



Northern Ireland
Assembly

Commissioner for Standards

Presentation to the Committee on Standards and Privileges
Complaint against Dr Steve Aiken OBE MLA by Mr Maolíosa McHugh MLA

23 February 2022

The Complaint

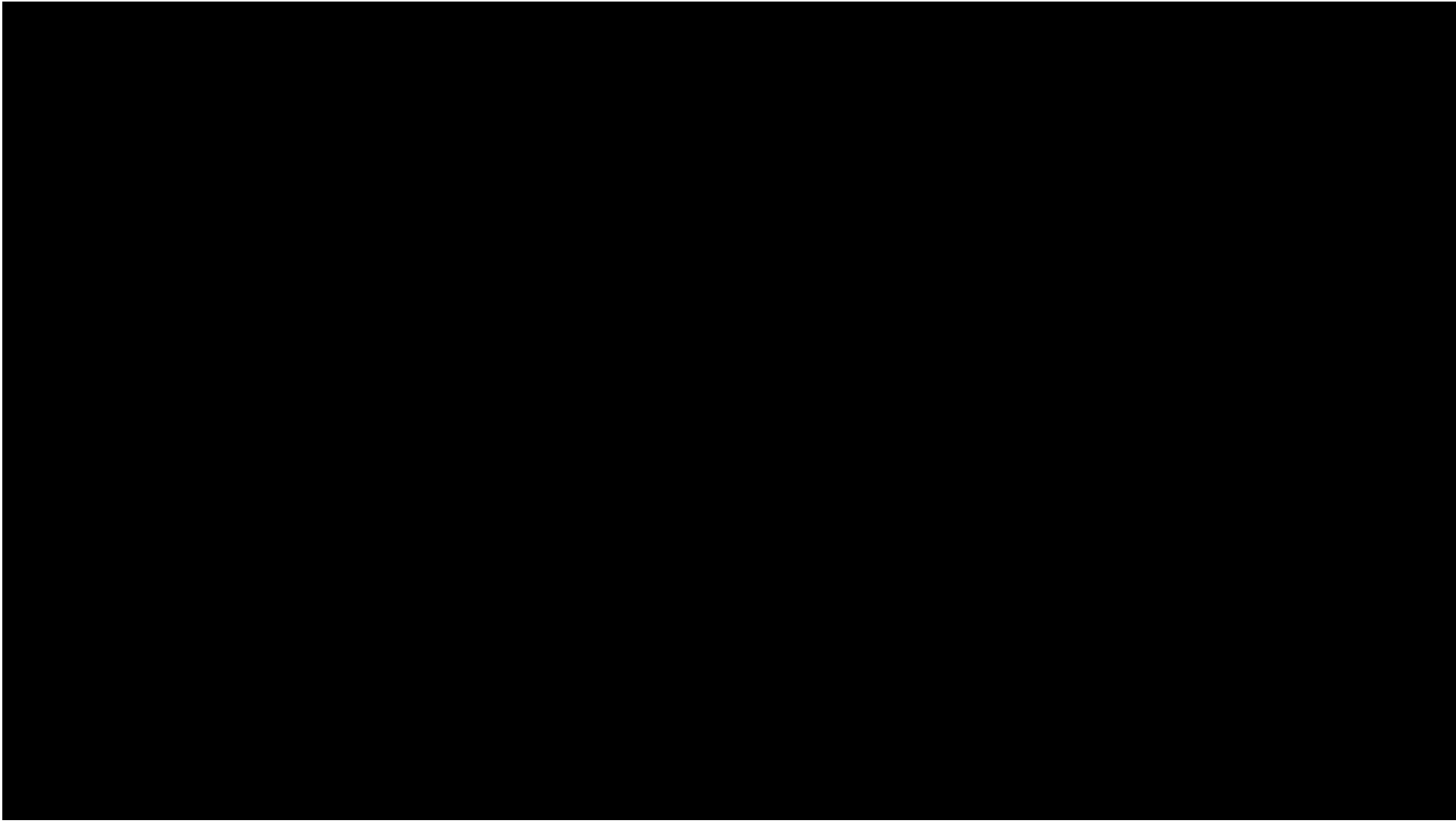
At the 4th November 2020 Finance Committee under agenda item ‘Declaration of Interests’ Dr Aiken revealed that he had submitted a complaint to the Commissioner for Standards alleging that a member of the Finance Committee did not declare that he or his office had been in receipt of a Covid-19 business grant when the Land and Property Services (LPS) and the Department of Finance attended the Finance Committee on a number of occasions in September and October 2020. [D1]

