



Northern Ireland
Assembly

Report by the NI Assembly Commissioner for Standards on
a complaint against Dr Steve Aiken OBE MLA
by Mr Bill Pauley

Assembly – Confidential

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Summary

This investigation focuses on a complaint made by Mr Bill Pauley, a senior civil servant at the Department of Finance. His complaint alleges that during his evidence session at the Committee for Finance on 17 June 2020, Dr Steve Aiken OBE MLA was aggressive towards him in his tone and behaviour on a number of occasions and as a result he felt threatened, intimidated and unable to give his evidence effectively. He alleges further offensive comments were made by Dr Aiken at the 2 February 2021 Assembly Plenary Session relating to his 17 June 2020 evidence session.

Mr Pauley believes Dr Aiken's behaviour is in breach of Rule 15 of the Code of Conduct for MLAs which states "You shall not subject anyone to unreasonable and excessive personal attack". Mr Pauley further alleges that Dr Aiken as Chair of the Committee for Finance did not take sufficient action to protect him from unacceptable personal attack by Mr Wells which he alleges is in breach of Rule 19 of the Code "You shall take reasonable care to ensure your staff, when acting on your behalf, uphold these rules of conduct". He believes Dr Aiken violated the Code's Respect principle.

Dr Aiken refutes these allegations and believes he behaved professionally at all times. He states that he was being justifiably robust as he believed Mr Pauley was misleading the Committee for Finance.

Having considered all of the evidence, including the video recordings of the two Finance Committee meetings in question, it is my view that Dr Aiken displayed unacceptable and offensive behaviour on the 17 June 2020. Dr Aiken's tone and behaviour towards Mr Pauley was discourteous, aggressive and disrespectful at the 17 June meeting. It is my view that Dr Aiken's behaviour was in breach of Rule 15 (para 4.15) and the Respect principle of the NI Assembly's Code of Conduct for MLAs.

Chronology of events

17 June 2020	Mr Pauley appears before the Committee for Finance to give evidence on behalf of his Minister in relation to Private Members' Legislation: The Functioning of Government (Miscellaneous Provisions) Bill
24 June 2020	Members of the Finance Committee discuss the treatment of Mr Pauley and witnesses in general who appear before the Committee
1 July 2020	Mr Pauley lodges complaint alleging at 17 June 2020 Finance Committee meeting Dr Aiken breached Rule 15 , Rule 19 and the Respect principle of the Code of Conduct
7 Sept 2020	Commissioner is appointed
30 Sept 2020	Acknowledgement letter is sent from the Commissioner to Mr Pauley in relation to his complaint with copy sent to Dr Aiken and Clerk to the Committee on Standards and Privileges
5 Nov 2020	Letters are sent from the Commissioner to Mr Pauley, Dr Aiken and the Clerk to the Committee on Standards and Privileges informing them the complaint was admissible and the investigation commenced
7 Dec 2020	Letters are sent from the Commissioner inviting Mr Pauley and Dr Aiken to interview
3 Feb 2021	Mr Pauley has interview with Commissioner via Zoom
24 Feb 2021	Dr Aiken has interview with Commissioner via Zoom
24 Feb 2021	Dr Aiken statement received by Commissioner via email
1 March 2021	Email is sent from the Commissioner to Dr Aiken providing dates to resume his interview
8 March 2021	Letter is sent from the Commissioner to Dr Aiken asking him to contact office as a matter of priority to arrange interview date
11 March 2021	Letter is received by the Commissioner from Dr Aiken requesting items of disclosure which he requires before he will confirm a date for resumption of interview
16 March 2021	Letter is sent from the Commissioner to Dr Aiken with the further clarification and disclosures he requested. Commissioner requests again that he contact the office as a matter of priority to arrange a date for interview

23 March 2021	Letter is sent from the Commissioner to Dr Aiken informing him that this is now an urgent matter and if he does not contact the Office to arrange a date for the interview the Commissioner would reluctantly use her powers to compel him to attend interview
1 April 2021	Dr Aiken has interview with Commissioner via Zoom

Background to the Complaint

1. This complaint was raised by a senior civil servant, Mr Bill Pauley, and relates to his attendance at the Committee for Finance ('the Committee') meeting on 17 June 2020 where he gave evidence on behalf of the Minister for Finance.¹
2. The evidence session was in relation to the Private Members' Legislation: The Functioning of Government (Miscellaneous Provisions) Bill. Among other things, this proposed (now enacted) legislation provided for regulation of the appointment of SPADs and complaints against Ministers in breach of the Ministerial Code of Conduct.
3. In contrast, Mr Pauley representing the Finance Minister, was providing evidence that proposed a 'codes based' approach without any legislation which the Department of Finance believed responded to and reflected the *New Decade, New Approach*².

Investigation

4. In the course of my investigation, I carried out the following:
 - Interviewed Mr Bill Pauley³ and Dr Steve Aiken OBE MLA^{4,5}
 - Reviewed statements received from and Dr Aiken⁶
 - Read the Hansard report of 17 June 2020 Finance Committee meeting⁷ and reviewed the video recording of 17 June meeting⁸
 - Reviewed the video of the 24 June 2020 Finance Committee meeting⁹
 - Viewed the debate in the Assembly Plenary Sitting on 2 February 2021 along with the Hansard report of that meeting¹⁰

¹ Document 1

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf

³ Document 2

⁴ Document 3

⁵ Document 4

⁶ Document 5

⁷ Document 6

⁸ <https://youtu.be/E4JOppU1nc>

⁹ <https://youtu.be/VssciA7aYFk>

¹⁰ Document 7

- Reviewed two media articles brought to my attention by the complainant^{11,12}
 - Requested and reviewed documents from the Finance Committee¹³
 - Researched legislation and cases relevant to the facts of this complaint¹⁴
5. The principles and rules from the Code of Conduct for MLAs (the 'Code'), along with the relevant legislation and case law are at Annex A.
 6. A copy of the complaint and all other documents I have relied on in reaching my decision are at Annex B.

Findings of Fact

7. Mr Pauley, Director of Strategic Policy and Reform, Department of Finance, was appearing as a witness at the Committee for Finance on 17 June 2020 to give evidence on behalf of his Minister in relation to the Private Members' Legislation: The Functioning of Government (Miscellaneous Provisions) Bill.
8. Mr Pauley felt threatened, harassed and intimidated by Dr Aiken's behaviour towards him.
9. Dr Aiken was at all times acting in his capacity as an MLA. Dr Aiken was additionally acting in his capacity as Chairman of the Finance Committee.
10. An imbalance of power existed in relation to Mr Pauley and the Finance Committee in favour of the Finance Committee—i.e. in favour of Dr Aiken.
11. The video footage of all meetings reviewed were true and unedited audio and video recordings of events. Hansard reports of the meetings were accurate transcripts of what was said during and throughout the meetings reviewed.
12. At the 17 June Finance Committee meeting, Dr Aiken interjected while Mr Pauley was answering his question and in an aggressive tone told him he didn't want to hear his

¹¹ Document 8

¹² Document 9

¹³ Document 10

¹⁴ Annex A

- evidence. Later in the meeting he interjected while Mr Pauley was answering another Member's question, and again in an aggressive tone told Mr Pauley that he didn't want to hear his evidence relating to other jurisdictions.
13. Dr Aiken apologised to Mr Pauley several times throughout this meeting.
 14. Dr Aiken asked for Mr Wells to withdraw a comment he made while Mr Pauley was being questioned by another Member and he asked Mr Pauley "Do you want to phone a friend?"
 15. On 24 June 2020 at the Finance Committee meeting, a Member of the Committee raised concerns about the behaviour towards witnesses, including Mr Pauley at the Committee's 17 June meeting, and said that there should be an 'end to the bullying of officials' who appear before the Committee.
 16. On 2 February 2021, while taking part in an Assembly Plenary Sitting, Dr Aiken referred to Mr Pauley's evidence session at the 17 June meeting as "unedifying".
 17. Dr Aiken refutes all allegations made by Mr Pauley and believes he acted in a professional manner at all times.
 18. In accordance with paragraph 7.14 of the General Procedures Direction, Dr Aiken was afforded an opportunity to challenge any of the above findings before I finalised my report. He did not avail of that opportunity.

Allegations

19. In his complaint and interview, Mr Pauley described the behaviour towards him at the 17 June Finance Committee as an unreasonable and excessive personal attack and raises the following allegations:^{15,16} Mr Pauley alleges that:
1. Dr Aiken responded to part of his evidence in an angry and aggressive manner and asked him to state his own position on the evidence he was giving on behalf of his Minister.¹⁷ Dr Aiken told him that he did not want to hear the evidence he had given again.¹⁸
 2. Dr Aiken intervened and interrupted a second time, in an angry and aggressive manner, and said he didn't want to hear evidence presented on what happened in other jurisdictions.¹⁹
 3. Dr Aiken did not take sufficient action to protect Mr Pauley from unacceptable personal attack from Mr Wells namely a) his comment "Do you want to phone a friend?"²⁰ and b) his persistent questioning on Mr Pauley's personal view in relation to the evidence he was presenting on behalf of his Minister.
 4. Dr Aiken's repeated bullying behaviour was unreasonable and completely unacceptable. It made him feel threatened and intimidated with the result that he was unable to deliver his evidence effectively.²¹
 5. Dr Aiken's description of the evidence session as 'unedifying' while speaking at the 2 February 2021 Assembly Plenary Sitting²² was insulting and offensive.

¹⁵ <https://youtu.be/E4JOppU1nc>

¹⁶ Documents 1 and 2

¹⁷ <https://youtu.be/E4JOppU1nc?t=1815>

¹⁸ <https://youtu.be/E4JOppU1nc?t=1902>

¹⁹ <https://youtu.be/E4JOppU1nc?t=3272>

²⁰ <https://youtu.be/E4JOppU1nc?t=2558>

²¹ Document 2, p3 at C

²² <https://www.youtube.com/watch?v=-CL3UgHNANA>

Allegations 1 and 2

Dr Aiken responded to part of Mr Pauley's evidence in an angry and aggressive manner and asked him to state his own position on the evidence he was giving on behalf of his Minister. Dr Aiken indicated he did not want to hear the evidence he had given again.

Dr Aiken intervened and interrupted a second time, in an angry and aggressive manner, and said he didn't want to hear evidence presented on what happened in other jurisdictions.

Evidence

20. Video footage provides evidence of Dr Aiken's tone and manner when he told Mr Pauley that he did not want to hear his evidence^{23,24} and when he interrupted Mr Pauley while he was answering another member's question and in an aggressive tone and demeanour stated that he did not want to hear about what happens in other jurisdictions.²⁵
21. Dr Aiken denies that he treated Mr Pauley in an unprofessional way and asserts that he was not aggressive.
 1. **Commissioner:** Do you think that was aggressive behaviour?
Steve Aiken: No. I think that was robust behaviour, and that was behaviour that indicated my annoyance of the fact that I'd been misrepresented.²⁶
 2. **Steve Aiken:** I believe the way I conducted myself was in a fully professional manner.²⁷
 3. **Steve Aiken:** No, I didn't think my behaviour was threatening or intimidating. It was robust and it reflected the situation we were in.²⁸

²³ <https://youtu.be/E4JOppU1nc?t=1902>

²⁴ <https://youtu.be/E4JOppU1nc?t=1815>

²⁵ <https://youtu.be/E4JOppU1nc?t=3272>

²⁶ Document 3 at 08:00

²⁷ Document 3 at 04:30

²⁸ Document 3 at 10:43

22. While Dr Aiken refutes all of Mr Pauley's allegations and maintains that his behaviour was appropriate, Dr Aiken apologised to Mr Pauley on a number of occasions²⁹ and also apologised at the end of Mr Pauley's session.

