent Secretary;
 - b. Gifts of small value (currently this should be put at up to £140) may be retained by the recipient;
 - c. Gifts of a higher value should be handed over to the department for disposal, except that:
 - (i) The recipient may purchase the gift at its cash value (abated by £140);
 - (ii) If the recipient wishes to reciprocate with, and pay for, a gift of equivalent value, the gift received may be retained;
 - (iii) If the department judges that it would be of interest, the gift may be displayed or used by the department;
 - (iv) If the disposal of the gift would cause offence or it might be appropriate for the recipient to use or display the gift on some future occasion as a mark of politeness, then the gift should be retained in the department for this purpose for a period of up to five years;
 - d. While rules a-c make it clear that no Minister or member of their family should accept a gift from anyone which would, or might appear to, place him or her under an obligation there may be difficulty in refusing a gift from another government (or governmental organisation) without the risk of apparent discourtesy. On the other hand the acceptance of a gift or the knowledge that one will be offered may in some countries and in some circumstances entail the offer of a gift in exchange. As a general rule Ministers should not offer gifts or initiate an exchange. In deciding whether to accept gifts from or offer gifts to members of governments (or governmental organisations) Ministers should wherever possible consult their Permanent Secretaries who will be able to advise them. Gifts received overseas worth more than the normal travellers' allowances should be declared at importation to Customs and Excise who will advise of any duty and tax liability. In general, if a Minister wishes to retain a gift he or she will be liable for any tax or duty it may attract;
 - e. In the event of a Minister accepting hospitality on a scale or from a source which might reasonably be thought likely to influence Ministerial action, it should be declared to the Northern Ireland Assembly Register of Members' Interests.

23.10.2014 – Letter to OFMdFM



COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254
Parliament Buildings
Stormont
Belfast
BT4 3XX

23 October 2014

First and deputy First Minister
Stormont Castle
Belfast
BT4 3XX

Thank you for your response of 29 September 2014 (your ref COR/353/2014) which the Committee on Standards and Privileges considered at its meeting last week. The Committee noted that Ministers are expected to continue to have regard to the principles underpinning the guidance on gifts and hospitality contained in the Northern Ireland Assembly Executive Committee Ministerial Code published in 2000. The Committee was grateful for sight of the relevant section of that Code.

The Committee was unable to find online either this particular requirement or the Code itself. Nonetheless the Committee has obtained a full copy of this Code from the Assembly library. The Committee noted that it contains a number of other provisions which may be relevant to its review of the Assembly's Code of Conduct. The Committee therefore agreed to ask you to clarify the following issues:

- Are there any provisions, or other underpinning principles, of the Northern Ireland Assembly Executive Committee Ministerial Code published in 2000 to which Ministers should continue to, or are expected to, have regard?
- How is the public made aware of these requirements or expectations upon Ministers (in relation to gifts and hospitality and any other relevant provisions)?
- What transparency is there in relation to Registers of Ministerial Gifts and Hospitality?

I should also point out that, as part of its review of the Code, the Committee has received comments calling on the Executive to revisit the Ministerial Code of Conduct. The Committee's report on the review of the Assembly's Code of Conduct may contain a recommendation that this should occur and may also recommend that the Executive should agree to introduce an independent process to investigate complaints which allege that a Minister has failed to observe the Pledge of Office in respect of duties set out in the Ministerial Code of Conduct.

Yours sincerely

Alastair Ross MLA
Chairperson to the Committee on Standards and Privileges

13.01.15 – Letter from OFMdFM



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Mr Jimmy Spratt
Chairman
Committee on Standards and Privileges
C/O Room 254
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Our Ref: COR/667/14

13 January 2015

Dear *Jimmy*

**COMMITTEE ON STANDARDS AND PRIVILEGES: REVIEW OF NI ASSEMBLY'S
CODE OF CONDUCT FOR MEMBERS**

Your predecessor, Mr Alastair Ross MLA, wrote to us on 23 October 2014 seeking clarification on a number of issues concerning the Northern Ireland Assembly Executive Committee Ministerial Code published in 2000, which we had cited in our earlier response letter to the Committee dated 29 September.

We have set out below our responses to the issues that you have raised in your letter.

- (i) *Are there any provisions or other underlying principles of the Northern Ireland Assembly Executive Committee Ministerial Code published in 2000 to which Ministers should continue to, or are expected to, have regard?*

In all cases, except where explicitly superseded by the statutory Ministerial Code of 2007, there is an expectation that, should the particular circumstance arise, Ministers would have due regard to the guidance contained within the 2000 Code as it applies to a range of matters, including the acceptance of gifts and hospitality; Ministers' visits; Ministers' business or private interests and Minister's constituency interests.

- (ii) *How is the public made aware of these requirements or expectations upon Ministers (in relation to gifts and hospitality and any other relevant provisions)?*

[REDACTED]

The statutory requirements placed upon Ministers in relation to conduct (including receipt of gifts and hospitality) are clearly set out in the Ministerial Code, which is published on the Northern Ireland Executive website:
http://www.northernireland.gov.uk/pc1952_ni_exec_min_code.pdf).

(iii) *What transparency is there in relation to Registers of Ministerial Gifts and Hospitality?*

While there is an expectation that all departments will keep records of Ministers' acceptance of gifts and hospitality and of Ministerial visits, this information is not required to be published, although Ministers are free to do so if they wish. Ministers, as you are aware, are required, under the provisions of paragraph 1.5 of the Ministerial Code of Conduct, to record any pecuniary interests which members of the public might reasonably think could influence their judgement in the Assembly's Register of Interests.

