Appendix three

From: O'Toole, Matthew <matthew.otoole@mla.niassembly.gov.uk>
Sent: 23 September 2025 11:08
To: McAteer, Shane <Shane.McAteer@niassembly.gov.uk>
Subject: RE: Response to Standards Commissioner report

For the avoidance of doubt, my response is not intended to challenge the specific findings of fact by the Commisisoner but to draw the Committee's attention to the broader problems created by this approach for the Committee's consideration.

Matthew

From: O'Toole, Matthew <matthew.otoole@mla.niassembly.gov.uk>
Sent: 23 September 2025 00:59
To: McAteer, Shane <Shane.McAteer@niassembly.gov.uk>
Subject: Response to Standards Commissioner report

Dear Shane,

This email is in response to the report issued by the Standards Commissioner in relation to a complaint against me.

I first of all note that the Commissioner of Standards cleared me of the actual complaints made against me. She did however find me in breach of Rule 12 per precedent and, one assumes, previously cited legal opinion in relation to the 2011 Assembly Members (Independent Financial Review and Standards) Act.

Let me state initially that I do not dispute the findings of fact, and therefore I acknowledge the broader finding is consistent with the logic the former Commissioner applied to other cases. To the extent that this breach was technical and inadvertent, I will of course be mindful of the application of these rules in future.

I do however have to highlight the highly absurd situation created by the interpretation of the rules which has been applied. The Commissioner clears me of both the

complaints made against me, and specifically in relation to Rule 17 coonfirms that merely disclosing the fact of a referral or complaint cannot be a breach of Rule 17, because the code at Rule 17 specifically refers to the disclosure of facts relating to *an investigation* and, since a complaint does not automatically lead to an investigation, it cannot be a breach.

But in finding me in breach of Rule 12, with reference to Clause 33 of the 2011 Act, the Commissioner is clear that in her view *any* disclosure of any nature, including the mere fact of a complaint is a prime facie breach. In her report, the Commissioner says this approach to confidentiality is required to "prevent the risk of misuse or harm" but does not engage with the many potentially bizarre outworkings and potential flawed incentives created by such an application of the rules. For example, what would stop a vexatious claim that a referral had been made without actually making a complaint, securing publicity but no opportunity for investigation or a response from the responding MLA. This would avoid incurring Rule 12 of the code but secure publicity for a complainant without giving the respondent any route to response or vindication.

Moreover, since Clause 33 of the 2011 Act appears only to engage MLAs via Rule 12 of the code of conduct, are we to assume there is no penalty for private individuals or organisations, or indeed councillors or MPs or TDs, who publicise the fact of their making complaint? If this is not the case, it would be helpful if there were clarification. But on its face it appears to imply an extraordinary situation where MLAs are prevented from publicising the fact of a complaint, but *in practice* no one else is subject to this restriction.

Add to this, any thinking through of this situation highlights other unwelcome outworkings. Recently, the British Deputy Prime Minister Angela Rayner announced that she had *referred herself* to Westminster's standards commissioner. In doing so, she was making herself subject to the Commissioner's investigation and as with countless other examples in these islands, she used the mechanism of a self-referral as a public acknowledgement of the need for independent investigation and accountability. In Northern Ireland, the interpretation of Rule 12 currently being applied means any MLA who publicises that they have referred themselves to the Commissioner, even if their motivation is transparency, is instantly in breach of the code. There are numerous other examples of members of neighbouring legislatures disclosing that they had referred themselves to standards watchdogs and I have provided some links at the end of this email. They would all be in breach of the Assembly's rules based on this precedent.

Another anomaly is the failure to properly define “disclosure”. With the exception of legal counsel, contact with whom one would hope and assume is privileged, the current rules as applied offer no clarification on what represents disclosure. Do the rules prohibit discussion with one’s party colleagues, or staff or family members? It doesn’t say. Since my staff gave access to my inbox, disclosure of lots of information to them is automatic. One might say that a reasonable person would assume disclosure is intended to mean public disclosure via a statement to the press or social media post, but the Commissioner applies an absolutist interpretation of Rule 12 in other important ways so we can hardly assume reasonableness or flexibility in this area of interpretation.

The Commissioner’s conviction is that Rule 12 must mean that any disclosure of any information, including the mere fact of a complaint, by an MLA, represents a prima facie breach of the code. In reaching this position, she insists on a construction of Rule 12 which requires reading across section 33 of the 2011 Act, but in doing so avoids any reading across of Rule 17 which explicitly refers to an investigation not being disclosed (rather than a complaint). She herself acknowledges that Rule 17 does not explicitly prohibit disclosure of a referral, and I am therefore cleared of a breach of that rule – but her finding of a breach of Rule 12 (not part of the original complaint) is not based on a plain reading of the code in itself, but rather an interpretative exercise involving Section 33 of the underpinning act. Put simply, the code by itself does not expressly prohibit the disclosure (in any form) of the mere fact of a complaint.

All of this is to say that while I acknowledge the Commissioner’s findings, which were certainly reached in good faith, I must also draw the Committee’s attention to the huge anomalies and perverse incentives created by the current rules, or interpretation of the rules, being applied. In short, they are an utter mess and risk further reputational harm to the Assembly standards process. The Commissioner herself acknowledges the flaws in the rules. Her view appears to be that clarifying the code of conduct to explicitly prohibit any disclosure of any information, including the fact of a referral or complaint, is the proper way forward. Notwithstanding doubts about the clarity of the current code (which does not explicitly prohibit disclosure of a complaint) she appears to have applied that interpretation in any case. Another approach might be to clarify that disclosure of the fact of a complaint is not a breach of the rules but disclosure of any details of a live investigation that ensued very much would be. Indeed, this would appear to be consist with a plain reading of the code as currently drafted.

Either way, and without challenging the specific findings of fact in this case, I would wish to draw the committee's attention to the above points in the interests of a fit for purpose standards regime.

Many thanks

Matthew O'Toole