Steve Aiken (to Mr Pauley): So, right now, let's make that abundantly clear. I do not want to hear that put in front of this committee again. Sorry, I'm sorry for being angry, but I'm getting really fed up with this. Sorry.³⁰

Steve Aiken: Just need to be careful in our tone. I, as a chair, I accept the fact that my tone has been slightly exasperated during this as well, but there's good reason for it.³¹

Steve Aiken: Your comments have been noted. I apologise if I have embarrassed anybody, but, yet again, I state that this is about Northern Ireland and I am not taking any more lectures or being told that we are in a unique situation and then it being explained that we are not.³²

Steve Aiken: Bill and David, thank you very much indeed. I know that we have probably been slightly more robust with you than we would like to be. Please take an apology from me for that. Thank you very much for coming to the Committee, and we look forward to seeing you again soon.³³

23. Dr Aiken stated that his apologies were in no way an admission of guilt; his apologies were not made because he felt he had done anything wrong, but rather his apologies were given out of 'politeness' because he didn't want any witness to feel uncomfortable.³⁴

1. **Commissioner:** You are apologising [in the video] so I am asking you what are you apologising for if you don't think it is wrong?

Steve Aiken: No but I am apologising because it is a general degree of politeness. I do not wish to make any witness feel uncomfortable. I do not wish people to come in front of our committee and feel as if they are being, put it this way I don't want officials to feel as if they are in the Health Committee where there is continuous attacks made on officials and their integrity and their professional integrity.

²⁹ Document 6 at p2; p4; p7 (twice); p16

³⁰ Document 6 p2

³¹ Document 6 p7

³² Document 6 p7

³³ Document 6 p16

³⁴ Document 3 p5 at E; p6 at E; p13 at G; p14 at A-E

2. **Steve Aiken:** I apologised because the, I did not like the way the committee meeting was moving. I did not like the frustration that was in there. But again that frustration was based on the fact that the witness was not giving information. And I do not know how often I need to say this, the fact that we were being misled and he was deliberately impugning me from the beginning as we were coming through. That is not acceptable. It is not acceptable in a committee. It's not acceptable in the Assembly. It wouldn't be acceptable anywhere. And the fact that I apologised should not be taken as a view of my guilt or whatever happens to be.

3. **John Devitt:** Okay, well it is fully evidenced from the video recordings of the meetings and from the report in the News Letter and the Irish News that you have made a number of apologies for your behaviour. Is that not a strong indication that you are unable, or unwilling, to manage your frustration, annoyance with individuals in a public setting? And is this the leadership style that you wish to promote?

Steve Aiken: Absolutely not. You will have noted from my considerable media appearances, my media appearances within the Assembly, my other meetings of committees, a myriad of times for good governance and also for the ability to ensure that people feel as if they are not put under particular levels of pressure or whatever it is. I have used the method of giving apologies. What could have been deemed as I apologise if people feel uncomfortable, because that is my natural leadership style and flair. I do not wish people to feel uncomfortable, but it is my duty and responsibility to see that effective legislative scrutiny is conducted, particularly from civil servants.³⁵

Reasoned Decision

24. As Chair of the Committee, Dr Aiken has a duty to encourage conduct and behaviours conducive to the effective operation of the Committee, to act fairly and objectively at all times, and to treat witnesses and other Members with respect.³⁶

25. Having considered the video evidence, it is reasonable to describe Dr Aiken's tone as aggressive towards Mr Pauley.

26. Dr Aiken himself said during the 17 June meeting:

³⁵ Document 4 p14 at time 32:35

³⁶ Document 10 App A, B and D

Steve Aiken: I, as Chair, I accept the fact that my tone has been slightly exasperated during this as well, but there's good reason for it.³⁷

27. Mr Pauley was there to give evidence at the Committee's request. When Dr Aiken told Mr Pauley, in the tone he used, that he didn't want to hear his evidence it made Mr Pauley feel threatened, intimidated and unable to provide the evidence to the Committee that he was there to provide.
28. By telling Mr Pauley in an aggressive tone that he did not wish to hear his evidence in relation to other jurisdictions—a question that was posed to the Department of Finance by the Finance Committee itself—Dr Aiken was again making Mr Pauley feel intimidated and unable to give the evidence he was there to provide.
29. I am not persuaded by Dr Aiken's defence that his behaviour was appropriate in the context of his belief that Mr Pauley was misleading the Committee in relation to the evidence Mr Pauley was presenting. Regardless of the content of his evidence, there is no defence to making a witness feel intimidated, threatened and harassed. Members must treat witnesses with respect at all times no matter the circumstances.
30. It is not in my remit to investigate the content of the evidence Mr Pauley was presenting to the Committee. I note from Dr Aiken's statement that he is waiting for this process to be completed before he raises a complaint against Mr Pauley with the Northern Ireland Civil Service.
31. Regardless of the frustration that Dr Aiken admits he felt at the time because he believed Mr Pauley was misleading the Committee, the role of the Chair is to maintain order and to set the tone. If Dr Aiken believed Mr Pauley was misleading the Committee, he along with the Committee, could have given consideration to other avenues available to them such as stopping the witness session and returning at a later date. When this was put to him, Dr Aiken said there had been time constraints in relation to the business at hand which would not have allowed him to suspend as suggested.³⁸ Instead, his behaviour led to Mr Pauley feeling, in his own words, threatened and intimidated. Witnesses should never feel harassed, threatened or intimidated when giving evidence.

³⁷ Document 6 p7

³⁸ Document 3 p4

32. I find Dr Aiken's explanation in relation to his numerous apologies to Mr Pauley unreasonable. Dr Aiken claims that he was not apologising because he believed he did anything wrong but rather out of politeness because he didn't want anyone to feel uncomfortable. But it seems that Dr Aiken was, in relation to this allegation, the one making Mr Pauley feel 'uncomfortable'. Therefore, the assertion by Dr Aiken that he was not apologising for his behaviour seems disingenuous. To my mind, either he apologised because he knew or thought he was wrong in behaving that way--which he denies, or he was merely saying the word 'sorry' for the sake of seeming polite but without the usual meaning of remorse attached to the word. It appears to me that either way, his explanation in relation to his apologies is challenging to reconcile.
33. This case relates to behaviour; it is not a straight forward application of a black and white rule. Some, like Dr Aiken, will believe this behaviour is entirely appropriate. Others, such as Mr Pauley, will believe it is entirely inappropriate and in breach of the Code. Mr Pauley said in his interview:
- Mr Pauley:** I had reservations about making a complaint against both of them. Making a complaint against elected members for a committee session and I am aware, I am accountable I can .. in there is a question, a difficult question to determine. I am certain there is a line but to determine and to make the judgement of whether it was crossed.³⁹
34. The key question in relation to this allegation and the allegations that follow, is whether Dr Aiken's behaviour crossed the line from robust questioning to disrespectful behaviour in breach of Rule 15 of the Code of Conduct and the Respect principle. In deciding whether this behaviour crossed the line of acceptable behaviour, I have weighed up the evidence, context and facts of the case and ultimately made a decision on whether the behaviour, on the balance of probabilities, was an unreasonable and excessive personal attack in breach of the Code.
1. Examining the meaning of unreasonable and excessive personal attack is essential in terms of deciding whether the behaviour in question went over the line and breached Rule 15.

³⁹ Document 2, p9 at F

2. It is vital to the democratic process that Members and the Committees they serve are able to carry out their scrutiny role which often times requires robust and challenging questioning by MLAs to both witnesses and each other.⁴⁰
 3. Unreasonable is defined as ‘not fair or acceptable’.⁴¹
 4. Excessive is defined as ‘more than is necessary, normal, or desirable; immoderate’.⁴²
 5. The Committee on Standards and Privileges discussed Rule 15 of the Code in their 2015 report.

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.⁴³
 6. The Finance Committee’s own policies relating to courteous and respectful behaviour are unequivocal where it states ‘witnesses must be treated with respect at all times’.⁴⁴
 7. While Members are required to hold others to account which often requires robust questioning, they are at the same time required to be respectful to witnesses and to each other. Members should be able to undertake a scrutiny role in a courteous, respectful and appropriate manner without resorting to personal attacks, causing offense, being abusive and/or overly disruptive. Therefore, Members need to consider both what they are expressing and the way they are expressing it.
35. In relation to this complaint, other information that was taken into consideration when considering the allegations include:

⁴⁰ Document 12 para 101

⁴¹ <https://dictionary.cambridge.org>

⁴² <https://dictionary.cambridge.org>

⁴³ Document 12 para 52

⁴⁴ Document 10

1. Definition of harassment

Mr Pauley alleges that the behaviour towards him was, among other things, harassment and led to him feeling threatened, intimidated and unable to provide his evidence. Many organisations develop definitions and policies relating to harassment; the closest to home would be that of the Assembly Commission, who define the behaviours of harassment, bullying, discrimination and victimisation as:

Any form of unwanted, unreasonable and offensive conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Conduct shall be regarded as having this effect only if, having regard to all the circumstances and in particular the complainant's perception, it should be reasonably considered as having that effect.⁴⁵

While Members are not employees of the Assembly Commission and are not subject to this definition, it is instructive to the extent that it provides further understanding of the complaint.

2. Complainant's perception of the behaviour

Mr Pauley made his view clear when he stated that the behaviour of Dr Aiken made him feel intimidated, harassed and unable to give his evidence. Considering that Mr Pauley is a senior civil servant and has no doubt given evidence many times, his perception is likely a well-informed one. Having interviewed Mr Pauley, I am satisfied that he genuinely felt threatened, harassed and intimidated by Dr Aiken's behaviour towards him. Additionally, it is clear from the 17 June Committee meeting video that Mr Pauley's hands were at times shaking and he appeared uncomfortable.

3. Views of other members of the Finance Committee

1. One member of the Finance Committee interjected during the 17 June Committee meeting to tell Dr Aiken that he thought he and another member had acted in a rude and unacceptable way to Mr Pauley:

Maoliosa McHugh MLA: I am interjecting for that very reason, Chair. I thought that it was downright rude that, when this gentleman started to speak, as soon as he got the first couple of words out of his mouth, you and Mr Allister went down his throat. I thought that that was

⁴⁵ Document 11

downright rude.I felt embarrassed for a minute because of the way in which you were being treated, Mr Pauley.

Steve Aiken: Thank you very much, Maolíosa. Your comments have been noted. I apologise if I have embarrassed anybody, but, yet again, I state that this is about Northern Ireland and I am not taking any more lectures or being told that we are in a unique situation and then it being explained that we are not.

2. Others, such as Mr Paul Frew MLA and Mr Wells MLA disagreed with this, and at the 24 June meeting stated that they felt the Committee and Chair did a great job.^{46,47}
3. At the 24 June Committee meeting, two members of the Finance Committee expressed concern about the culture of the Committee:

Maolíosa McHugh: On a number of different occasions, I've had to look to the Chair when I would have spoken in the past that I was hearing the dawn chorus coming from behind me, shouting at me or passing comment, whenever I'm speaking and the likes of it. And I think too, that's a reflection of the bad manners that is displayed by this committee. Now, whenever it's got to this stage that we're actually being presented in the national newspaper and everyone else is talking about it, and in fact even here within this Parliament, that all of the committees are commenting about the poisonous atmosphere that exists on this committee, I think it is something that has to be taken on board. And I think it's a very, very serious issue for you as chair to take it on board."⁴⁸

Pat Catney: And just one more little point, folks. I look at the committee and we are blessed with just one lady in it. I know when we bring in some of our witnesses, I know it is not meant to be, but we are the eight or nine eight men and we only have the one really, so I'm not accusing anyone, I'm just saying if we could temper that just a little bit.⁴⁹

⁴⁶ <https://youtu.be/VssciA7aYFk?t=636>

⁴⁷ <https://www.youtube.com/watch?v=VssciA7aYFk>

⁴⁸ <https://youtu.be/VssciA7aYFk?t=237>

⁴⁹ <https://youtu.be/VssciA7aYFk?t=3374>

4. Imbalance of power

It is important to note when considering all of the circumstances that an imbalance of power existed in relation to Mr Pauley and the Finance Committee in favour of the Finance Committee— i.e. in favour of Dr Aiken.