We also note your further comments concerning the establishment of an independent process to investigate complaints that a Minister has failed to observe the Pledge of Office in respect of duties set out in the Ministerial Code of Conduct. It would be important that the Committee, in considering such a recommendation, should take full account of the provisions of the Northern Ireland Act 1998 which govern breaches of the Pledge of Office. These allow a motion to be moved either by the First Minister and deputy First Minister, acting jointly, or by an MLA in circumstances where it is supported by at least 30 MLAs, to seek a resolution of the Assembly that a Minister does not enjoy its confidence because of his or her failure to observe any of the terms of the Pledge of Office. If the Assembly approves the motion, and resolves that the Minister does not enjoy its confidence, the sanction imposed can be censure, suspension for a period of time, or a reduction in salary, depending on the provision of the Act under which the motion has been moved.

It is clear that these provisions were framed not only to ensure that the line of accountability on matters of conduct should clearly run from a Minister to the Assembly, and not to either the Executive or to us as First Minister and deputy First Minister. The ultimate decision on whether a breach has occurred and on any consequent sanctions is therefore for the Assembly to take.

The inclusion of the Pledge of Office and the Ministerial Code of Conduct in the Ministerial Code in no way mitigated these arrangements, nor did it establish separate and parallel accountability mechanisms. No authority has been therefore conferred on us by the Ministerial Code to determine that a Minister has failed to observe the Pledge of Office, and this would remain the case even in circumstances where a requirement for an independent investigation existed. Insofar as the power to move a motion has also been conferred on MLAs, the question would therefore also arise as to independent investigation of any allegations of a breach of the Pledge of Office emanating from within the Assembly itself.

It is important therefore that in any recommendation the Committee may frame for independent investigation of breaches of the Pledge of Office, it takes full account of the determining role the Assembly itself currently plays in these matters and is mindful of the need to avoid any diminution of the Assembly's own authority.

We look forward to receiving the Committee's final report and recommendations following its review.

RT HON PETER D ROBINSON MLA
First Minister

MARTIN MCGUINNESS MLA
deputy First Minister



2011.01.28 Letter from the Speaker

The Speaker



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Mr Declan O'Loan MLA
Chairperson, Committee on Standards & Privileges
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STANDARDS &

01 MAR 2011

PRIVILEGES

28 February 2011

Dear Declan,

Thank you providing me with an opportunity to contribute to the Committee's consideration of the issue of Assembly privilege.

This is a young institution and a matter of Assembly privilege has not been raised with me under Standing Order 70, though I understand that you are aware of one such referral to the previous Speaker in 2002. It is therefore timely that consideration is given to our understanding of privilege and to the roles and responsibilities of the Speaker, the Committee and others in considering matters of privilege.

In relation to the meaning of privilege, I am clear that Assembly privilege is distinct from the broader concept of parliamentary privilege at the UK parliament, as described in Erskine May. The Northern Ireland Assembly is a creature of statute and the Northern Ireland Act 1998 establishes a number of privileges for Members of the Assembly and for the Assembly itself. In particular, the privilege of free speech is protected by Section 50 of the Northern Ireland Act which provides members with absolute privilege from action for defamation in relation to the making of a statement in proceedings of the Assembly and the publication of a statement under the Assembly's authority.

In addition, the Assembly as a legislature and a scrutiny body enjoys specific powers and privileges. Section 5(5) of the Northern Ireland Act provides that "*the validity of any proceedings leading to the enactment of an Act of the Assembly shall not be called into question in any legal proceedings*". In addition, Section 44 provides the Assembly and its committees with powers to call for witnesses and documents and creates offences under Section 45 if people fail to comply with notices properly issued under Section 44.

I can assure the Committee that I consider the Speaker to have an important role in seeking to defend the privileges of the Assembly. Indeed, as provided for in the Northern

SP106_11

Ireland Act there may come a time when this Assembly decides to seek an extension of its privileges. I am unaware of the need for any such action at this time, but am of the view that the Speaker and the Committee would have a role in considering and addressing such matters.

There are of course 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 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.

Thus far I have focussed on legal privileges and breaches of privilege by a Member of the Assembly. It could be argued that non-Members could also breach privilege, by for example leaking reports, disrupting proceedings, interfering with communications, etc. Whilst I cannot be definitive, it would seem more likely that complaints about such matters might fall initially to the Speaker, Committee Chairperson or to the Assembly Commission to consider, in the context of the rules of the House. However, I believe that it is right we should maintain a means of referring matters of privilege to the Committee on Standards and Privileges in those limited circumstances where it is appropriate to do so.

In relation to the matter of the Commissioner for Standards, whilst again it is difficult to be definitive given the youth of our institution, I am inclined to the view that the new statutory Commissioner for Standards should be just that and his or her principal responsibility should be to investigate complaints about the conduct of Members of the Assembly.

I trust that this is helpful to your ongoing inquiries.

Yours sincerely,

WILLIAM HAY MLA

SP106_11

08.08.2014 - Letter to IFRP



COMMITTEE ON STANDARDS AND PRIVILEGES

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BT4 3XX

Tel: 028 9052 0333
Email: paul.gill@niassembly.gov.uk

8th August 2014

Georgina Campbell
Secretary
Independent Financial Review Panel
Room 239
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Dear Georgina,

I am writing to you on behalf of the Committee on Standards and Privileges to draw to the attention of the Independent Financial Review Panel a development in Scotland in relation to MSPs' salaries.

Background

The Committee on Standards and Privileges is currently carrying out a review of the Code of Conduct for Members of the Assembly. As part of that review, the Committee has 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. The Committee is aware, for example, that a Member would become disqualified if sentenced or ordered to be imprisoned or detained indefinitely, or for more than one year.

This is similar to the position in relation to MSPs in Scotland. Accordingly, in August 2013 when the then MSP Bill Walker was convicted of 23 separate charges of assault at Edinburgh Sheriff Court, and the maximum sentence available was imprisonment of one year, there was a public outcry at the realisation that he would not be disqualified from being an MSP.