The allegations made by Mr McHugh relate to the disclosure by Dr Aiken of the fact that he had submitted a complaint to the Commissioner for Standards and in doing so Mr McHugh alleges that:

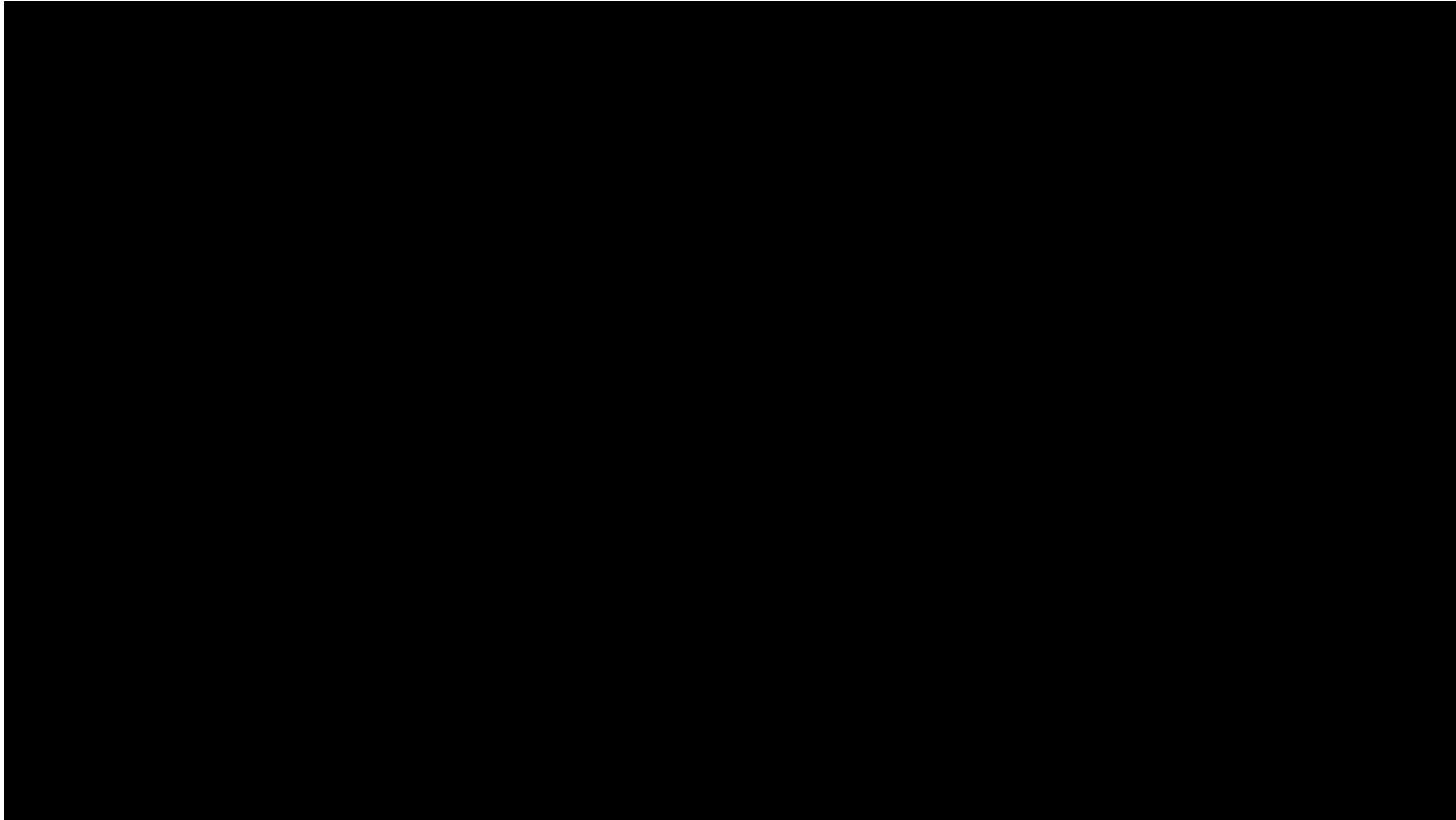
1. Dr Aiken breached Rule 17 of the MLA Code of Conduct that states *“You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority.”*
2. Dr Aiken breached Section 33 of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (“the 2011 Act”)