5. Article 10 of the European Convention: Freedom of Expression

1. A consideration of Article 10 is important to the facts of this case.

Article 10 provides:

- (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the rights and interests of others....

2. In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, controversial, colourful, emotive, non-rational and aggressive, that would not be acceptable outside that context, is tolerated.⁵⁰

3. There is little scope under Article 10(2) for restrictions on political speech or on debate on questions of public interest.⁵¹

4. However, the right to freedom of expression is not absolute. Restrictions may be imposed to ensure that the conduct of public life, including public debate, does not fall below a minimum level so as to endanger public confidence in democracy.⁵²

5. Public servants are subject to wider levels of acceptable criticism than other members of the public when matters of public concern are being discussed. However, the limits are not as wide as they are for elected politicians. It may be necessary, for example, to protect officers from offensive and abusive verbal

⁵⁰ Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)

⁵¹ R (Calver) v Adjudication Panel for Wales (2012) EWHC 1172

⁵² Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)

attacks as it is in the public interest that officers are not subjected to unwarranted comments that prevent them from performing their duties⁵³

6. Protecting public servants is a legitimate and proportionate aim of the State in respect of Article 10.⁵⁴

Hickinbottom J:

As well as in their own private interests in terms of honour, dignity and reputation, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine public confidence in the administration. Therefore, in the public interest, it is a legitimate aim of the State to protect public servants from unwarranted comments that have, or may have, that adverse effect on good administration.

What is more, civil servants must enjoy public confidence in conditions free from perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive attacks when on duty.⁵⁵

7. The Committee on Standards and Privileges considered this in their 2015 report:

“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.⁵⁶

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.”⁵⁷

⁵³ Janowski v Poland ([1999](#)) 29 EHRR 705

⁵⁴ Heesom v Public Services Ombudsman for Wales [2014]; Mamère v France (Application no. 12697/03)

⁵⁵ Mamère v France (2009) 49 EHRR 39

⁵⁶ Document 12 para 90

⁵⁷ Document 12 para 101

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.”⁵⁸

8. In approaching this case, in relation to Article 10, I considered whether
 - (1) The facts led me to conclude, on the balance of probabilities, that Dr Aiken failed to comply with the applicable Code of Conduct—in this case Rule 15 and the Respect principle.
 - (2) If so, whether such a finding in itself is *prima facie* a breach of the right to freedom of expression under Article 10.
 - (3) If so, whether the restriction involved by the finding was justified by Article 10(2), which allows restrictions that are necessary in a democratic society.

6. Relevant Cases

As this complaint requires a judgement evaluation, careful consideration of each of the specific facts and circumstances of each matter is paramount. While previous decisions may be useful in terms of outlining approaches etc, they should not be relied on as precedent cases in respect of findings of fact. Having said that, one relevant case worth mentioning in relation to this current case is a 2015 case investigated by the then Commissioner for Standards, Mr Douglas Bain. It involved an alleged breach of Rule 15 and the respect principle. The complaint related to the conduct of MLA Sammy Wilson (now MP) during a Department for Social Development (DSD) Committee meeting. Mr Bain found that Mr Wilson’s description of one of the witnesses as “dodgy” was at worst a mild form of abuse and did not amount to “an unreasonable and excessive personal attack”. Additionally, Mr Bain found that Mr Wilson was entitled by virtue of Article 10 to make the accusation of partiality in relation to Mr Maskey as Chair of the Committee, even if it was wholly untrue. However, when Mr Wilson described Mr Allister as a ‘thug’, despite the fact this comment was made in a political context by one politician about another, Mr Bain did not accept it was protected by the right to freedom of expression enshrined in Article 10 of the Convention as untruthfully describing someone as a “thug” is an abusive and gratuitous personal comment, that it

⁵⁸ Document 12 para 102

amounted to an unreasonable and excessive personal attack on Mr Allister and that it contravened the Respect principle set out in the Code. Finally, after taking everything into consideration, Mr Bain found that Mr Wilson's conduct 'in the round' amounted to an unreasonable and excessive personal attack on another Member when Mr Wilson called Mr Allister a 'thug' and failed to publicly apologise for or publicly explain his remark. Mr Bain also took into consideration Mr Wilson's gesticulations, his evidence at interview and the circumstances in which the conduct took place. After a divided decision, the Committee for Standards and Privileges agreed that a finding of breach was necessary in a democratic society for the protection of the reputation or rights of others.⁵⁹

While the Committee acknowledges the importance of Mr Wilson being able to exercise his right to freedom of expression, this right did not outweigh the public interest in this case in ensuring that Mr Allister's reputation and rights were protected. Although this finding interferes with Mr Wilson's Article 10 rights this interference is justified.

36. I am of the view that Dr Aiken's behaviour was unreasonable in that it was not fair or acceptable to treat Mr Pauley in such a way. It was excessive in that the tone and manner was more than was necessary, normal or desirable; it was discourteous, disrespectful and aggressive and as such was an unreasonable and excessive attack on Mr Pauley in breach of the Code.
37. In terms of freedom of expression and the enhanced protection for political expression under Article 10, while my finding of a breach of the Code amounts to a prima facie interference with Dr Aiken's Article 10 rights, this interference is proscribed by law and necessary in a democratic society for the protection of the reputation or rights of others, namely Mr Pauley, and therefore justifiable.
38. Dr Aiken's behaviour led to Mr Pauley feeling threatened, intimidated and unable to effectively give his evidence.
39. I uphold this allegation.

⁵⁹ <http://www.niassembly.gov.uk/assembly-business/committees/2011-2016/standards-and-privileges/reports-2011-2016/report-on-a-complaint-against-mr-sammy-wilson-mla/>

Allegation 3

Dr Aiken did not take sufficient action to protect Mr Pauley from unacceptable personal attack from Mr Wells namely a) his comment “Do you want to phone a friend?”⁶⁰ and b) his persistent questioning on Mr Pauley’s personal view in relation to the evidence he was presenting on behalf of his Minister.

Evidence

40. Dr Aiken asked Mr Wells to withdraw his ‘Do you want to phone a friend?’ comment immediately.⁶¹
41. Mr Pauley alleges Rule 19 was breached in respect of Dr Aiken not protecting him from Mr Wells’ inappropriate questioning. Rule 19 states:

You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these Rules of conduct
42. Dr Aiken did not challenge Mr Wells when he pressed Mr Pauley to give his personal view.

Reasoned Decision

43. Dr Aiken asked Mr Wells to withdraw his ‘Do you want to phone a friend?’ comment immediately and Mr Wells withdrew the comment.
44. When pressed by Mr Wells on his personal view, Mr Pauley could have stated that he was there to represent his Minister’s view as he had stated earlier in the session. While I do not think this was unacceptable questioning insofar as Rule 15 is concerned, and therefore not something Dr Aiken needed to protect Mr Pauley from, Members including the Chair should know and respect the fact that civil servants appearing before the Committee are there to provide evidence on behalf of their Minister.
45. As Members of the Committee for Finance are not Dr Aiken’s staff, Rule 19 is not engaged in the context of this complaint.⁶²

⁶⁰ <https://youtu.be/E4JOppU1nc?t=2558>

⁶¹ Document 6 p4

⁶² Annex A

46. I do not uphold this allegation in relation to Dr Aiken failing to protect Mr Pauley from Mr Wells' questioning at 17 June meeting.

47. I do not uphold the allegation in relation to a breach of Rule 19 of the Code.

Allegation 4

Dr Aiken's repeated bullying behaviour was unreasonable and completely unacceptable and led to Mr Pauley feeling "threatened and intimidated" with the result that he was unable to deliver his evidence effectively.⁶³

Evidence

48. Dr Aiken refutes the allegations that he questioned Mr Pauley in a way that was disrespectful and beyond acceptably robust.
49. Mr Pauley stated at interview and in his complaint that he felt intimidated, threatened and offended because of the way he was treated by Dr Aiken.
50. The key question is again whether his behaviour 'crossed the line' in breach of Rule 15. My consideration and explanation of this is explained at paras 34-35 above.
51. In Mr Pauley's interview, he states that he raised the complaint because he believes Dr Aiken's behaviour crossed the line.

Bill Pauley: I will have to go back to this committee on many occasions. My staff will have to go back to this committee and in fact some other members of my staff have gone there since in relation to it and we have a duty of care to those staff that it will be a safe place for them to go and that they will not be bullied and harassed. I felt on that basis that my treatment had crossed a line, that it was personal, that I was prevented from giving evidence in a robust and angry and aggressive matter. That is not robust questioning. It overstepped that line to me and I am asking where that line is and whether that was crossed and that is the basis of my complaint. I believe it was in the way that I felt. I believe it had a significant impact on me. I believe that members of the committee recognised that impact. I believe that the chair did when he apologised three times."⁶⁴

52. On two occasions, both at the 24 June meeting, Dr Aiken addressed bullying accusations in relation to the Committee.
 1. Dr Aiken interrupted a Member and while pointing his finger at him said:

⁶³ Document 2, p3 at C

⁶⁴ Document 2, p5 at F

Steve Aiken: Very careful with your use of language. We do not permit bullying or aggressive behaviour beyond any of the normal bounds of the Assembly or good procedure.^{65,66}

2. Towards the end of the meeting, he further stated:

Steve Aiken: I will not tolerate any accusations of bullying. I will not tolerate any bullying in this committee.⁶⁷

53. Views expressed by other members of the Committee suggest that bullying behaviour has occurred and has been tolerated within the Committee (para 35.3.1 to 35.3.3). This is in contrast to Dr Aiken's assertions that bullying is not tolerated.
54. An opinion article that appeared in the media soon after the 17 June meeting was included in Mr Pauley's complaint as evidence. The article, written by Mr Tom Kelly and published in the Irish News, expressed the author's view after watching the Committee meeting and in it he comments that Dr Aiken showed an "apparent lack of civility or respect towards them [Mr Pauley and his colleague]".⁶⁸
55. Dr Aiken dismissed the article as lacking importance, relevance and credibility on the basis of its publisher and provenance and made various remarks about it at interview.⁶⁹
56. Another article included in Mr Pauley's complaint as evidence was published in the News Letter on 28 October 2020, and is a report on Mr Pauley's complaint.⁷⁰ As this was a confidential document belonging to a confidential process, in accordance with Rule 17 of the Code it should not have been shared with a newspaper, or anyone for that matter. Mr Pauley refers to this as having been 'leaked' by someone, and wrote to me outlining his concern that he should be subjected to even further scrutiny for raising a complaint with the Commissioner. No new complaint has been raised by Mr Pauley in relation to this.

⁶⁵ Document 3 p9 at 20:01

⁶⁶ <https://youtu.be/VssciA7aYFk?t=3170>

⁶⁷ <https://youtu.be/VssciA7aYFk?t=3588>

⁶⁸ Document 8

⁶⁹ Document 3: p7 at G; p16 at E; p20 at E; p13 at E

⁷⁰ Document 9

57. Dr Aiken asserts that his 'robust' behaviour was mild compared with other Committees.
1. **Steve Aiken:** But the behaviour is not aggressive and if you would look at any of the committees within the Northern Ireland Assembly if you look at the Health Committee, Infrastructure Committee, The TEO Committee and the rest of them, if anything I would say that I was probably one of the more reasonable of the committee chairs to do that as well.⁷¹
 2. **Steve Aiken:** That wasn't in anyway different than any other legislative assembly or indeed any other sort of committee here in the Assembly.⁷²

Reasoned Decision

58. It is clear that this complaint relates to the treatment of Mr Pauley at the Finance Committee and no other. The fact that Dr Aiken refers to past events and times in other committees and jurisdictions to defend his behaviour does not persuade me that his behaviour was appropriate. It does, however, raise concerns in relation to possible inappropriate conduct that may be occurring in other committees.
59. Having interviewed Mr Pauley, I am satisfied that he genuinely felt threatened, harassed and intimidated by Dr Aiken's behaviour towards him. Having regard to all the circumstances, it can be reasonably considered that Dr Aiken's conduct had this effect on Mr Pauley.
60. The Code's principles require MLAs, as elected public officials, to conduct themselves in a manner that promotes the principles of objectivity, leadership, equality, promoting good relations, respect and good working relationships and further at para 3.1 in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of the Assembly.
61. Treating witnesses, Members or colleagues in a hostile or aggressive manner does not create the inclusive, cooperative environment which the policies and the Code seek to promote. In my view, maintaining civility and respect at all times within our institutions, including our committees, ultimately leads to better outcomes for everyone.