The Scottish Parliamentary Corporate Body responded to this by bringing forward an amendment to the Scottish Parliament Salaries Scheme. The amendment, which was agreed by the Parliament, provided that for any period during which an MSP was imprisoned, the salary payable to that member would be reduced by 90%. For information I enclose a copy of this amendment and the paper from the Clerk/Chief Executive's Office which informed it.

The Independent Financial Review Panel

The Committee on Standards and Privileges has asked me to draw this amendment to the attention of the Independent Financial Review Panel. The Committee also wishes to establish whether there are similar measures in place here at the Assembly and, if not, whether this is something the Panel has looked at or plans to look at in the future.

I also attach the Committee's issues paper in relation to the review of the Code of Conduct which sets out the Committee's initial thinking on the various matters coming up for consideration. Although the consultation period has closed, the Committee would welcome the views of the Independent Financial Review Panel on any of the issues it believes to be relevant to its work.

In particular I draw to your attention paragraph 140 of the issues paper which refers to the Committee's power under Standing Order 69C (3) to bring forward sanctions, including in relation to the withdrawal of a Member's salary and allowances. In light of the Panel's functions it may wish to comment upon this particular sanction.

Conclusion

Please let me know if the Panel requires any further information.

A copy of this letter goes to the Clerk/Director General.

Yours sincerely,

Paul Gill
Clerk to the Committee on Standards and Privileges

Encs

11.12.14 – Letter to IFRP



COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254
Parliament Buildings
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BT4 3XX

Pat McCartan CBE, MSc (Dist), FCIPD
Chair, Independent Financial Review Panel
Room 241
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

11 December 2014

Dear Mr McCartan,

I note that during media interviews yesterday you said that there was not currently full disclosure in relation to MLAs and the employment of family members.

This is not the case. Since 2009 all MLAs have been required to register family members who benefit directly or indirectly in any way from any Office Cost Expenditure. In addition, if a Member uses any of their Office Cost Expenditure in a way that benefits a family member of another MLA then this must also be registered.

This requirement arises from provisions in the Assembly's Code of Conduct and Guide to the Rules relating to the Conduct of Members. This means that should a Member fail to register such information that Member would breach the Code of Conduct.

You are aware that the Committee on Standards and Privileges is currently reviewing this Code and Guide. It aims to bring forward for the Assembly's approval an updated Code and Guide in the new year. I note, however, that the Panel's consultation document which issued yesterday addresses a number of areas which fall within the scope of the Committee's current review rather than within the scope of what the Panel's determination might address.

If the Panel has suggested amendments to the requirements in the Assembly's Code and Guide then I would suggest that it should put them in writing to the Committee without delay. I would remind you that the Committee has not yet received any written submission from the Panel on the review.

Yours sincerely,

Jimmy Spratt MLA
Chairperson
Committee on Standards and Privileges

2015.13.02 – Letter from IFRP

Independent
Financial
Review
Panel

Mr Jimmy Spratt MLA
Chairperson
Committee for Standards and Privileges
Room 254
Parliament Buildings
Stormont
Belfast
BT4 3XX

STANDARDS &
18 FEB 2015
PRIVILEGES

13 February 2015

Dear Mr Spratt

Thank you for your time on the 10 February 2015 and your subsequent letter of 11 February inviting the Panel to attend the Committee for Standards and Privileges meeting on 18 February 2015. I am happy to advise yourself that the Panel will be attending the Committee meeting.

Arising from our discussion on the 10 February 2015, I can confirm that the Panel, at its meeting on the 23 October 2014, considered the matter relating to the situation in Scotland, whereby an MSP despite being imprisoned for 12 months for assault, was unable to be disqualified from being an MSP as the rules stated that to be disqualified, his sentence must exceed one year. At that meeting, the panel agreed with the approach adopted in Scotland whereby a Member sentenced to less than 12 months in prison should continue to receive the salary reduced by 90%.

The Panel further agreed to ensure this matter was incorporated in its Determination for the 5th Assembly.

I look forward to our discussion with the Committee for Standards and Privileges on the 18 February 2015.

Yours sincerely

Mr Pat McCartan
Chair

27.2.2015 Letter from IFRP

The logo for the Independent Financial Review Panel is a dark grey rectangle with the words "Independent", "Financial", "Review", and "Panel" stacked vertically in white, sans-serif font.

Independent
Financial
Review
Panel

Mr Jimmy Spratt MLA
Chairperson
Committee for Standards and Privileges
Room 254
Parliament Buildings
Stormont
Belfast
BT4 3XX

27 February 2015

Dear Mr Spratt

CONSULTATION ON PRIOR DISCLOSURE OF INTERESTS

As recently discussed with both yourself and Committee Members, the Panel normally publishes one Determination for each Assembly Mandate, setting out its assessment of what monies should be paid to Members and any restrictions on how these monies can be paid or spent. The Panel has a duty to keep this Determination under review and on analysis has decided that a number of changes are necessary.

The Panel is of the view that, having reviewed the contents of the March 2012 Determination as amended, recent information coming to light and continuing analysis have demonstrated that exceptional circumstances exist, necessitating the issue of a revised Determination.

When the Panel met with the Committee on Standards and Privileges on 18 February 2015, I undertook to keep your Committee fully informed on the Panels intention for a Determination to ensure Prior Disclosure by MLAs of 'associated persons' before any claims for OCE are paid.

The Panel proposes that the changes will give effect to its intent arising from the 10 Principles as agreed by Leaders of the Assembly's Political Parties. The Panel

would intend to support the effective administration of their proposals through the introduction of these changes at the beginning of the next financial year 2015/16.

The Panel considers that it is the public interest and in the interests of the effective administration of Members expenses that these changes come into effect from 1 April 2015.

I am confident that the Committee will also understand the benefits of being seen to act promptly and of ensuring that these changes for openness and transparency coincide with the start of the financial year.