Video Evidence 4th November 2020

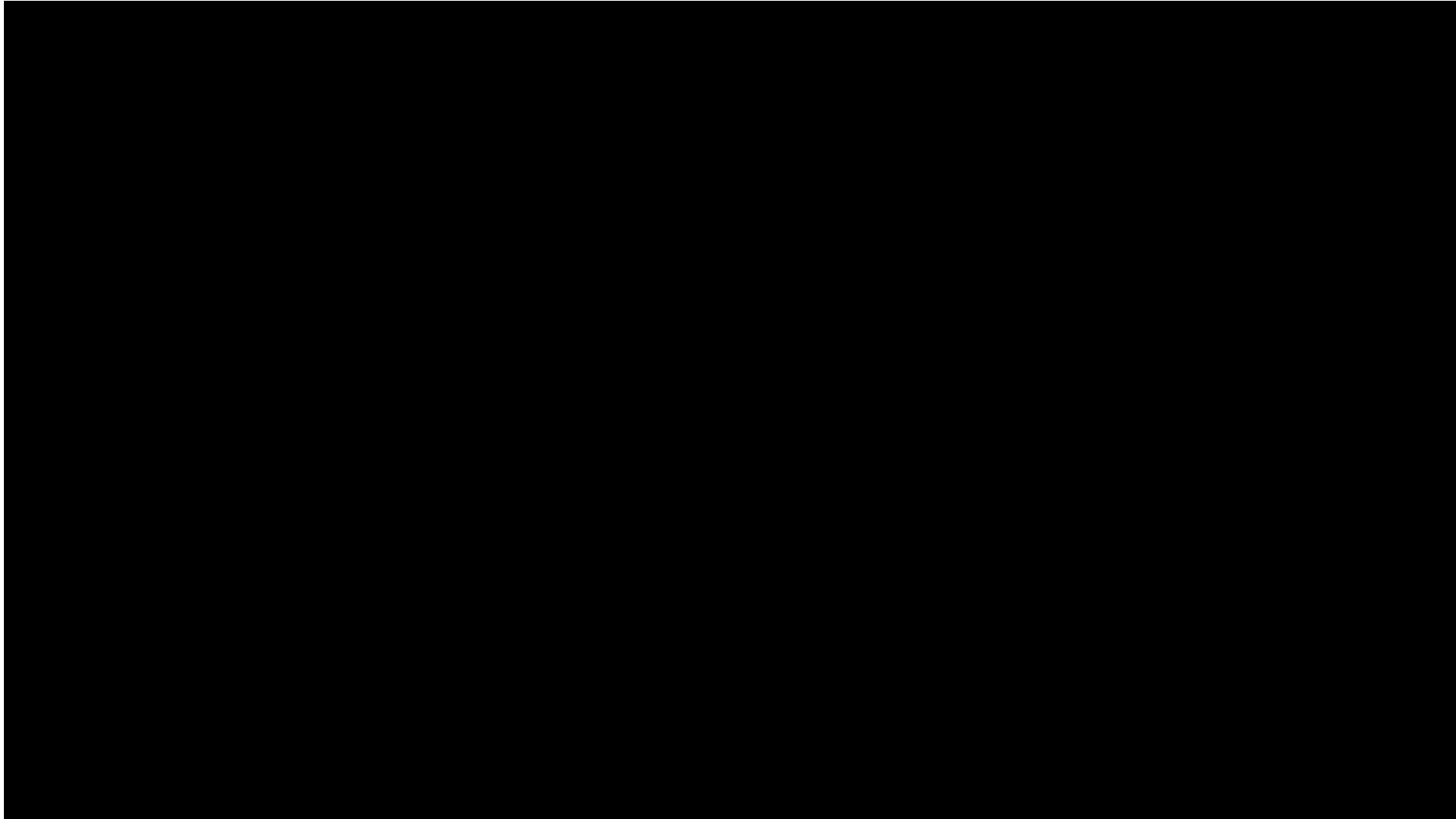


Video Evidence 4th November 2020