⁷¹ Document 3 p14 at C

⁷² Document 3 p22 at F-G

62. This allegation is an overarching one. I have outlined my reasoning relating to what crossing the line looks like---from robust questioning to breaching the Code of Conduct (paras 34-35). Having weighed up all of the evidence, I am satisfied that the behaviour towards Mr Pauley by Dr Aiken crossed the line and was unreasonable and excessive.

Decision

63. I uphold the allegation that Dr Aiken's repeated unreasonable and excessive behaviour caused Mr Pauley to feel threatened and intimidated and unable to effectively give his evidence in breach of the Code
64. I am of the view that Dr Aiken's behaviour was unreasonable because it was not fair or acceptable to treat Mr Pauley in such a way. It was excessive in that the tone and manner was more than was necessary, normal or desirable; it was discourteous, disrespectful and aggressive and as such was an unreasonable and excessive attack on Mr Pauley in breach of the Code's Ruel 15 and Respect principle.
65. In terms of freedom of expression and the enhanced protection for political expression under Article 10, while my finding of a breach of the Code amounts to a prima facie interference with Dr Aiken's Article 10 rights, this interference is proscribed by law and necessary in a democratic society for the protection of the reputation or rights of others, namely Mr Pauley, and therefore justifiable.
66. I uphold this allegation.

Allegation 5

At the 2 February 2021 Assembly Plenary Sitting⁷³, Dr Aiken referred to the civil servants' evidence session on 17 June as 'unedifying' which was insulting and offensive to Mr Pauley.

Evidence

67. The video recording and Hansard show Dr Aiken referring to the senior officials' appearance at the Committee as "unedifying".^{74,75}

Steve Aiken: Indeed, we had the rather unedifying experience of being given evidence by senior officials in the Department of Finance who told us how guidelines were much more appropriate and that discussions had been held during the New Decade, New Approach negotiations.⁷⁶

68. Mr Pauley stated at interview:

Bill Pauley: And as I say for it to be described by Mr Aiken yesterday as unedifying experience of the senior civil servants of the department being there during that session, well it didn't feel very nice I can tell you that.⁷⁷

Reasoned Decision

69. In relation to the 2 February 'unedifying' comment made by Dr Aiken, it was wholly unnecessary and inappropriate and further offended and insulted Mr Pauley.
70. However, the comment was made in the Chamber and therefore it is not within the Commissioner's remit to consider such comments.
71. I do not uphold this allegation because it is outside the scope of the MLAs Code of Conduct.

⁷³ <https://www.youtube.com/watch?v=-CL3UgHNANA>

⁷⁴ Document 7

⁷⁵ <https://youtu.be/-CL3UgHNANA?t=20738>

⁷⁶ Document 7

⁷⁷ Document 2, p6 at B

Other issues arising in the course of my inquiry

Dr Aiken's conduct during the investigation

72. It was disappointing that Dr Aiken was less than fully cooperative with the Office of the Commissioner for Standards in relation to respecting its procedures and in responding to requests from the Office in a timely manner.
73. The Code's Rule 16 states:
- You shall cooperate at all times with any investigation by or under the authority of either the Northern Ireland Assembly Commissioner for Standards or the Assembly.⁷⁸
74. I provided Dr Aiken with the Guidance for Witnesses document and the 2016 Direction and Code, both of which outline the processes of the investigation and the Office. Those same rules were also agreed on the day of the interview.⁷⁹
75. Despite being a Member on the Committee for Standards and Privileges and having being provided with the rules and procedures which were agreed prior to the interview, Dr Aiken appeared to be unaware and/or unaccepting of the process.
76. Throughout the interview Dr Aiken's representative, who was there in the capacity of an observer only as per the guideline, insisted on speaking at numerous points throughout the interview.⁸⁰
77. At times during his first interview, I found Dr Aiken to be combative and the tone of the interview somewhat alarming.⁸¹
78. The interview was suspended as Dr Aiken wanted further disclosure of the evidence that we were presenting and further clarification of the rights of his representative to speak.⁸²

⁷⁸ Annex A

⁷⁹ Document 3 p1 at A-B

⁸⁰ Document 3 p8 at B-C; p10 at E; p11 at F-H; p12 at A-E; p13 at C; p15 at C; p16 at G-H; p17 at A-H; p18 at A-D; p19 at C; p25 at A-H; p26 at A-B

⁸¹ Document 3 p 25 at H

⁸² Document 3 p12 at D-F

79. Soon after suspending the 24th February interview, I contacted Dr Aiken on two separate occasions requesting that he contact the Office to arrange a date to resume his interview.⁸³ On 11 March, Dr Aiken replied with a list of items he required before he would be willing to set a date to resume the interview.⁸⁴ I provided him with clarification and the items he requested on 16 March and requested, as a matter of priority, that he contact the Office to arrange a date to resume the interview.⁸⁵ Having not replied by the 23 March, I again wrote to Dr Aiken for a fourth time, highlighting to him that I would use the powers of the Office to compel him to attend if he did not contact the Office within 48 hours to arrange a date and time.⁸⁶
80. Dr Aiken's second (resumed) interview took place on 1 April 2020, five weeks after his first interview.
81. Overall, it is my view that Dr Aiken showed a lack of respect for the processes of the Office of the Commissioner for Standards. Dr Aiken's confrontational behaviour at times during his first interview and his lack of timely responses throughout the process which led to avoidable delays, were unnecessary and below the standards expected from an MLA.

⁸³ Documents 13 and 14

⁸⁴ Document 15

⁸⁵ Document 16

⁸⁶ Document 17

Conclusion

82. I am satisfied on the basis of the evidence, my analysis and reasoning, that in behaving the way he did at the 17 June 2020 Finance Committee, Dr Aiken acted contrary to Rule 15 (para 4.15) and the Respect principle and in doing so breached the provisions of the Code of Conduct.

Further recommendations

83. In light of my findings and observations in this case, I have included here recommendations that the Committee for Standards and Privileges may wish to consider.
1. Training should be developed and delivered to Committee Chairs and Members in relation to the Respect principle and Rule 15 of the Code of Conduct, with a focus on treatment of witnesses and each other.
 2. A thorough, useful and practical overview of the Code of Conduct and Guide, including the principles, rules and 2016 Direction outlining the complaints process should be developed and included as mandatory within the induction programme for all Members.
 3. A meaningful and mandatory equality, diversity and inclusion programme should be developed and delivered, preferably one that has some proven positive outcomes on organisational culture elsewhere.

Annex A



Northern Ireland
Assembly

The Code of Conduct and The Guide to the Rules relating to the Conduct of Members

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2 The Code of Conduct

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. 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.

4 The Code of Conduct

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 registrable interests. A registrable interest means an interest specified in Chapter 1 of the Guide to the Rules. [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. A relevant interest means an interest to which Chapter 2 of the Guide to the Rules applies, and may include a registrable interest.
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.

6 The Code of Conduct

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.



Legislation and case Law relevant to this complaint

Article 10 of the European Convention provides:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and are necessary in a democratic society, ... for the protection of the rights and interests of others....

Relevant legal cases

1. Heesom v Public Services Ombudsman for Wales [2014] ¹
2. Janowski v Poland(1999) ²
3. Mamère v France (2009)³
4. Lombardo v Malta (2009)⁴
5. Sanders v Kingston (No 1) [2005] EWHC 1145 (Admin)
6. APW/001/2020-021/CT-Councillor Kevin O'Neill⁵

¹ EWHC 1504 (Admin)

² [\(1999\) 29 EHRR 705](#)

³ [\(2009\) 49 EHRR 39](#)

⁴ [\(2009\) 48 EHRR 23](#)

⁵ <https://adjudicationpanel.gov.wales/apw0012020-021ct-councillor-kevin-oneill>

Annex B

Document	Description
1	Bill Pauley Complaint 01 July 2020
2	Interview transcript Bill Pauley 3 February 2021
3	Interview transcript Jim Wells MLA 9 February 2021
4	Interview transcript Steve Aiken OBE MLA 24 February 2021
5	Interview transcript Steve Aiken OBE MLA 01 April 2021
6	Statement Jim Wells MLA
7	Statement Steve Aiken OBE MLA
8	Hansard, Finance Committee Meeting 17 June 2020
9	Hansard, Assembly Plenary Sitting 2 February 2021
10	Irish News article, Tom Kelly, 22 June 2020
11	Newsletter article, Adam Kula, 28 October 2020
12	Finance Committee letter and Annexes A-D
13	NI Assembly Dignity at Work policy, Section 6.07
14	Excerpt from CSP 2015 Report
15	Email from Commissioner's Office to Steve Aiken MLA, 1 March 2021
16	Letter from the Commissioner to Steve Aiken MLA, 8 March 2021
17	Email from Steve Aiken MLA to the Commissioner, 11 March 2021
18	Letter from the Commissioner to Steve Aiken MLA, 16 March 2021
19	Letter from the Commissioner to Steve Aiken MLA, 23 March 2021

COMPLAINT FORM

Notes

1. You do not need to use this form to make your complaint but doing may help to ensure that you provide all the necessary information.
2. If you need help to complete the form please telephone the Standards Commissioner's office on 028 9052 1338. Please note that the Commissioner cannot advise you on whether you should make a complaint or on what you should say in it.
3. Information in bold must be provided if your complaint is to be admissible. You do not have to provide the other information but it may speed up the processing of your complaint if you do.
4. If you are complaining about more than one MLA, you must complete a separate form for each of them
5. Please read [Complaints Process](#) before completing this form.
6. Please send the completed form and your supporting evidence by post to The Standards Commissioner, Room 15 Parliament Buildings, Stormont, Belfast BT4 3XX or by email to Standards.Commissioner@niassembly.gov.uk

YOUR DETAILS

Title: Mr/Mrs/Miss/Ms/Doctor/Other (please specify): Mr

First Name: Bill

Surname: Pauley

Postal Address: Department of Finance, Strategic Policy and Reform, Clare House, 303

Airport Road West, Belfast,

Postcode: BT3 9ED

Phone number (Day): xxxxxxxx **(Evening):** xxxxxxxx

E-mail: [xxxxxxxxxx](#)

DETAILS OF MLA YOU ARE COMPLAINING ABOUT

First name: Mr Steve Aiken, Chair Finance

Committee Mr Jim Wells, Member

Finance Committee

WHAT CONDUCT OF THE MLA DO YOU SAY BREACHED THE RULES OF CONDUCT? (Please describe in detail each act or omission of the MLA that you allege broke one or more of the Rules of Conduct)

I gave evidence to the Finance Committee on 17 June 2020 along with a member of my team. On numerous occasions during this session, contrary to the Assembly Principles of Conduct, I was treated with a lack of respect by the Chair Mr Steve Aiken MLA and Mr Jim Wells MLA.

I was subjected to unreasonable and excessive personal attack (Rule 15) throughout this evidence session. This began when the Chair, Mr Aiken, responded to part of my evidence in an angry and aggressive manner to state his own position on the evidence I had given on behalf of my Minister and indicated that he did not want to hear the evidence that I had presented again. He recognised that the manner in which he made this intervention was unacceptable and apologised to me. Despite this the unacceptable behaviour did not stop and continued to behave this way throughout the session. For example he later intervened again in an angry and aggressive manner to say he did not want evidence presented on what happened in other areas despite this being a specific request made of us in the written briefing. This led to multiple apologies being made. This repeated bullying behaviour made me feel extremely uncomfortable throughout the 90 minute hearing and I was precluded from presenting my evidence. The Chair also did not take sufficient action to protect me for the unacceptable personal nature of the questions from Mr Wells (rule 19)

Mr Wells treated me with a lack of respect through snide interventions such as “do you want to phone a friend” when other members placed their questions and made an unacceptable personal attack when he pressed me for my personal views on issues even after the basis of my giving evidence on behalf of my Minister had been clarified to the Committee. This was personal, repeated and excessive even after it was noted by him that I was uncomfortable where he wrongly attributed my discomfort in being asked to present my Ministers position, deliberately trying to undermine the relationship between a civil servant and the minister.