To this end and in order to inform our work, the Panel has agreed to conduct a four week consultation exercise to seek the views and comments from stakeholders and interested parties and would in particular welcome your views on the following:

- 1 Do you have any comments in relation to the Panel's proposal that before any payments can be claimed from OCE, members must make prior disclosure as to whether any associated person will receive the payment?*
- 2 Do you have any comments in relation to the Panel's proposal as to the persons who will be deemed for the purposes of the Determination to be associated persons?*
- 3 Do you agree that all payments where not already paid directly to the Member, an employee or supplier, should be payable into the personal bank account of the member making the claim?*

I attach a consultation document for your consideration. It would be helpful if you could be as specific as possible in your response and, where appropriate, give the reasons for your views, comments or suggestions.

You can respond to me at the address below or by email to info@ifrp.org.uk

The deadline for submitting your views is **5pm on Friday 27 March 2015**.

On behalf of the Panel, I look forward to hearing from you.

Yours sincerely

Mr Pat McCartan
Chair

Independent Financial Review Panel, Room 241, Parliament Buildings, Ballymiscaw,
Stormont BT4 3XX

Response of 1 April from IFRP

STANDARDS &

PRIVILEGES

Independent
Financial
Review
Panel

Mr Jimmy Spratt MLA
Chairperson
Committee for Standards and Privileges
Room 254
Parliament Buildings
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1 April 2015

Dear Mr Spratt

Thank you for your letter dated 18 March 2015. The Independent Financial Review Panel (the Panel) has found your letter most helpful and have asked me to reply.

The three matters you identified from our evidence session on 18 February 2015 with the Standards and Privileges Committee and which we undertook to consider shall be fully taken into account as part of our Determination for the new Mandate and we regard your letter as an important submission to our consultation exercise.

Therefore we shall:

- Include in our next Determination a provision for reducing the salary of a Member by 90% for any period during which a Member is imprisoned;
- Consider steps to ensure that our Determination does not provide an obstacle to the Assembly's power to withdraw a Member's salary and allowances; and
- Consider in our next Determination the inclusion of a mandatory Code of Conduct for support staff of MLA's.

You also raise the matter of the Panel's proposal regarding prior disclosure for claims made under OCE. I enclose a copy of the Determination which is due to take effect from the 1 April 2015. The Panel is satisfied that the current arrangements in respect of petty cash items purchased by MLA's should continue as at present.

In all other cases, the effect of the Determination is to require MLA's to make a prior disclosure in respect of financial matters and/or associated persons as defined within our Determination.

I trust this clarifies the matter for yourself and the Committee. The Panel thanks you for the very positive engagement and looks forward to our continued co-operation in ensuring compliance with the Panel's Determinations and your Committees responsibilities for standards and privileges.

Yours sincerely

Mr Pat McCartan
Chairperson
The Independent Financial Review Panel

Independent Financial Review Panel, Room 241, Parliament Buildings, Ballymiscaw,
Stormont BT4 3XX

Northern Ireland Assembly (Members' Allowances) Determination (No. 1) 2015

The Independent Financial Review Panel, in exercise of the powers conferred on it by section 2 of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011, makes the following determination—

Title and commencement

1. This determination may be cited as the Northern Ireland Assembly (Members' Allowances) (No. 1) Determination 2015 and shall come into force on 1 April 2015.

Amendment of the Northern Ireland Assembly (Members' Salaries, Allowances, Expenses and Pensions) Determination 2012

2. The Northern Ireland Assembly (Members' Salaries, Allowances, Expenses and Pensions) Determination 2012 is amended as follows—

(1) In paragraph 2(2)—

- (a) In the alphabetically appropriate place, insert—

“associated person” has the meaning given by paragraph 9(17);;

“civil partner” has the same meaning as in section 1 of the Civil Partnership Act 2004;;

“cohabitant” means either member of a couple consisting of—

- (i) a man and a woman who are living together as if they were husband and wife; or
- (ii) two persons of the same sex who are living together as if they were civil partners;;

“political party” means a party registered under Part II of the Political Parties, Elections and Referendums Act 2000; and

- (b) omit the words from ‘a spouse’ to ‘cohabiting partner’ and substitute—

- (i) parent, child, grandparent or grandchild;
- (ii) brother, sister, uncle, aunt, nephew or niece (whether of the full or half blood);
- (iii) spouse or any person related to a spouse in any of the ways set out in sub-paragraphs (i) or (ii);
- (iv) civil partner or any person related to a civil partner in any of the ways set out in sub-paragraphs (i) or (ii); or
- (v) cohabitant or any person related to a cohabitant in any of the ways set out in sub-paragraphs (i) or (ii);

- (2) In paragraph 6, for ‘cohabiting partner’ substitute ‘cohabitant’

- (3) In paragraph 9—

- (a) in sub-paragraph (8), for 'cohabiting partner' substitute 'cohabitant';
- (b) in sub-paragraph (11), omit 'subject to sub-paragraphs (13) to (14), under sub-paragraph (1)'; and
- (c) after sub-paragraph (14), insert—
 - '(15) A member shall not be entitled to recover expenditure in respect of a payment unless he makes a declaration in accordance with paragraph 16.
 - (16) A declaration must state—
 - (a) the name of the person who received the payment;
 - (b) whether the person who received the payment was at the time of the payment resident or registered at a place within the European Union;
 - (c) whether the person who received the payment was an associated person, and if so the details of that association;
 - (d) where the person who received the payment was a trust—
 - (i) whether any trustee of the trust was an associated person, and if so the details of that association;
 - (ii) whether any beneficiary of the trust was an associated person, and if so the details of that association;
 - (e) where the person who received the payment was a company—
 - (i) whether any director of that company was an associated person, and if so the details of that association;
 - (ii) whether any person who owned or controlled more than 5% of that company's share capital or voting rights was an associated person, and if so the details of that association; and
 - (f) where the person who received the payment was a partnership, whether any partner was an associated person, and if so the details of that association;
 - (17) An associated person is—
 - (a) a political party;
 - (b) a member, employee or officer of a political party;
 - (c) an association, whether incorporated or not, the purpose of which is wholly or mainly—
 - (i) the advancement of political opinions;
 - (ii) the advancement of culture or heritage; or
 - (iii) the advancement of religion;
 - (d) a person who is, or was within the last five years—
 - (i) a member of the Assembly, the European Parliament, the House of Commons, the House of Lords, the Scottish Parliament, the National Assembly for Wales, Dáil Éireann (House of Representatives of Ireland) or Seanad Éireann (Senate of Ireland);
 - (ii) a district councillor;