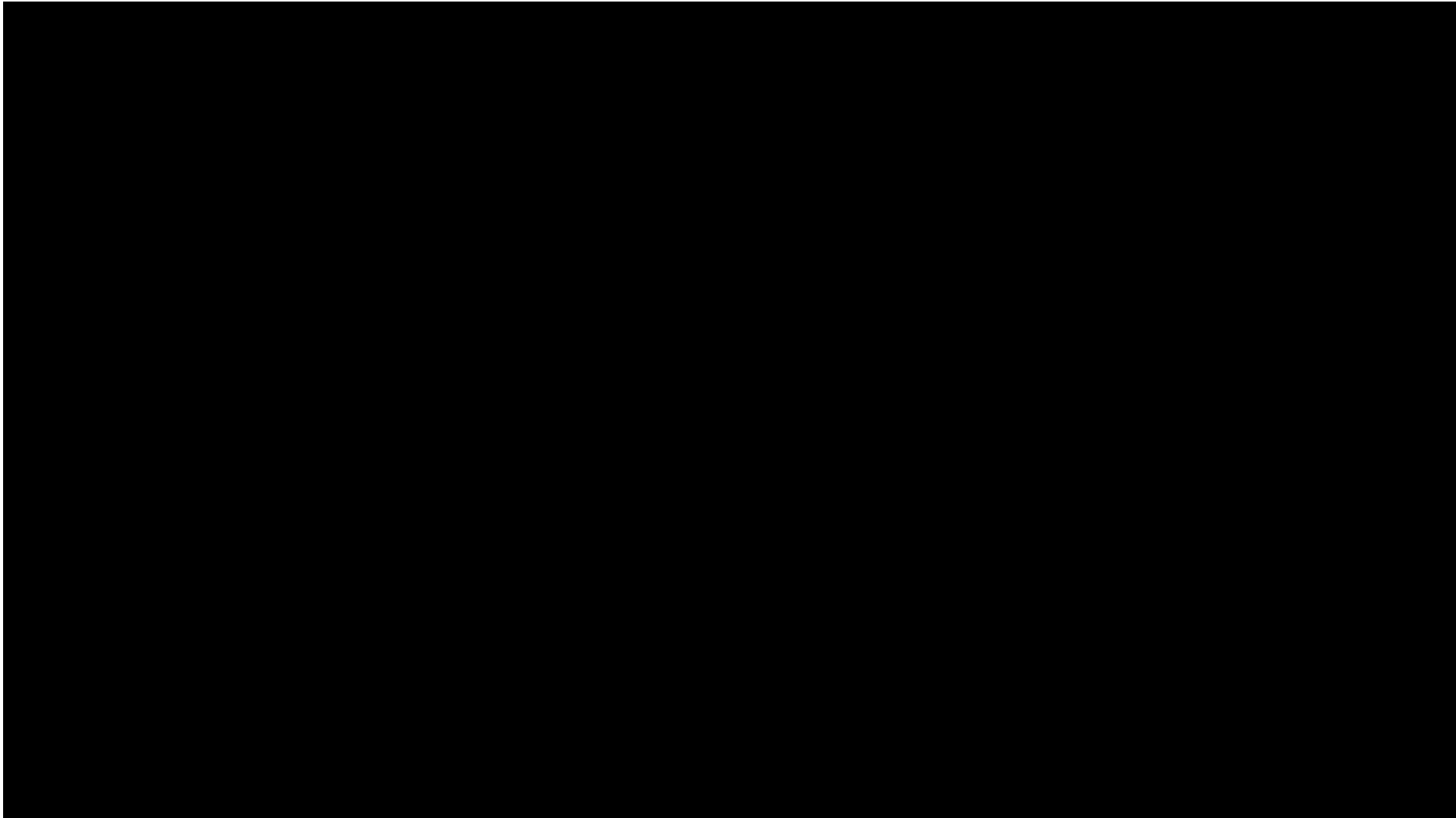
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Video Evidence 4th November 2020