The multiple and repeated occurrences of unacceptable behaviour throughout this session had a cumulative effect.

The unacceptable nature of my treatment during this hearing was recognised by one other member of the Committee who intervened to state this. This did not stop the continuation of the unacceptable behaviour and the chair took no action, despite my obvious discomfort.

It was also recognised in a press Article by a journalist covering the session. An article appeared in a Newspaper that referred to the session adding to the public nature of my treatment by the Committee.

Giving evidence to a Committee is and should be a thorough and sometimes challenging examination of the issues. In my evidence session, I was subject to robust questioning on matters of fact by other members of the committee. This was a thorough cross examination of my evidence, but was conducted in a manner of mutual respect.. The unreasonable and excessive personally threatening behaviour from Mr Aiken and Mr Wells towards me made me feel uncomfortable and intimidated and meant I was unable to deliver my evidence effectively.

I believe their conduct is in direct contravention of principle 7 of the Standards of Public Life and as a result has brought Assembly in to disrepute.

WHEN AND WHERE DID EACH ACT OR OMISSION TAKE PLACE?

Committee of Finance Evidence Session 17 June 2020

WHICH RULE OF CONDUCT DO YOU SAY WAS BROKEN BY EACH ACT OR OMISSION OF THE

MLA? (It is sufficient to give the number of the Rule)

Additional Assembly Principles of Conduct

Number 10 Respect: Members should show respect and consideration for others at all time

Rules of Conduct

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

19. You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these rules of conduct.

SUPPORTING EVIDENCE: You must attach sufficient documents or other evidence to satisfy the Commissioner that there is a prima facie case that a Rule of Conduct was broken. You should also attach the name and contact details of any witnesses whom you believe will be able to provide supporting evidence.

The Evidence is contained in the recording of the hearing. <https://youtu.be/E4JOppU1nc>

The hearing was also recorded by Hansard. In order to make judgement on my complaint I would ask that the evidence session is watched, as Hansard cannot pick up tone, raised voices or give a true representation of the actions of the members complained against.

FURTHER INFORMATION: Insert here any further information that you believe would assist the Commissioner in considering your complaint. Please continue on separate sheet if required.

This is an urgent matter. I cannot perform the full duties of my role effectively if I cannot appear before the Finance Committee to give evidence when required to do so on behalf of my Minister and to be able to do this without being treated with respect, not bullied or harassed, not subjected to unreasonable and excessive personal attacks. I expect the Chair of the Committee both to comply with the Code of Conduct for behaviour and to enforce these standards from other members of the committee.

Bill

Pauley 1

July 2020

INTERVIEW TRANSCRIPT

Interview of: Mr Bill Pauley

Witness: XXXXX

Date: 3 February 2021

Place: Room 106, Parliament Buildings

Present: Dr Melissa McCullough, Standards
Commissioner
John Devitt
Bill Pauley
Neil Jackson

Time Started: 9:33 am

Time Ended: 10:11 am

- A. **Commissioner** I am Dr Melissa McCullough the Commissioner for Standards, the other person present is John Devitt. We are interviewing via Zoom on 3rd February 2021 and the time is 9:33am. I am interviewing Mr Pauley and the other person present is Mr Neil Jackson and I wish to remind Mr Pauley that Mr Jackson is not permitted to answer our questions on your behalf, he is here only as an observer. OK. We also.. as all of our interviews have to be under oath so I have an oath here. Normally we would give you.. its an affirmation really here I will just share the screen so you can see it. Bear with me one second. Ok Can you see that Bill
- B. **BP** I can
- C. **Commissioner** okay. Can you just speak that out loud for the record
- BP** I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.
- Commissioner** Great Thanks so much. Ok so I am going to start off for the interview record. Could you please state your place of work and your job title.
- D. **BP** I work in the Department of Finance, which is located at Clare House on Airport Road. I am the Director of Strategic Policy and Reform in the Department of Finance
- Commissioner** And how long have you been in this role.?
- E. **BP** Four years. Just over four years. It was four years in October
- Commissioner** Have you been.. How long have you been a civil servant?
- BP** 1st May 1984. 37 years almost.
- Commissioner** OK long time. OK I am just taking you through some questions that arise from your complaint. So have you previously given oral evidence before either Mr Wells or Mr Aiken?
- F. **BP** Yes. I have given. I gave evidence once previously to this committee in this session where both were present and I have given evidence once since that occasion.
- Commissioner** And tell me about those experiences
- G. **BP** Do you want to previously. I worked previously for Mr Wells when he was Health Minister
- Commissioner** OK
- H.

- A. **BP** Other than that some encounters around European Programme funding questions, answer. Very limited. Much less with Mr Aiken who hasn't been in politics the same length of time as Mr Wells
- Commissioner** And were those experiences that you just mentioned, were there any issues with those experiences liken to what we are looking at today in this complaint?
- B. **BP** No
- Commissioner** Ok. So during that Finance Committee on 17th June 2020 in your complaint you stated that the repeated bullying behaviour made you feel extremely uncomfortable throughout the 90 minute hearing and that precluded you from presenting your evidence. I am thinking as a senior civil servant in your role that you would be used to robust questioning. Am I right in that?
- C. **BP** I have been questioned robustly before and was also questioned robustly during this session in a manner that was completely acceptable by others.
- D. **Commissioner** Just to reiterate about you presenting your evidence that it precluded you. In what way do you think it prevented you from presenting your evidence exactly?
- BP** Mr Aiken, the session began quite normally in relation that I gave a statement of introduction, made clear the basis on which I was there. Referred also to the fact that my Minister had given evidence to the committee a few weeks before that and indeed that happened on 13th May and that the evidence I would be given would be on behalf of the Minister as is custom and practice and this is the basis in which we attend the committees. I think that session on 13th May may be interesting to you just to confirm what I did say at.. in relation to the particular issue of what was actually said and agreed during the talks process was indeed the line to take off my Minister in relation to that so he is very much on the record for that. Indeed he said it again yesterday as this Bill had completed its passage through the House whenever we were discussing. So Mr Aiken intervened to say in what he acknowledged was an angry manner, was that he did not want to hear that position being presented again so he directly told me that he did not want to hear what was the evidence that I was there to present on behalf of my Minister. He even referred to this yesterday in the House, made another statement about it. Called the appearance of the two senior civil servants on that day an unedifying experience and he said that he was involved in a negotiations which bore no relation to what the discussions became. So he was effectively saying that what we were saying in relation and what my Minister had said in relation to that process was not true. And he said that during the evidence session and the thing that he did not want to hear that presented again. So I
- E.
- F.
- G.
- H.

A. was effectively told that I couldn't present that evidence. I was hugely uncomfortable about this for a number of reasons. Firstly, that was what I was there to do. The manner in which he did it was completely unacceptable. And I suppose to be honest with you I don't think that what he said was necessarily the case of what happened. He indicated that he was present at the talks process. I too was present. I took the notes of the accountability and transparency working group. I was there. I also took notes with two bi-lateral meetings with the Ulster Unionist Party when we discussed the issues that were in these codes and the transparency with them. The leader of the Ulster Unionist Party at that time was Robin Swann in relation to that. So I took the notes of the discussion of that so he was preventing me from presenting evidence on the basis that it was not his position, he did so in an angry manner. He interrupted Mr Allister in order to make that intervention so in fact most of Mr Aiken's interventions other than the introduction and the conclusion in the bit and where I found his behavior threatening and intimidating where when he interrupted others to come to make points and to.. he certainly did that again in relation to evidence when actually my colleague who is a member of my team, where I am responsible for making sure that he is able to work in a safe and effective environment during questioning on whether or not the ..it was relevant to present information about the details of .. in what happened in other jurisdictions in relation to that. There was another intervention where it was said that the committee did not want to hear evidence about the experience in other jurisdictions. Which was completely astonishing to me as in their letter asking the department questions they ask a specific question as to whether the Department was aware about what happened in other jurisdictions. So throughout this there were ...he interrupted other questions while we were answering with other members to make positions and points that prevented us giving evidence and even in response to making a response to the question we were asked. I found that unacceptable.

F. **Commissioner** Why do think that was the demeanour on the day?

BP I really don't know. The session began fairly innocuously as I have said and we moved to Mr Allister which he spent nearly half an hour, 27 minutes or something whatever you might come to..Mr Allister is always known to be challenging and robust in his questions in relation to it. I have known Mr Allister a long time. He was an MEP when I spent 9 years as head of our department's European Division and have on many occasions if you like responded to Mr Allister's questions in his line and his probing with him in relation to him. And indeed we met outside of the Chamber in relation to his Bill in relation to that as well but Mr Allister in his manner and style and in presentation of it I suppose has a style or whatever and where the chair interrupted to if you like for some reason be more robust than Mr Allister was being but he did it in a way that presented me from giving evidence which I

H.

- A. believe disconcerted me and I think it affected the rest of my own personal performance during that session that went on for some time afterwards
- Commissioner** So Because the discussion was you know made knowledge of that topic was sensitive given the history of SPADS and have those previously appointed so the fact that that was sort of what happened.
- B. Did the challenges. Did you think that there would be those sort of challenges because of this..
- BP** I knew that Mr Allister would question me on those matters. Mr Allister had previously submitted a written Assembly question to ask what the position was in relation to I think the particular issue was in relation to whether the point at which the Department took over the appointment of special advisers and he was saying that the new code of appointment for special advisers was far worse or whatever his language was but deficient compared to the previous code of appointment for special advisers where that previous code had specified quite detailed steps that you had to make and we had that appointment process establishing a pool of candidates, making sure it was open and fair and transparent in that way. Where the new code of appointment for special advisers stripped all that back. It was a much shorter document and well my response to Mr Allister was quite simply that those making the appointment had to be the Minister for the Minister to be responsible for SPAD which indeed was the case and that the SPAD code of appointment requires those making those appointments to fully comply with all employment law. So I was expecting.. that's a position that Mr Allister had taken in a written question previously and or his Twitter account or I can't remember but it ..the question in his position in relation to that SPAD code of appointment and that issue within it was not a surprise to me.
- C.
- D.
- E.
- Commissioner** Before I go on to the next question. There is reminding me of..I don't see unless you sent it in and somehow its been... but I am looking for the .. you referred to an article in the press that actually also stated there was .. you know it was very robust and challenging, sort of backing up what you are saying. I don't know if you could refer us to it or send me a copy of that whenever you can. It's not the one that was .. the leaked one. Not that one. But the one prior. The one you have mentioned in your complaint.
- F.
- G. **BP** I believe I have a copy of that in the depths of our trims system which works very effectively no matter what others might say.
- Commissioner** OK. Thank you. If you could send that one over. Now just..
- H.