- (iii) an employee of a member of the Assembly;
 - (iv) an employee of the Commission;
 - (v) an employee of a Northern Ireland department;
 - (vi) an employee of a district council;
 - (vii) a family member of a member of the Assembly; or
 - (viii) a candidate for election to the Assembly.
- (18) Where a member knew or ought reasonably to have known that a declaration under sub-paragraph 15 was not accurate—
- (a) the Commission may request repayment of any amount paid to the member in respect of which that declaration was made;
 - (b) the member shall repay that amount to the Commission, within three months of the date of request; and
 - (c) in default of repayment of that amount, the Commission may deduct an amount equal to it from any other amount to be paid to the member under this or any subsequent Determination.'
- (4) In paragraph 14, for 'cohabiting partner' substitute 'cohabitant'; and
- (5) After paragraph 19, insert—
- 'Direct payments to members
- 20.—(1) A payment to which sub-paragraph (2) applies must be paid into an account held by a financial institution in the name of the member.
- (2) This sub-paragraph applies to payments in respect of—
- (a) members' travel expenditure under paragraph 7;
 - (b) members' subsistence expenditure under paragraph 8;
 - (c) disability expenditure under paragraph 10;
 - (d) recall expenditure under paragraph 11;
 - (e) employees' travel expenditure under paragraph 12;
 - (f) contributions by a member towards the pension of any employee under paragraph 13;
 - (g) childcare expenditure or allowance under paragraph 15;
 - (h) resettlement allowance under paragraph 16;
 - (i) ill-health retirement allowance under paragraph 17; and
 - (j) winding-up expenditure under paragraph 18.'

Letter to Clerk of Standards and Privileges

28 April 2015

Independent
Financial
Review
Panel

Mr Jimmy Spratt MLA
Chair of the Committee on Standards and Privileges
c/o Clerk to the Committee on Standards and Privileges
Room 254
Parliament Buildings
Ballymiscaw
Stormont
BT43XX

28 April 2015

Dear Mr Spratt

When the IFRP met the Committee on the 18 February 2015, the Panel agreed to keep the Committee on Standards and Privileges abreast of any matters which were of interest to the Committee. To this end, the Panel wishes to provide the Committee with an update in relation to the implementation of its recent Exceptional Determinations, which took effect from the 1 April 2015.

At the Panel's meeting on the 23 April 2015, we received a report from Mr Richard Stewart, Director of Corporate Services, concerning the implementation of the Exceptional Determinations. As Members now provide prior disclosure information to the Finance Office with their OCE claims, the Panel is drawing your attention to the data arising from prior disclosure, which may have some overlap with the data on the Register of Members' Interests. The Panel accepts that the rules for the Register differ from ours for prior disclosure, but, there may be an interest on behalf of your Committee in ensuring compatibility where appropriate between prior disclosure and the Register of Interests.

The Panel believes it is appropriate to draw your attention to the information now in records held by the Director of Corporate Services and we trust you will find this information helpful for maintaining the Register of Interests.

Independent Financial Review Panel, C/o Room 241, Parliament Buildings, Ballymiscaw,
Stormont, BT4 3XX

If you or the Clerk would like to discuss further, please feel free to contact Mr Hugh Widdis or indeed the Panel.

Yours sincerely

MR PATRICK MCCARTAN CBE
Chairman

2014.06.28 Department of Environment Code of Conduct

From the office of the
Minister of the Environment



Department of the
Environment
www.doeni.gov.uk

Alastair Ross MLA
Chair
Standards and Privileges Committee
Northern Ireland Assembly
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Your reference:

Our reference: SUB/492/2014

28 June 2014

Dear Alastair

The draft mandatory Northern Ireland Local Government Code of Conduct for Councillors (the mandatory Code) was approved in the Assembly on Tuesday, 27 May 2014 and came into force on 28 May 2014.

Following the debate on the above mandatory code, I gave an assurance to members that I would follow up on any outstanding issues that may have been raised.

I am writing to clarify two issues that you raised during that debate. You queried why the mandatory Code is based on the original principles of public life as opposed to the updated principles of last year, given that they come from the Committee on Standards in Public Life; and you also queried whether the principles in the mandatory code are regarded as enforceable rules, as opposed to being aspirational.

As you are aware, the Committee on Standards in Public Life (the Standards Committee) issued its review of best practice in promoting good behaviour in public life, "Standards matter" in January 2013. As a result of that review, the principles of public life remained unchanged, but they did revise the descriptors that applied to them.

However, the Standards Committee also recognised that some organisations have chosen to adapt the principles for their own purposes and they have welcomed this as evidence of active consideration of the way in which key values can best be expressed. They also stated that the value of the principles lies not in their exact formulation, but in the behaviour which they stimulate when - adapted or not - they become part of an organisation's culture.

The departmental review of the previous Code of Conduct for Councillors, (which was a guidance document only) which led to the development of the current

mandatory code, took into account other codes of conduct and supporting procedures that applied to local government councillors in other jurisdictions. It did not focus on those codes that apply to the Parliamentary tiers that would affect members of the Scottish Parliament, the UK Parliament and the Welsh Assembly.

The MLA Code of Conduct that would apply to members of the Assembly would also be included in this tier, but during the departmental review it was also noted that, at that time, a number of councillors also held the position of MLA.

