

Cathy Mason
Chairperson
Committee for Standards and Privileges
Parliament Buildings
Ballymiscaw, Stormont
Belfast
BT4 3XX

18th November 2025

Re: Complaint Case ID 202500079

Dear Cathy

Thank you for forwarding the correspondence received from Mr Matthew O'Toole MLA in response to my report in relation to case 202500079. I welcome the opportunity to comment.

At the outset, I acknowledge the constructive tone of the Member's submission and his recognition that the findings of fact are accepted and that my decision was consistent with existing precedent and legal advice underpinning the interpretation of Rule 12 and section 33 of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011. I also note his expressed willingness to comply with the rules as they currently stand.

I accept that this case has raised wider questions about how Rule 12 of the Code of Conduct interacts with both Rule 17 and section 33 of the 2011 Act. The Member's observations illustrate that, while the Code and the statute are designed to operate together, the practical effect of that relationship can appear complex and, at times, counterintuitive.

The purpose of the Commissioner's interpretation in this and previous cases has been to ensure consistency and to give effect to the intention of section 33 — namely, to safeguard confidentiality during all stages of the complaints process and to protect both complainants and respondents from misuse or reputational harm before the conclusion of an investigation. That interpretation has been adopted in good faith and is supported by previous independent legal advice and precedent decisions.

However, I recognise that the Member raises some important and legitimate policy questions about whether the current drafting of the Code achieves the right balance between confidentiality, fairness, and transparency. I have raised similar concerns during my tenure; these can be found within recommendations made within my investigation and annual reports. In line with those recommendations, I would reiterate that I believe it is both reasonable and necessary for the Committee to consider whether there should be an explicit distinction between the disclosure of the *fact of a complaint or referral*, and the *details or substance of an investigation*. At present, the Code has not adequately reflected this distinction unlike in other legislatures, where self-referral and acknowledgment of a complaint are permitted, provided that no details of an ongoing investigation are disclosed.

Clarification of the Code rules, and (if necessary) alignment between the Code and the 2011 Act, would provide clearer guidance to Members and greater certainty for future Commissioners. Importantly, clearer provisions would also assist in addressing the inequity

that currently exists between members of the public who submit a complaint and Members who are the subject of that complaint. As the former are not bound by the Code of Conduct, there is no mechanism by which to hold them to account for unauthorised disclosures, whereas Members are subject to formal obligations and scrutiny. Providing clarity and consistency would therefore strengthen confidence in the standards system for all involved.

Whilst my finding in this instance was not an interpretation unique to this case but one consistent with previous rulings and the legal framework as it currently stands, I nonetheless acknowledge that the Member's submission highlights how those provisions may have unintended or undesirable consequences, including in relation to self-referral or inadvertent disclosure.

In summary, while I stand by the reasoning and integrity of the findings reached, I share the view that this issue merits consideration by the Committee to ensure that the confidentiality provisions of the Code and the underlying statute are clear, proportionate and workable in practice.

Yours sincerely

[Redacted]
Melissa McCullough
Former NI Assembly Commissioner for Standards

Commissioner for Standards States of Jersey
Commissioner for Standards States of Guernsey
Commissioner for Standards States of Alderney