- A. **BP** The article talked about my hand trembling and the witness being clearly under pressure in relation to and indeed there is a place where you can see that.
- Commissioner**
- B. During the whole meeting I am counting three at least times where Mr Aiken and I have watched about three times if not more. I don't have the minutes in front of me as to what times he did these but there was at least three apologies throughout that and during and it is clear because you complained that you find his apology was insufficient. I am wondering if you could just explain that.
- BP**
- C. During the time there is indeed at least three and I haven't counted them to hear that and indeed he finishes with it in relation to it which might have been..I suppose some events after the session or not so much after the session. After I left and I suppose we are talking about Mr Aiken or Mr Wells made a comment about colleagues of mine who were going in afterwards and who say they must quaking in their boots. This seem to be the desired intention and it seemed to me that Mr knew exactly what was happening in there whenever the robust questioning as they would talk it happen. I think I would also refer you to the discussion in the committee the week afterwards when this matter was raised. The committee had a discussion of it. One member described me as being battered bruised and broken at the committee's attempts to intimidate in relation to it. Mr Wells didn't accept that, he said he didn't accept one word of that comment. He said we are very senior civil servants getting large salary and that we go home and laugh about it during that discussion. And the committee more broadly talked about they needed to have robust questioning in order to get to the truth. Now, the comments at the start of that meeting finished with a question, came actually from Mr Allister who asked if any complaint had been made to determine whether or not and there hadn't been at that point and the answer was no and the committee moved on. I think they had another agenda for that day whatever it was in relation to it. But I did feel there that the committee did not recognise nor again was it that we had apologised or did not say that we had stepped over the mark where I felt that they did. I will have to go back to this committee on many occasions. My staff will have to go back to this committee and in fact some other members of my staff have gone there since in relation to it and we have a duty of care to those staff that it will be a safe place for them to go and that they will not be bullied and harassed.
- D.
- E.
- F.
- G. I felt on that basis that my treatment had crossed a line, that it was personal, that I was prevented from giving evidence in a robust and angry and aggressive matter. That is not robust questioning. It overstepped that line to me and I am asking where that line is and whether that was crossed and that is the basis of my complaint. I believe it was in the way that I felt. I believe it had a significant impact on me. I believe that members of the committee recognised that impact. I believe that the chair did when he apologised three times or
- H.

- A. whatever it was. Mr Wells made a point of dwelling on it for some minutes during the session itself. Moaliosa McHugh referred to it, stopped it during the meeting and brought it up again afterwards in the next session that the way that the committee was behaving was matter of concern. I was on the receiving end of it and it was not a pleasant experience in any way and I do not believe that type of questioning and that level of robustness is necessary for the committee to work effectively and to probe me to whatever extent might be appropriate in relation to the policy issues and questions that are before at this time. And as I say for it to be described by Mr Aiken yesterday as unedifying experience of the senior civil servants of the department being there during that session, well it didn't feel very nice I can tell you that.
- B.
- C. **Commissioner** Thank you. I am going to hand over to John but one last question from me is that is there any other hidden or relevant factors that we should know about in relation to this. You mentioned earlier that you might have other evidence that you wanted to speak about.
- D. **BP** No I don't have other evidence I mentioned it to you. I suppose the points that I would make my evidence is and we have touched on it a little bit that this is a very public matter for me to be treated in this way. The original press article the fact that the session. It has been twice in the press now, it is a matter and indeed the reporting of the.. during the article of like.. I mean the caption under the photograph is not mention those who were if you like questioning me at the time or whatever. It had my name at the bottom it in relation to the photographs in relation to it. So in a sense that was there. I had wanted to refer you to the 13th May to confirm that that indeed did the position that I was presenting was that of my Minister. I wanted to refer you to the letter of 13th June from our Departmental Assembly Liaison Officer that is where the Department responded prior to the hearing to the question they had asked and indeed chose that it is on the Assembly website because it shows that they had indeed asked questions about other jurisdictions so that the position taken during the session was completely doing that. I suppose you could also say that in New Decade, New Approach document itself in itself it is evidence because it lists those issues that are there. It is called a deal. I am unsure of Mr Aiken's position and whether that was a deal or not but I do know that our institutions are restored and it is of course true that not everything in that document has been delivered and indeed I have written letters for my Minister to Treasury to say where is the money in relation to it. But that document contained the basis of the principles that was there. There is substantial Executive papers that would show that all of those documents that we were discussing about in the codes were indeed agreed by the Executive as a whole before they published and put in place in relation to it. I have referred also to the evidence the next session and the discussion of the committee members at that which I think reflect their attitude in relation to it which indeed was a factor in
- E.
- F.
- G.
- H.

- A. my deciding whether or not I would make a complaint about the session involved in relation to that and I would refer you to Mr Aiken's comments yesterday during the debate on the bill in relation to that.
- Commissioner** And that would have been..That Finance Committee just to backtrack for a second that Finance Committee meeting after the June meeting would have been..
- B. **BP** Seven days later, 24th June
- Commissioner** 24th June Thank you
- BP** And it is brought up under matters arising at the beginning of the meeting.
- C. **Commissioner** OK Great. Thanks so much Bill, I am going to hand you over John.
- JD** Hi Bill thank you and your information that you have provided has been very helpful and informative so thank you for that. Bill I suppose I have just a few questions. Can you assist us in relation to what discussion if any you had with your Minister or Mr Hughes in relation to you making the complaint
- D. **BP** I didn't want you to hear me drinking the water there.
- JD** That's OK
- BP** In relation to it. I have had no discussion with my Minister in relation to this complaint.
- E. **JD** So are they aware that you have made this complaint I suppose is my question
- BP** I have not told or had a discussion with the Minister about this complaint. I have discussed the complaint with my Permanent Secretary, Sue Gray and indeed I have written to my employer to say I have made a complaint about the treatment in which I was there because actually the only person who is responsible for ensuring that I have a safe place to work is indeed my employer in relation to that. So I am unsure if she has told the Minister if there has been but I have never raised it with him and he has never raised with me in relation to that nor have we had a discussion about it. Immediately after the session and before we had complaint or was a discussion generally among the staff who were in the office about how that session was extremely robust when I came back to the office after it in relation to that and our private office staff are on the same floor of this building as I am. Fifteen yards from where I am sitting now if you like you would have the Minister's private office in relation that, in relation to that. But
- F. **BP**
- G. **BP**
- H. **BP**

- A. I have never discussed this matter before or after a complaint was made with Conor Murphy.
- JD** So do I understand your answer then correctly that your staff would have viewed this session while you were giving evidence.
- B. **BP** Yes. The department with its Assembly Liaison Officer, every department has a dalo as we call them Disemble Acting Department Assembly Liaison Officer, they monitor all the session they would give us of the ones who aren't there we get a read out of every meeting, before the minutes and the things of what the committee is doing in relation to that and those who would be following a particular policy issue or whatever would do it. Mr Hughes was with me. I did discuss that I was going to make a complaint with him in relation to it. I told him I was going to do it lest he be considering or whatever his own thought was going to be but I told him that I was going to do it on the basis as well that I felt that I had a responsibility to him as he works for me and that if I ask him to accompany me to a committee session to give evidence that I have a duty to make sure that in attending a session like that that he shouldn't have to expect that he would be treated in a manner where he was treated with a lack of respect or where his dignity would be exposed in the type and manner which happened in this session
- C. I was going to do it lest he be considering or whatever his own thought was going to be but I told him that I was going to do it on the basis as well that I felt that I had a responsibility to him as he works for me and that if I ask him to accompany me to a committee session to give evidence that I have a duty to make sure that in attending a session like that that he shouldn't have to expect that he would be treated in a manner where he was treated with a lack of respect or where his dignity would be exposed in the type and manner which happened in this session
- D. **JD** So following on from that then am I correct in my understanding that Mr Hughes is now aware that you have made a complaint or not.
- E. **BP** He is.
- JD** So in respect of that is he supportive of your complaint? In other words will he provide independent evidence, not that it is required, but it is on the video but I am just, he is a witness to these events and I just want to know whether he would be a co-operating member of your staff?
- F. **BP** I imagine he would. I haven't discussed with him whether or not or the question of whether he would give evidence or whether he would need to in this matter. Everything that happened or is recorded. The other sessions that I have referred to whether it is the Minister's one the one following this recording. People can see what happened but you know you can ask him or I can ask him. I have no issue with that.
- G. **JD** And what level of member of staff is Mr Hughes, is he junior or is he senior?
- BP** No he is a senior civil servant, Grade 5 as we call them trying to you know so he is an experienced and senior member of my team.
- H. **JD** Well I suppose my final sort of question to you is that in relation to the unedifying experience comment that Mr Aiken has alluded to, are you

- A. suggesting or you saying that, his behavior is a continuous sequence of events from the session from the 17th June?
- BP** I believe that he is characterising that session where in the comments that he had made and I haven't seen the Hansard from yesterday yet, it is not available yet but as I understand it the quote that we have indeed he says "indeed we had a rather unedifying experience of being given evidence by senior officials in the Department of Finance who told us how guidelines were much more appropriate and that discussions had been held during the New Decade New Approach negotiations. I was involved in those no negotiations which bore no relation whatever to what those discussions eventually became. The New Decade, new Approach document was published and it refers absolutely to the position that we took and as I have indicated to you I took the notes of the working group.
- B.
- C. **JD** In respect of your complaint then in relation to Mr Wells you have alluded to the fact that you used to work for Mr Wells when he was the Health Minister
- D. **BP** A short time. Yes
- JD** So did you have any discussion with Mr Wells prior to making the complaint?
- BP** No. You mean of course between the session
- E. **JD** Yes
- BP** Between what the 17th June and my making a complaint I had no discussions at all with Mr Wells, No.
- JD** OK and Mr Wells who was your, I suppose your boss previously, did you have any reservations about making a complaint against him?
- F. **BP** I had reservations about making a complaint against both of them. Making a complaint against elected members for a committee session and I am aware, I am accountable I can .. in there is a question, a difficult question to determine. I am certain there is a line but to determine and to make the judgement of whether it was crossed. In preparing all of the documents that we have prepared and note were the basis of our position at that committee. A new Ministerial code, a new code of conduct for a Minister code and the code of conduct for Ministers, part of that document a code of conduct for special advisers, a code of appointment for special advisers, a new code of ethics for the civil service and new response to the RHI Inquiry and indeed David Hughes and I are working, we are leading the Executive's response to the RHI Inquiry. So, in doing and going through those documents and where bad behaviour had occurred in the past we were writing
- G.
- H.

A. documents that would take a point on. The whole purpose of this session and indeed Mr Allister clarified during it that the key difference between the Department and him in his Bill was whether legislation was necessary or whether the codes of practice and conduct were sufficient to ensure that behaviour would improve in the future and indeed we had discussions about behaviour during the session we are talking about. On that basis I felt that I had to ask the question as to whether Mr Wells' behaviour towards me during that session which in a sense was different in character to Mr Aiken's. the phone a friend comment was absolutely outrageous in my view in relation to it and I must say that I am rather confused at people of the experience of Paul Frew and Mr Wells that they are unaware of the basis on which a civil servant appears before a committee. I do not know why Mr Wells recognising that I was uncomfortable felt the need to press why I was uncomfortable and to suggest a reason for it as being that I was uncomfortable presenting the views of my Minister. There is no why after 37 years in the Civil Service I would be uncomfortable presenting the views of my Minister I do it every day. It is my job in relation to it. So I had no qualms or compulsions about that at all but he seemed to press the personal point in wanting to make it or otherwise and his comment when we left the room about quaking in our boots seem to me to suggest that he rather enjoyed doing that to me. It seems to be his approach in the session and his comments in the next session about well paid large salaries and I accept I am well paid. But to suggest that we go home after an experience like that and laugh about it while we are having our tea was certainly not my experience on the evening of 17th June.

E. **JD** And in relation to both Mr Aiken and Mr Wells I take it that there is no personal conflict outside of your involvement giving evidence at these sessions.

F. **BP** No I have had no contact with them since other than the session that I attended subsequently. I forget even what that was on. I appeared before them subsequently with another member of my team. It was in the activities of our public sector reform division here in relation to it and other than In haven't met them personally. I have met other members of the committee in the course of our business in the Department separately and outside of that. I have met separately with Mr Allister on his Bill in between those times and we have met with Pat Catney on banking and access to finance issues which he is leading the Assembly's all party group on banking and finance.