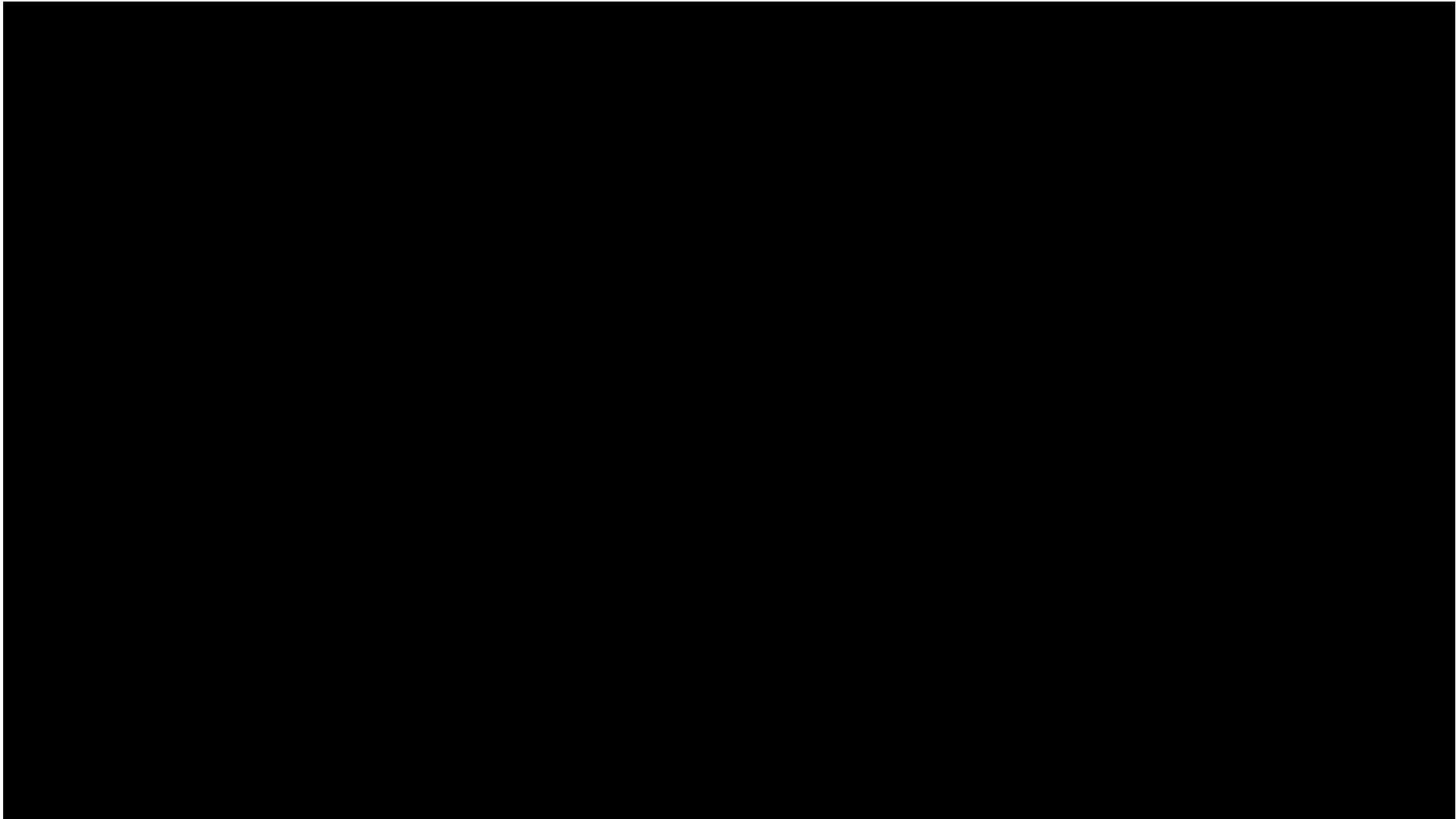


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Video Evidence 4th November 2020



Video Evidence 4th November 2020



Dr Aiken's witness statement

- Witness statement received on 13th December 2021 [D10]
- Dr Aiken asserts that:
 - He was declaring an interest when he made the disclosure
 - That it was his duty to do so under Northern Ireland Assembly Standing Orders 69 para 5 (b) and the MLA Code of Conduct, Chapter 2 (Declaration of Interests)
 - He contends these provisions take precedence over Rule 17 of the Code of Conduct: *“You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority”*



Declaration of Interest

PM: I'm just not sure what item of the agenda this is under. You're entitled to do whatever you

SM: Correct. **It is an issue to do with declaration of interests.** And I think it is appropriate that all members of this committee make it abundantly clear that when we are

PM: **Are you declaring an interest?**

SA: **No.**

PM: Fair enough.