It was therefore considered helpful to adopt a uniform approach, so that the principles within the mandatory code would mirror those currently used in the MLA Code. The principles used are based on the seven Nolan principles which are applied to the majority of codes of conduct that exist across most public sector organisations. This uniform approach would provide a common denominator between both the mandatory code and the MLA Code, for those councillors who also held the position of MLA.

The Local Government Act (Northern Ireland) 2014 provides that members of the legislature of any other country, the House of Commons, the House of Lords, the European Parliament and the Assembly will be disqualified for being a councillor. This provision supports the removal of any requirement to provide a link between the codes.

However, as a result of the ongoing political party commitments relating to dual mandates, some MLAs have decided to remain as a councillor. It has also occurred that a councillor has been co-opted to the position of MLA. These are options that could still occur in the future. I believe it is relevant that my officials maintain a watching brief on progress on the review of the MLA Code and they are liaising with your Committee Clerk to share information and to consider any relevant changes that may be required to the mandatory code. As you indicated in the Assembly, I am grateful that you also note the benefits of maintaining this contact.

The rules of conduct set out in the mandatory code are the specific application of the Principles. In complying with these rules, as required under the Code, it will help councillors in meeting the high standards of conduct promoted by the principles. The rules also state that a councillor should have regard to the principles and should not express opinions in a manner that is manifestly in conflict with the principles.

Depending on the situation, it may be that a person has complied with the rules but is seen to be in breach of a specific principle then the upholding of that principle should be enforced. This would be a matter for the Commissioner for Complaints to consider and decide.

I hope this explains the rationale and clarifies the position for you. I have instructed my officials to keep me informed of the developments regarding the MLA Code which I understand will be available in the autumn, so that any relevant impact on the mandatory code can be addressed effectively.

Yours sincerely,

MARK H DURKAN MLA
Minister of the Environment

3.2.2015 Correspondence from Douglas Bain

STANDARDS &

11 FEB 2015

PRIVILEGES

**FROM: Douglas Bain CBE TD Advocate
Northern Ireland Assembly Commissioner for Standards**

**Paul Gill
Clerk to the Standards & Privileges Committee**

3 February 2015

REVISION OF CODE OF CONDUCT

I minute to draw attention to two areas in which the Committee may wish to consider further revision of the draft Rules of Conduct.

New Rule

Rule 20 would cover the situation where a Member urges one of his or her staff to act in contravention of the Code and the second sentence of Rule 8 would catch any Member who urges another Member to breach that rule. But there is nothing in the current draft to cover the situation where a Member urges another Member to breach any of the rules except Rule 8. Whilst it is to be hoped that such conduct would be very rare, it has been hinted at in one investigation that I have dealt with. I believe that there is a compelling case for a rule outlawing it.

If the Committee were minded to include such a rule it might perhaps be along the following lines –

‘You shall not urge another Member to contravene any rule of conduct.’

If such a provision was included the second sentence of Rule 8 would be unnecessary.

Rules 2 and 3

These rules are, as I understand it, intended to avoid investigations into whether a Member has breached the criminal or equality laws. I fear that as drafted they might not achieve that result.

It is not inconceivable that a complaint of breaching either the criminal law or equality law could be made in which the alleged admission (Rule 2) or alleged acceptance (Rule 3) was made informally to the complainant or to a third party rather than in the course of legal proceedings. Such an admission, if proved, would be sufficient to render the complaint admissible. Investigation of whether or not such an informal admission/acceptance had been made would be time consuming, problematic and often unsatisfactory.

To avoid that risk and to ensure that Rules 2 and 3 have their intended effect I recommend that consideration be given to inserting the word 'formally' after 'admit' in Rule 2 and 'accept' in Rule 3.

Douglas Bain CBE TD Advocate
Northern Ireland Assembly Commissioner for Standards

16.01.2015 Further Correspondence from the Equality Commission



Legal, Policy & Research Division
DX 4316 NR BELFAST
Fax: 028 90 331047
E-mail: information@equalityni.org

16 January 2015

Mr Paul Gill
Assembly Committee on Standards and Privileges
Room 241
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BT4 3XX

Dear Paul

Re: Draft Members' Code of Conduct: good relations principle.

Thank you for recent email seeking further clarification on whether the Commission has agreed an updated definition of good relations.

Firstly, whilst we recognise that the Member's Code is still under consideration and in draft form, we welcome the fact that consideration is being given to including in the Code separate aspirational principles in relation to Equality, Promoting Good Relations, Respect and Good Working Relationships.

We also welcome the fact that consideration is being given to including an equality principle that reflects the wording provided by the Commission.

Good Relations Principle

As outlined in our response to the Assembly Committee on Standards and Privileges paper on the Review of the Members Code in May 2014, we

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recommend changes to the current wording in the Members' Code relating to the principle on good relations.

As highlighted in our response, neither 'good relations' nor 'promoting good relations' is defined in legislation. We also mentioned that we were considering an updated definition of good relations in the context of the publication of *Together: Building a United Community*¹, as well as the enhanced good relations duty placed on public authorities in Great Britain following the enactment of the Equality Act 2010 in Great Britain.²

We asked that, whilst we and others continue to give consideration to a formal definition, the Committee should take account of these developments in drafting the good relations principle within the Members' Code of Conduct.

Specifically, we asked that consideration should be given to a focus on "the need to tackle prejudice and promote understanding between people on the grounds of religion, political opinion, race, gender, age, sexual orientation and disability".

In the context of our recent evidence to the OFMDFM Assembly Committee's *Inquiry into Building a United Community*, we highlighted the clear need for a definition of good relations in statute.³ We also indicated that there are a number of elements that would be helpful in the formulation of a definition of good relations, to inform any legislation to establish powers and duties for an Equality and Good Relations Commission.⁴

In particular, we consider that the elements are:

- a high level of dignity, respect and mutual understanding;
- an absence of prejudice, hatred, hostility or harassment;
- a fair level of participation in society.