G. **JD** Thanks Mr Pauley I am going to hand you back to the Commissioner for any follow up questions.

H. **Commissioner** Thank you John and thank you.

- A. **BP** Sorry Can I? Do you want me to approach Mr Hughes? Do you want me to or will you do that or .
- JD** I was simply asking the question as to whether he was aware that you had made the complaint and whether he wanted to make any written or oral statement. As you quite rightly say the events are recorded audio and video so the events are not in dispute as we stand today.
- B. **BP** I suppose for complete clarity as we move on I do see myself as having made the complaint as part of my duty of care to my staff who I have to ask to go and attend that committee and as I would go myself but I have to ask others to go either with me or on behalf of the Minister as we all go but I am responsible for those staff when they attend the committee
- C. **JD** That is very helpful. Thank you.
- BP** Thank you
- Commissioner** So I think this has been really helpful. It has fleshed out a lot of detail Bill and also provided a lot of clarity to us. I think you have provided also with further useful evidence that I will be looking into and you have agreed to send me that article. Moving forward. Well before I do, do you have any other questions relating to this, this session.
- D. **BP** No. I have no other questions to make. I have told you the nature and basis written and there to see other than the other bits of which are really the background corroborating issues rather than further experiences. It reflects attitude and continued attitude and approach. I have no further comments that I would want to make.
- E. **Commissioner** **41:03** and I appreciate your honesty and the answering the questions very clearly but moving forward we will be interviewing both Mr Wells and Mr Aiken before the end of the month. I am hoping that you know within the next few months there will be a closure to this in whatever way that is but I do not want to prolong it much further. So if you don't have any other questions all that is left is to say that the time now is the end of this interview is 10:13 and I want to thank you for coming along today and thankyou for coming along Neil as well
- F. **BP** And thanks for me Neil. Talk soon no doubt. Thank you Commissioner. Thank you John
- G.
- H.

INTERVIEW TRANSCRIPT

Interview of: Mr Steve Aiken MLA by Zoom

Witness: XXXXX

Date: 24 February 2021

Place: Room 106, Parliament Buildings

Present: Dr Melissa McCullough, Standards
Commissioner
John Devitt
Steve Aiken
Alex Redpath

Time Started: 10:59
am

Time Ended: 12:40
12:40

A. Commissioner So this interview is being tape recorded. I am Dr Melissa McCullough Assembly Standards Commissioner, the other person present is Mr John Devitt, he is the second interviewer who is assisting me in this investigation. We are interviewing via Zoom, the date is 24th February 2021 and the time by clock is 10:59am. I am interviewing Dr Steve Aiken and the other person present is Mr Alex Redpath. Dr Aiken can I remind you that your representative is not permitted to answer any questions on your behalf. He is here only as an observer.

B. SA Understood

C. Commissioner OK I will now formally ask you to take the oath which is in this case due to the virtual platform for today's interview will be an affirmation. I am just going to share my screen. We will be doing some screen sharing so bear with me. Ok. Can you see that OK

SA Yes

D. Commissioner OK if you could just take that out loud for the recording please

SA I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

E. Commissioner Great. Thank you very much. OK. If for any reason the technology should fail us can I just ask that we each try to get back onboard and wait for each other if anything does fail so there is no panic or anything like that. So bringing us to this complaint. The matter that I am investigating relates to the complaint made by Mr Pauley when he appeared before the Finance Committee on 17th June 2020. You had chaired this meeting. Also in attendance were a number of other MLAs including Mr Wells MLA. The substance of Mr Pauley's complaint is as laid out in his correspondence dated 1st July 2020 and which I notified you about in writing on 29th September 2020. I had also offered you the opportunity to submit a written statement prior to this interview in my letter dated 7th December 2020, however you haven't provided a written one as to date.

F. SA Excuse me Commissioner I think we did provide a written statement. We provided a written statement I think it was dated on just slightly after, it was originally dated on 9th December.

G. Commissioner I'll have to look into that because I don't remember receiving that or I would have had it in my packet.

H.

- A. SA We have made a written response of allegation to breach of conduct to Mr Bill Pauley. We submitted a, I think it was a nine paragraph, three page document on the issue
- Commissioner OK so do you think. Would you have access to emailing me that.
- B. SA Give me the best email address to give it to you
- Commissioner [XXXXXXXXXXXXXX](#)
- SA OK. Give me a second. Do you want to suspend this. I bring this out of the computer and send this straight to you
- C. Commissioner OK
- SA OK
- [Break in recording]
- D. SA **11:20** ... of what is. What the minister and the Head of the Civil Service or the Head of the Department had said. Bearing in mind the role of the civil servant is to give evidence to the committee. That is factual and that was very clearly not correct so that was at that stage you can understand the considerable degree of frustration that was being felt by many members of the committee. Not just by me.
- Commissioner Thank you for that
- E. SA Sorry Melissa you broke up there. I didn't hear that
- Commissioner I said thank you for that. I have some items I want to get through with you related to the behaviour side of things.
- SA Yep
- F. Commissioner I think obviously everything you have said is on the record. But I have a few video clips which I would like to show for you to express, understand more where these things are coming from. Now this video clip is one of the areas where you apologised. I will just play that now.
- Jim Allister* *We don't want anyone to touch the facility to appoint behind people's back by virtue of the royal prerogative. And you are saying that to elected Assembly members who are supposed to make the legislation*
- G. *Jim Wells* *Do you want to phone a friend*
- SA *No it's through the chair and please withdraw that remark. That is beneath you Jim. Sorry about that. I apologise*
- H.

- A. Commissioner So in respect to that there is no record of Mr Wells actually withdrawing the remarks as requested by you as the chairman. Is there?
- SA No you misconstruing. There is two Jims. There is Jim Allister and Jim Wells.
- B. Commissioner No No Mr Wells. Sorry. I don't. Mr Wells is saying. You say withdraw. Withdraw that..
- SA yes
- Commissioner Yes
- SA It was to both Jims
- C. Commissioner You were asking
- SA It was Jim Allister and Jim Wells, because I felt both their behaviour was unacceptable
- Commissioner OK. So did both of them officially withdraw?
- D. SA I can't remember but I did put on record that I was unhappy with their remarks.
- Commissioner So I can see Mr Wells laughing. I didn't realise it was for both Jims. I can see Mr Wells laughing but no withdrawal but at 43 minutes you are heard to say "Mr Pauley, I apologise".
- SA Yeah I apologised on behalf of the committee and I apologised on behalf of the members. I am the chair of the committee. It's my. It's the committee that I chair of and their behaviour was unacceptable and I apologised for it
- E. Commissioner And did you not consider it would be important to insist that Mr Wells also personally apologised for that comment
- SA I think it suitable in during the occasion that the chair indeed apologises for that. I accept the responsibility of the chair that is part of the role of the chair of the committee. Members of the committee decide if that's what they want to do. I deem it to be unacceptable and to keep the process going I then apologise directly to Mr Pauley for on behalf of the committee. I think that is perfectly acceptable.
- F. Commissioner So just to clarify that of a 14.48 where he says do you want to phone a friend. In the interest of transparency and integrity, we interviewed Mr Wells on this subject and his recollection was that he did apologise and withdrew the remark and then when he saw it with us and revisited the video clip he acknowledged that the withdrawal wasn't clear so he asked that we ask you to clarify that he did in fact withdraw the remark
- G. SA Well. To me and you framed the question that way I would have to listen to the clip carefully because it was a fairly rapidly moving sort of situation. I think it is very clear and I have enormous respect for the integrity of Jim Wells and indeed for all the members of the
- H.

- A. committee and his, he was very clear to me that he would have quite happily sort of made that. He would have withdrawn that remark and done that and sort of the question is I on behalf of the committee are more than happy to do it. I accepted. I understood that Jim Wells was apologising and indeed Jim Wells on many occasions on our committee has either if he has done something he doesn't feel about because he has very strong moral values will very clearly say I am
- B. sorry. And he will do that and I think in this evidence in this case he did. And I am quite clear that sort of on my behalf on behalf of the committee I did the same thing
- Commissioner He said, I mean he accepts he was wrong to make the remark so there is no question of that
- SA Yeah well sort.. but again within the circumstances I mean the remarks that are made particularly Mr Allister and Mr Wells and indeed other members during that committee during that particular session within the context of dealing with a senior servant with the context of somebody who was being particularly ... I am being very careful with my language here but was misleading the committee in the evidence that he had been giving. I think that they were quite, they were quite constrained and you could hear the frustration in Mr Allister who is particularly a QC you could hear his frustration when he says phone a friend because he was particularly annoyed at the fact that the official was not answering the question
- C. Commissioner OK. Of course there's other clips here I want to show you now. This is at 57:31
- SA *Just need to careful on our tone and I as the chair I accept the fact that my tone has been slightly exasperated during this as well but there is good reason for it. Maoliosa go ahead.*
- D. MMcH *Well just through the chair in fact what I was objecting was for that very reason and I thought it downright rude that when this gentleman started to speak as soon as he got the first couple of words out of his mouth with you and Mr Allister went down his throat and I just thought that downright rude and just for information that you did provide to the meeting and that I appreciated that in every respect and I also appreciate the fact too that we do look at what happens in other jurisdictions while Sinn Fein stands for ourselves alone we don't believe in re-inventing the wheel in other words that and we do look at what is happening in other jurisdictions and that as well too and look to the best possible practice in every respect. And I just felt embarrassed there for a minute in the 18:30*
- E. SA *Thank you very much indeed Maoliosa your notes has been your comments have been noted. I apologise if I have embarrassed anybody but yet again I state this is about Northern Ireland and I am not taking anymore lectures about when we are being told we are a unique situation and then being explained that we are not OK. Next up Paul.*
- F. SA
- G. SA
- H.

- A. *Paul Frew* *Thank You chair. Can I ask just. Thank you very much you are very welcome here it has been very informative*
- Commissioner OK And so just out of ..Do you accept that that reaction to this observation by Mr McHugh is inappropriate
- SA No because again you have to look at the context of sort of the politics of the situation. I know you are not looking at the politics of the situation but bearing in mind that the Sinn Fein members of the committee had been had decided that they were not going to engage in any form in the process on the discussion on the bill and the fact that they then did engage in parts of the process and were following very clearly sort of the Ministers line I can make that observation because having sat through all particular sort of evidence sessions and sat through every sessions in the assembly to do with it as well and Mr McHugh very clearly was making a political point and indeed I have to be careful about this because Mr McHugh as you are well aware I have raised a formal complaint about Mr McHugh and other activities as well but it is quite clear that within the committee there was an attempt to frustrate process of the bill indeed by the Sinn Fein members and I took that in the tone that he was making those remarks and indeed if you examine the whole totality of the committee from during the whole period of the evidence gathering of the session you will notice that the Sinn Fein members in particularly only came in as part of the committee at the very end stages not during the thick of the discussion of it. So to use that is probably, I would say that was disingenuous but again you will notice very clearly that I apologised if that
- B.
- C.
- D.
- E. Commissioner That's why I showed it. Dr Aiken. You are apologising so I am asking you what are you apologising for if you don't think it is wrong.
- SA No but I am apologising because it is a general degree of politeness. I do not wish to make any witness feel uncomfortable. I do not wish people to come in front of our committee and feel as if they are being, put it this way I don't want officials to feel as if they are in the Health Committee where there is continuous attacks made on officials and their integrity and their professional integrity. And indeed if you review the evidence of every official we have had in front of us they have always been met with the maximum degree of courtesy with the exception when they are being
- F. Commissioner I agree with you. I have watched a lot of them and I agree with you there is a lot of respect shown to many of them. I agree. I wondered though do you think Mr Pauley in this instance from the totality of the meeting so you think that he was entitled to conclude that your chairing, your style of chairing and your behaviour amounted to bullying as he described.
- G. SA Absolutely not. Under no circumstances should a senior civil servant have come in front of our committee and decided to mislead the committee with evidence, particularly at the beginning of the evidence
- H.