SA: I do not have to. I as the Chairman..

PM: **If you are not declaring an interest then, you can't declare an interest for someone else.**

SA: **This is not a question of declaring an interest. This is an interest for all members of the committee** and the standards we expect of this committee that if we are dealing with an issue that is substantive and the issues have to be raised particularly in front of officials we're expecting the maximum of openness and transparency from officials I would expect the same from members of this committee.

* Philip McGuigan MLA [PM]; Steve Aiken MLA [SA]

Declaration of Interest

Mr McManus stated:

“My understanding was that he was **suggesting to Mr McHugh that he may want to declare an interest, or should have declared an interest.** That was my understanding at the time.....

“And having looked at the **minutes of the meeting, there was no record of Dr Aiken, chairperson, declaring an interest.** So, obviously, my understanding at the time would have been that he was not declaring an interest.” [D11]

Declaration of Interest

Paragraph 69(5) Standing Orders:

- Paragraph 69(5) provides that a member who has any financial interest or relevant interest in any matter *“must declare that interest before taking part in any proceedings of the Assembly relating **to that matter.**”*
- A ‘relevant interest’ would have to relate to the ‘matter under consideration’. I do not consider the fact of a complaint against a Member was a matter under consideration by the Committee.
- Dr Aiken appears to have conflated the committee’s role in scrutinising the LPS in relation to payments made in error with scrutinising a complaint he made to the Commissioner against another member. The Finance Committee has no remit in the investigation of alleged misconduct by a Member.



Declaration of Interest

Chapter 1, Paragraph 8 of the Guide:

- “The sole responsibility for complying with the duties placed upon them by this Guide rests with Members.”
- Dr Aiken cannot make a declaration for others or insist another Member declare an interest as it is the Member’s sole responsibility.

Chapter 2, Paragraph 8 of the Guide:

- “A declaration should be brief but should make specific reference to the nature of your interest.”
- Even if Dr Aiken was declaring an interest and believed he had a conflict of interest, as he asserts, then he should have made a brief and specific reference to it. Instead he appears on video to have initiated, facilitated and participated in a twenty seven minute discussion relating to his substantive complaint against Mr McHugh.



Declaration of Interest

- Video evidence showed Dr Aiken stating on a number of occasions at 4th November Finance Committee that he was not declaring an interest
- There is no record in the minutes of Dr Aiken declaring an interest
- In Mr McManus's view, Dr Aiken was not declaring an interest, but rather suggesting that Mr McHugh should have declared an interest
- It is my view that Dr Aiken was not declaring an interest, but even if he was it would not provide an answer to the contravention of section 33



Confidentiality and the Complaints Process

- Confidentiality is of paramount importance to the complaints process
- Section 33 of the 2011 Act
- Allegations made were not yet considered, investigated or adjudicated on by the Committee
- Risk of reputational damage to MLAs



Coronavirus: Heated exchanges over Sinn Féin Covid grants at Stormont

🕒 4 November 2020



Coronavirus pandemic



Stormont's Finance Committee has seen heated exchanges over the controversial payments of small business grants to Sinn Féin offices.

Last week, [BBC News NI revealed three Sinn Féin offices received payments from Stormont's emergency Covid fund](#) for small businesses.

One payment was made to the office of Sinn Féin MLA Maolfosa McHugh, who is a member of the committee.

He challenged members to repeat their allegations outside the meeting.

Members of the committee are afforded legal protection when speaking while it meets.

4 November 2020
[D4]



Belfast Telegraph

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Covid payments: UUP's Steve Aiken makes complaint to watchdog over Sinn Fein man Maoliosa McHugh



Complaint: Steve Aiken has reported a Sinn Fein MLA after an angry exchange



Ralph Hewitt [Twitter](#) [Email](#)

November 05 2020 07:09 AM



Ulster Unionist leader Steve Aiken MLA has reported Sinn Fein's Maoliosa McHugh to the Assembly's Standards Commissioner following an angry exchange during yesterday's Finance Committee.

Land and Property Services (LPS) appeared before the committee to answer questions about the Small Business Grants Scheme, and specifically how funding was given to Sinn Fein offices.

It came after a number of Sinn Fein members resigned from the party when it emerged that payments of £30,000 were sent in error to its offices in the early days of the pandemic.