¹ OFMDFM (2013), *Together: Building a United Community* Strategy, <http://www.ofmdfmni.gov.uk/together-building-a-united-community-strategy.pdf>

² Section 149 (Public Sector Equality duty)2 of the Equality Act 2010 in Great Britain has also advance considerations of Good Relations, by setting out that:

"Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
(a) tackle prejudice, and (b) promote understanding.

³ See ECNI Evidence to the OFMDFM Committee Inquiry into a United Community, October 2014

⁴ This draws from what is already provided for in other statutes and is closely aligned to powers and duties originally given to the Equality and Human Rights Commission in Britain. Equality Act 2010 Section 10

In addition, we made it clear that the definition contained in the Equality Act 2010 which provides public authorities in Great Britain with direction on how they should fulfill their duty to have due regard to the need to foster good relations is also useful. In particular,

*“(a) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to —
(b) tackle prejudice, and
(c) promote understanding”.⁵*

Recommended Good Relations Principle

In light of our views on the elements that would be helpful in the formulation of a definition of good relations in legislation, we **recommend** that a good relations principle contained within the revised Member’s Code is worded as follows.

“Members should act in a way that is conducive to promoting good relations by tackling prejudice, promoting understanding and respect and encouraging participation between people on the grounds of religion, political opinion, race, gender, age, sexual orientation and disability.”

We note from your email that the Assembly Committee on Standards and Privileges is considering including the following wording in the context of a new principle of ‘Promoting Good Relations’:

Members should have regard to the desirability of promoting understanding and good relations between people of different religion, political opinion, race, gender, age, sexual orientation and disability.

In particular, we note that the proposed wording states that Members ‘should have regard to the desirability of promoting understanding and good relations’.

We would draw to the Committee’s attention the fact that we consider that there is a distinction between the good relations duty under Section 75⁶ which applies to the decision-making processes of designated public bodies, and the standards of conduct that should apply to Members.

⁵ Equality Act 2010, section 149 (5)

⁶ This refers to ‘having regard to the desirability of promoting good relations’.


We therefore **recommend** that, rather than Members being required to 'have regard to the desirability of promoting good relations', the principle should state that "*Members should act in a way that is conducive to promoting good relations*". Our recommendation is also in line with the wording in the good relations principle set out in the recently revised DOE Code of Conduct for Councillors; which states that Councillors "should act in a way that is conducive to promoting good relations".⁷

Enforceable Rules

We welcome the fact that the Committee is considering including in the Members' Code a new express rule requiring Members to uphold the law in relation to equality. As set out in our response, the Commission had recommended the inclusion of an enforceable rule that makes it clear that Members must not discriminate contrary to the equality legislation or act in a manner that was in breach of the hate crime legislation.

Finally, we look forward to the publication of the Committee's final report on the review of the Code. We believe that the Code is of critical importance in setting and ensuring clear principles, standards and responsibilities for elected representatives in undertaking their work. As highlighted in our earlier response, once a final Code is approved, it is important that the standards set out in the Code are embedded through appropriate training and induction.

Regards


Roisin Mallon
Senior Policy Officer
Equality Commission

⁷ DOE Code of Conduct for Councillors , 2014, at page 7

18.03.15 Letter from Attorney General



Attorney General
for Northern Ireland

**STANDARDS &
23 MAR 2015
PRIVILEGES**

Mr Jimmy Spratt MLA
Chairman
Standards and Privileges Committee
Room 347
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Our Ref: AGNI/13/041

Date: March 18 2015

Dear Chairman

Please see enclosed copy of correspondence that was sent from the Attorney General to Mr Gerry Kelly MLA on 18 March 2015.

Your faithfully

Karen Arthurs

Office of the Attorney General for Northern Ireland, PO Box 1272, Belfast BT1 9LU
Telephone: 028 90725333 Fax: 028 90725334 E-mail: contact@attorneygeneralni.gov.uk
www.attorneygeneralni.gov.uk



**Attorney General
for Northern Ireland**

Mr Gerry Kelly MLA
Chairman
Procedures Committee
Room 33
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Our Ref: AGNI/13/041

Date: March 18 2015

Dear Chairman

I refer to the Committee's report: *Inquiry into the extent to which Standing Orders should permit the Attorney General for Northern Ireland to participate in proceedings of the Assembly, Part 1 – Impartiality of the Office of AGNI, Registration of Interests and participation of the AGNI in Assembly proceedings in respect of areas other than Statutory Rules*. I welcome the work that has been completed on this part of the inquiry and note the debate which took place in plenary on March 16 2015.

I have read the report with interest and make the following observations:

a. Recommendation 1

I welcome this recommendation and look forward to engagement with the Committee as work on the new Standing Order is progressed.

b. Recommendation 2

I understand that this recommendation is in line with the expected outcomes from the review of the Assembly's Code of Conduct currently

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being taken forward by the Standards & Privileges Committee. To facilitate the work of that Committee, I am copying this letter to its Chairman.

c. Recommendations 3, 4 & 5

There may be merit in revisiting these recommendations once the outworking of Phase 4 of the Committee's inquiry has been implemented and evaluated.

d. Recommendation 6

I look forward to working with the Committee on the implementation of this recommendation which will, I think, serve to increase public understanding of the work of this office.

Yours sincerely

John F Larkin QC
Attorney General for Northern Ireland

cc: Mr Jimmy Spratt, Chairman, Standards & Privileges Committee

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Further Correspondence with the Electoral Commission

From: Roisin McDaid [mailto:RMcDaid@electoralcommission.org.uk]

Sent: 05 June 2014 10:07

To: Gill, Paul

Cc: Ann Watt

Subject: FW: Response to NIA CSP 2014 review of the Code of Conduct and Guide

Dear Paul,

I hope the answers below, to the points you raised in your email of 13 May are helpful. I'm sorry for the delay in getting back to you but I hope you can understand how busy we have been with the elections.