However, the money was not returned until last week.

LPS made the grant payments on behalf of the Department of Finance.

West Tyrone MLA Catherine Kelly; her husband Barry McColgan, who was



Northern Ireland
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Commissioner for Standards

Belfast Telegraph 5 November
2020 [D3]

Allegation 1:

Did Dr Aiken's disclosure of the fact that he made the complaint breach Rule 17?



Allegation 1, Rule 17

- Rule 17 *You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority.*
- A complaint is not entirely synonymous with an investigation by the Commissioner in relation to the wording of Rule 17 and does not expressly prohibit reference to the fact of a complaint
- If at the time of Dr Aiken’s disclosure I had already considered that the complaint was admissible, it is my view that the disclosure would have involved the revelation of “*details in relation to such an investigation*” and would have been in breach of Rule 17
- However, I had made no assessment of admissibility of the complaint at the time Dr Aiken made the disclosure. Therefore, I do not find that Dr Aiken breached Rule 17 of the Code of Conduct



Allegation 2:

Did Dr Aiken's disclosure of the fact that he made the complaint contravene Section 33 of the 2011 Act?



Allegation 2, s33 2011 Act: Interpretation

Section 33 imposes restrictions on the disclosure of information. A general prohibition is contained in Section 33(1) which states:

“Subject to subsection (2), the Commissioner or any person who has (at any time and in any capacity) assisted the Commissioner in the discharge of functions under this Act, shall not disclose any information contained in any complaint or referral, or any information which is furnished to or obtained by the Commissioner or such person in the course of, or for the purposes of, an investigation under this Part.”



Allegation 2, s33 2011 Act: Interpretation

“..any person who has (at any time and in any capacity) assisted the Commissioner in the discharge of functions”

- *“At any time and in any capacity”* is intended to confirm that the term *“any person”* should be afforded the broadest possible construction.
- The text of this provision is not expressly confined to the provision of administrative assistance. Indeed, that interpretation is reinforced by *“(at any time and in any capacity)”*.
- A complainant *‘assists the Commissioner in the discharge of her functions’* in many ways: by submitting the complaint, providing further information to the Commissioner when requested, attending interview if required, maintaining confidence throughout the process etc.
- If the bar on disclosure were confined to the Commissioner and those providing administrative or investigative support, this would yield an anomalous result whereby the complainant and the person complained of could openly disclose information in circumstances where the Commissioner could not.

Allegation 2, s33 2011 Act: Interpretation

Rule 12 of the Code of Conduct states: *“You shall disclose confidential or protectively marked information only when you are authorised to do so.”*

The prohibition on disclosure of confidential information in Rule 12 must be read alongside the statutory prohibition on disclosure in section 33 of the 2011 Act.

Information relating to the discharge of the Commissioner’s functions is subject to a *statutory* duty of confidentiality although there is no specific sanction contained in the 2011 Act for a breach. However, the disclosure of information relating to a complaint is prohibited by section 33 which, in turn, engages Rule 12 of the MLA Code of Conduct.

[NOTE: Section 17 of the 2011 Act does not require that the complainant specify a particular Rule of the Code when making the complaint.]



Allegation 2: Reasoned Decision

- It is my view that the protection of information provided to the Commissioner in the discharge of her investigative functions in section 33 of the 2011 Act captures both the *fact* of the complaint and the information generated by and for the investigation.
- For the above reasons, I have found Dr Aiken to have contravened Section 33 of the 2011 Act and to have breached Rule 12 of the Code of Conduct.



Commissioner Identified Breach of Rule 16

Rule 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



Rule 16: Evidence

- 7th June invited Dr Aiken to contact my office to arrange an interview [D6]
- 18th June sent a further reminder to him [D7]
- Both communications failed to elicit a response from Dr Aiken
- On 28th June I sent by email a formal Notice to Attend for interview on 5th July 2021 [D8]; received and acknowledged by Dr Aiken [D13]
- Dr Aiken did not attend for the scheduled interview on 5th July 2021
- He was offered the option of attending for interview on 7th July but declined [D14]



Rule 16: Evidence

- On 7th July I sent by recorded delivery to Dr Aiken's constituency office another Notice to Attend interview on 21st July 2021
- Dr Aiken requested the Notice be sent to his constituency address and advised that his office was 'closed from 10 July' [D9]
- The Notice, covering letter and email correspondence all referred to the potential criminal offence under section 31 of the 2011 Act in the event of a failure to attend [D15]
- Dr Aiken did not attend for the scheduled interview on 21st July 2021
- On 21st July, my office made inquiry with the tracking service operated by Royal Mail who provided formal proof of delivery at 12.41 on the 9th July [D17]
- On 22nd July I referred the matter to the PSNI
- Dr Aiken informed me by email on 26th July that he had only received the Notice that day from his neighbour after returning to his office [D16]

Rule 16: Evidence

The 2011 Act provides in Section 31 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.



Rule 16: Evidence

The Memorandum of Understanding (MOU) between the Commissioner and the PSNI states:

*“Where the Commissioner considers that there has been a contravention of section 31, **he or she will, as soon as reasonably practicable**, report it to the officer appointed in accordance with Clause 3.8 above.”*



Rule 16: Evidence

- Referred to the PSNI on 22nd July 2021; formal report submitted to them on 26th July 2021
- Suspended investigation pending the conclusion of the police investigation
- PSNI submitted their file to the PPS on 2nd December 2021
- Resumed my investigation and wrote to Dr Aiken to provide him the opportunity to submit a written witness statement [D18]
- PPS informed me of their decision not to prosecute on 10th January 2022 [D19]

Rule 16: Evidence

PPS's decision not to prosecute was based on the evidential test not being met for the following reasons:

- Royal Mail delivered the recorded delivery item to an address other than the address on the envelope; there was a long-standing informal arrangement in place between Dr Aiken's office and Royal Mail to deliver items next door to the adjacent commercial premises.
- When it was delivered to an alternative address, the evidence was insufficient to prove to the criminal standard of proof that Dr Aiken was "*a person to whom a notice has been given*" within the meaning of the 2011 Act which prescribes the manner in which such notice must be given.
- Evidence further suggested that the notice did not come to the attention of Dr Aiken prior to the date when his attendance would have been required and this would have provided a basis for a "reasonable excuse" defence as is provided for within the 2011 Act.

[D20 and D21]

Rule 16: Evidence

Based on the evidence and my analysis, Dr Aiken was:

- a) Aware a Notice to Attend was being sent to his constituency office by recorded delivery on 7th July 2021
- b) Presumably aware of the long-standing arrangement he had with Royal Mail to deliver his mail to commercial premises next door when the constituency office was closed
- c) Aware that his constituency office had been closed on 9th July 2021.
- d) Aware that failure to attend under Notice was a potential criminal offence under section 31 of the 2011 Act



Rule 16: Evidence

Under these circumstances it is unclear to me why:

- Dr Aiken appeared to make no attempt to contact Mr Hall to enquire if he had received a recorded mail delivery on his behalf
- Dr Aiken did not contact my office to confirm the date and time of interview contained in the Notice
- Dr Aiken waited nineteen days after he was informed that he would be receiving a Notice to Attend to make contact with me to say he had only received the Notice from Mr Hall



Rule 16: Reasoned Decision

It is my view that Dr Aiken breached Rule 16 by:

1. Failing to respond to letters of 7th and 28th June 2021 inviting him to interview
2. Failing to attend interview twice under Notice to Attend

Seven Principles of Public Life

It is my view that:

- Dr Aiken's lack of cooperation is inconsistent with the Seven Principles of Public Life: Respect and Leadership.

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

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.

- Dr Aiken's failure to cooperate resulted in the needless waste of significant public funds and resources.



Conclusion

On the basis of my analysis of the facts and evidence, I consider that:

1. Dr Aiken's disclosure at the Finance Committee Meeting of the 4th November 2020 did not breach Rule 17 of the MLA Code of Conduct because an 'investigation' as expressly stated in Rule 17 hadn't yet commenced.
2. Dr Aiken's disclosure at the Finance Committee Meeting of the 4th November 2020 did contravene the statutory confidentiality requirements under Section 33 of the 2011 Act and breached Rule 12 of the MLA Code of Conduct.
3. Dr Aiken's failure to cooperate with my investigation *at all times* was in breach of Rule 16 of the MLA Code of Conduct.
4. Dr Aiken's behaviour throughout my investigation was inconsistent with the Seven Principles of Public Life: Respect and Leadership.