- To confirm if, in the meantime, it either recommends or wishes for the Assembly to bring its relevant reporting requirements into line with those of PPERA (in order to facilitate the potential introduction of a single point of registration at a later date);

The Commission's view is that ending dual report to provide for a single point of registration will reduce the reporting burdens on MLAs and avoid the potential for unintentional breaches of the rules. It is however for the Assembly to decide whether it wishes to do this. We would be happy to work with the Assembly to end dual reporting if that is what it decides.

- To advise what changes the Assembly would need to make in order to bring these into line.

The Register of Members interests will need to cover all the categories of donations and loans and reporting requirements of PPERA, relating to both holders of elective office and party members. The final form of the RMFI rules will need to be such that the Commission can obtain all the necessary information directly from the RMFI to fulfil any publication requirements of PPERA. This is a technically detailed procedure but the starting point would be compare the current RMFI rules with the PPERA requirements.

if the Commission could confirm that if the Assembly was to align its reporting requirements with those of PPERA it would still remain possible for the Assembly to set its own lower financial thresholds for registration.

The Assembly could set its own lower financial thresholds as long as the Commission can obtain all the necessary information directly from the RMFI to fulfil any publication requirements of PPERA.

- You also asked does a single point of registration mean a single mechanism for investigation of an alleged breach.

When dual reporting ends, responsibility for enforcing the rules around permissible donations and loans passes to the relevant legislature. The Commission only retains a role in relation to impermissible donations and loans.

We understand that at this stage the Committee is considering, if in principle it would like to move towards ending dual reporting and I hope that we have provided sufficient information to help with this decision. We are grateful for the invitation to provide oral evidence to the Committee however we think there would be more merit in this once the Committee has made a decision in principle. In the meantime if you or the Committee have any further questions please feel free to contact me.

Regards

Roisin

From: Gill, Paul [mailto:Paul.Gill@niassembly.gov.uk]
Sent: 13 May 2014 13:14
To: Roisin McDaid
Cc: Mitford, Ashleigh

Subject: RE: Response to NIA CSP 2014 review of the Code of Conduct and Guide

Roisin,

Thanks for this. I shall put the signed version of this response to the Committee and ask it how it wishes to respond.

Of course, the Assembly needs to agree the categories of members' interests for registration (including the requirements, timetables, thresholds and exemptions) well in advance of any formal decision being taken to definitely introduce a single point of registration. In light of this I imagine that the Committee may ask the Commission:

- To confirm if, in the meantime, it either recommends or wishes for the Assembly to bring its relevant reporting requirements into line with those of PPERA (in order to facilitate the potential introduction of a single point of registration at a later date); and
- To advise what changes the Assembly would need to make in order to bring these into line.

I also think that it would be useful if the Commission could confirm that if the Assembly was to align its reporting requirements with those of PPERA it would still remain possible for the Assembly to set its own lower financial thresholds for registration. I understand that this is the case. I believe that confirmation of this would make the Committee more likely to agree that the remainder of our relevant reporting requirements should be brought into line with those of PPERA.

As pointed out in your correspondence to us there are other matters on which the Commission would need to be satisfied before a single point of registration could be introduced. These include (a) the Commission ensuring that it is able to obtain all necessary information from the Register of Members' Interests and the Clerk of Standards to comply with its PPERA obligations and (b) that there is a robust approach to dealing with breaches of the rules. As far as I can see these matters would not need to be resolved before the Committee concludes its current review of the Code. Nonetheless I imagine that the Committee would be more than happy to consider these issues at whatever time the Commission felt appropriate.

[Incidentally, what is the significance of (b)? Does a single point of registration also mean a single mechanism for investigation of an alleged breach? Would a failure to register still be a breach of PPERA and, if so, would the Commission not want to have its own mechanism for taking proceedings?]

Finally, I should point out that, if you wished, I could arrange for the Committee to take oral evidence from Commission. I think this would be useful as an oral evidence session tends to draw out questions and angles from members that might otherwise go unconsidered. At this stage the Committee could hear oral evidence from you on either 4 or 11 June. Would the Commission be interested in coming along and giving evidence?

Thanks

Paul

Belfast Telegraph Article

Belfast Telegraph

Mon 21 April 2014

Page 19

MY TIME

Renewing MLA code of conduct

ALASTAIR ROSS

THE Assembly's current code of conduct was drawn up in 2009 to ensure that MLAs uphold an agreed set of standards and principles as they carry out their duties.

While the current code has served us well, my committee feels strongly that it is now time for us to review how it works in practice, how it compares to international standards and – most importantly – what we can do to make it work better.

To develop an all-encompassing code that meets the expectations of both the public and MLAs, it is vital that we strike an effective balance.

The public must have confidence in the effectiveness and enforceability of the code; at the same time, we must ensure that the requirements it places upon MLAs are reasonable and proportionate.

One of our main concerns with the existing code is that it could be viewed in parts as too ambiguous. In the past, this may have led to unrealistic expectations of what the code is supposed to do.

The new code should go further towards underlining a clear set of standards and rules, while, at the same time, promoting and protecting free speech and the right of MLAs to express their opinions.

During this review, we want to consider the interaction that we, as elected representatives, have with lobbyists and whether we need further rules to regulate this.

We will give particular consideration to the receipt of gifts. We also want to ensure that the Assembly's resources, services and processes are protected from abuse.

As part of our evidence-gathering, we will meet representatives from national and international bodies who work to promote best practice in political life.

A code of conduct is an important and necessary component of any legislature.

However, it can fulfil its purpose only if the standards it sets for MLAs are understood and endorsed across the local community.

Alastair Ross MLA is chair of the Assembly's committee on standards and privileges (<http://nia1.me/code>)

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