- A. session when I informed him that having been at the New Decade New Approach discussions all the way through. I also informed him as a leader of a political party that we did not sign off to New Decade New Approach he continued to use that line. That is completely unacceptable and I don't think that any chairman or indeed any political party leader in Northern Ireland should have to accept that from an official.
- B. Commissioner This is closing remarks from the 7th June Meeting. Sorry 17th June and this again is just to show a third... apology..I believe at the end of the meeting
- SA *...and the more I appear I've heard the more I am becoming convinced that it's important that we go down the legislative route but you know we have already heard you know we are trying to extract emails from the Department, we are trying to include all sorts of things and we are not getting we are not seeing this change in culture and that every time anybody comes to this committee they keep on saying it's a cultural change and everything is changing and you know look I put my hands up, I am not being party political about this. I'm putting this as somebody who really wants to see Northern Ireland work and Northern Ireland work well. And I am not seeing this change in culture and 23:37 bothering me. Now appreciate we are moving fairly rapidly now to look at end year monitoring but Bill and David thank you very much indeed. I know we have been slightly more robust than we like to be but take an apology from me to that as well but thank you very much for coming and look forward to seeing you again soon.*
- C. SA
- D. Commissioner Ok so I don't know if you want to make any comment on those concluding remarks
- E. SA I think I was being remarkably polite and because I don't want people to leave the committee to feel as if it was an inquisition and I was being polite but you will notice my comments about the culture and the culture that was supposed to have changed by RHI, the culture that was supposed to have been changed about more openness and transparency from civil servants was not evident. And to me that was the most disappointing piece. I think you detected from my tone and also from my degree of sorrow more than anything else that we had reached that stage and you will also note our reference about emails. Emails referred particularly to a PPE issue that the Minister had again misled the committee and indeed misled the Assembly about and the Department had decided to obfuscate and stop us getting access to those emails and we were in the process of considering invoking Article 44 to be able to make sure that we would have received those. So in the context of one of the most senior officials from the Department of Finance being in front of the committee while the committee was having enormous difficulty with access to information the fact it was highly politically charged in the fact that the Minister was making clear that he wasn't going to support the legislation
- F. SA
- G. SA
- H. SA

- A. Commissioner It is not being..It is not being used as evidence in terms of, it is being used as evidence that it is out there in the media. That this is a reputational thing. It doesn't have anything to do with whether it is a nationalist, a unionist or anything. It has to do with the fact that it has been out in the media people have read this piece regardless of what community they come from. I am making the point that behaviours can have consequences beyond just our committee meeting
- B. Alex Redpath Can I make a brief point. I don't propose to give evidence but give comment on this piece of evidence.
Commissioner I don't know that that's really allowable just now but go ahead
Alex Redpath Obviously my client has no control over what is written about him in the media. It appears that this evidence is being presented to the committee as an impartial third party view on the matter and our position that is not the case. Opinion piece writers in the newspapers come to these things with an agenda, they are not impartial, they are political actors and
- C. Commissioner I take your point. Ok. I take your point. I just want you to know that that was out there and I am asking you were you aware that it was.
SA Commissioner, and I mean this with all due respect. I appear in the media maybe 10, 15, 20 times a day. I appear in all sorts of areas of the media on every aspect of what I do on everything. So I am really at a loss to understand why this is being introduced as
- D. Commissioner It is being introduced because I wanted to show you the extent to which it was actually watched. People don't think maybe that their committee is watched by people
SA My committee every week by every, at the end of each committee meeting I will have discussions with journalists from the BBC, UTV, Belfast Telegraph, Irish News on every single occasion. But this isn't from a journalist this is an opinion piece.
- E. Commissioner Yeah, this is someone's opinion just like..I mean, behaviour is opinion based. I mean if you are saying you don't think you acted one way somebody else is appearing to believe that it is another way. And it might be politically motivated as was suggested. It might not be. The fact is it is immaterial. It is actually out there and it is a perception that is out there and I didn't know if you were aware that the committee. I know it is brought up in a, in the following weeks meeting but I am actually going to hand over to ..Oh . There is another bit of that that is mentioned which is important to this and that is at this point. If you just watch this
- F.
- G. SA *Steward, Janice*
JW *They will be quaking in their boots after that*
Commissioner Now that is something that the same reporter and others in terms of Mr Pauley have actually picked up on that was said "quaking in their boots" and
- H.

- A. SA Sorry, I didn't hear what was said, sorry
- Commissioner He said "they will be quaking in their boots now" when you were waiting on the other, Janice and whoever else to come in. And basically making it out that "oh they are going to be scared coming now, right". So that was the whole gist of it maybe you didn't even hear him at the time. Is that what you are saying, you don't remember him saying
- B. SA Sorry I am afraid I didn't even hear what the clip said to be honest with you
- Commissioner Do you want me to play it again
- SA Ah yeah play it again but I didn't hear it.
- C. Commissioner Ok I will play it very quickly
- SA Steward, Janice*
- JW They will be quaking in their boots after that*
- Commissioner Did you hear that
- D. SA Sorry I didn't say anything.
- Commissioner No you said nothing. That's my point. He's suggesting that they are quaking in their boots and I am suggesting did you believe that ..is that something that you would have
- E. SA Sorry excuse me. Can you show. Were there any witnesses in the chamber at the time
- Commissioner No but it's on Hansard
- SA No but were there any witnesses in the chamber at the time
- Commissioner No
- F. SA And Mr Wells, Mr Wells made a quip and a comment
- Commissioner Yes
- SA So what's, I am sort
- Commissioner Well I am asking you
- G. SA I am really confused because within the committee
- Commissioner Why didn't. I am asking you why you wouldn't have challenged that comment because that comment he really does believe people are **33:36** with him. He believes people should be quaking in their boots to come in front of the committee. Do you believe that?
- H.

- A. SA No, I don't. I do not get that at all. I seriously don't. I mean. The committee if we analyse the entirety of every committee session from beginning to end and looked at all the language that was used between the various members and back and forth and the rest of it. And there were no witnesses present, so look I'm genuinely at loss to what to say to that to be quite frank
- B. Commissioner I am saying to you that that was actually reported on in that article. Now, it's not, I'm not suggesting that's not an opinion article, it has opinion right on it. Whether it's fact, fiction, opinion I am simply saying it was portrayed by one writer. And it is his view but the fact is
SA I have a problem with this because we see sort of something like Sam McBride in the Newsletter or other commentators will say it's good to see that there is you know the committees are actually doing their job in holding 34:47 to account
- C. Commissioner And you mention that. You actually mention that
SA 34:50 quoting that. I am sort of. I have a real issue here right now that I am being accused about something that has been said in an opinion piece in the Irish News
Commissioner No you are being. You are being questioned about the media representation and Mr Pauley's complaint that actually include
D. SA I can't do anything about the media representation by what anybody says or what anybody has done
Commissioner I am going to hand over to John because I think it doesn't do the Assembly any favours to be represented in such a way. In a way that actually looks as if you know in terms of what Mr Pauley complaining about it seems to be saying yes his hands were shaking. It wasn't good, it was uncomfortable watching and I watched it and it was uncomfortable watching for me. I am not suggesting in any way that this is concrete evidence of anything I am simply putting it out there that there is someone else who actually was uncomfortable watching
E. Commissioner can I ask a question
AR
Commissioner No
F. JD Dr Aiken,
SA I really have to make a statement here and this must be recorded.
Commissioner Oh It's recorded.
- G. SA You are telling me that because of an opinion piece in the Irish News that that is the evidence that is being presented to me
Commissioner No the evidence is the Hansard and the evidence is the video and the videos of the following week that John is going to speak to. It's not, it's actually just showing you and asking you are you aware that that is the way it was represented by one person who wrote one opinion piece and that's what I am saying. That is all that video or that slide is showing. You are telling me that you were not aware that a lot of
- H.

- A. people write about you. I haven't seen any other evidence of, that would corroborate Mr Pauley's complaint other than that. Now you are saying it could be political. I am not suggesting it is or isn't . I am simply saying this another avenue that was brought to our attention by Mr Pauley.
- B. JD Dr Aiken, Dr Aiken if I can interject and just put it in some context. Let me put it in context for you. The purpose of showing you the clip is that it is on record, it's on video and it's from a member of your committee and the comments that were made about "they will be quaking in their boots after that" was referring to the incoming witnesses that were about to give evidence but it was also an indication that people should be quaking in their boots when they come to your committee and Mr Wells when we interviewed him on 10th February confirmed that witnesses should be quaking in their boots when they come before your committee. So that is the context of the question and the purpose of showing you the clip. So I don't know if that gives you more reassurance.
- C. SA No because I think you might be miss con.... And I haven't heard Mr Wells' evidence but it might be misconstruing what he said because the role of the committee is to find out evidence and the role of the committees in the Northern Ireland Assembly in the past have been in the situation where they have been deliberately misled, they haven't been able to get evidence and indeed sort of many of the civil servants who have come before the committees have not been in a position, have not given evidence and indeed in some cases have misrepresented the facts and that is why we ended up with RHI and that's why the Assembly came down for three years. Indeed Mr Wells is and I am not putting words in his mouth but I think one of his primary concerns was in the past the committee system and in bearing in mind he has been a Minister and he has been a chair of committee before his views is probably very clearly that the committees have not been doing their role and I think that is in the context that he was referring to
- D. JD OK well I will take it that context and as the commissioner said this is all on record. I now want to move on to take you to the following week's committee meeting which was dated 24th June. I don't know if you have had the opportunity to view that but I am going to play the clip for you to assist you with your recollection of events.
- E. AR I can raise a point of order.
- F. Commissioner Sorry go ahead
- G. AR Commissioner, is it the role of your office to plead a complainant's case on his behalf or is it your role to evaluate the evidence brought forward by a complainant and to make a decision on the basis of that complaint
- H. Commissioner My role is to gather all the evidence and to investigate the complaint in a robust fashion and transparent way. That's is my role. I don't

- A. AR even...I gather the evidence and I hand out my conclusion on the evidence to the committee. I don't make a decision on the evidence I have a slight concern that evidence from other Finance committee meetings was not referenced in the claimant's original complaint and it would require us to watch and this footage and have some time to prepare our response to same
- B. Commissioner I am sorry which one was not
- AR From my understanding of the Complaints Commissioner and again if I am wrong I am sure you will correct me is that the subject of the complainant's complaint were the events of the 17th June 2020 not the 24th June. I can see no reference in his complaint to the events of the 24th June
- C. Commissioner Yeah. The 24th June was referenced I believe in a prior statement but also at his interview.
- AR And have we been provided with access to his interview and statement
- Commissioner I am not too sure what you have been provided. I can look into that but I don't think it is very different from what. Would you like time to look at this and come back to us?
- D. AR I would request a copy of the complainant's witness, sorry interview so that we can consider his response to the 24th June footage and time to consider those evidence before making a response
- SA Am I being...just a question. Am I being formally investigated for something that has been said on 24th June?
- JD It's a continuation of the events from the 17th June Dr Aiken and it's relevant to the specific complaint that Mr Pauley makes of the 17th and that's why it's relevant to show you this video
- E. AR It is a fundamental principle of natural justice that we have sight of all evidence that you will be considering in advance of providing a comment on it and I believe it would be grossly inappropriate to expect Mr Aiken to comment on the contents of this video having been given no forewarning
- F. Commissioner So we will look to revisit that video. We will set up another meeting and I will send you the link to this. It is available online 24th June meeting in the Hansard. John do you have any further questions relating to the 17th June?
- JD Well I can take you back to 17th June Dr Aiken if you wish and I do have a couple of questions and those questions are directly related to the comments that you have made that debating is an emotional environment. Is it not your role as chair to defuse that emotion and get the facts and evidence that you are seeking
- G. SA I think it is very clear that it is my job tom make sure that the facts do come out and as I have already stated during this interview that we were being misled by Mr Pauley, right from the beginning. So the question you have to ask yourself is did I feel as if we were getting factual information coming out from the witness. And the answer to that was quite clearly no
- H.

- A. JD But is it not also correct that you as chair should put your annoyance, frustration call it what you will to one side and seek another way to extract the truth from you witnesses.
- SA Sorry my job as the chair is to make sure that the evidence that comes forward is necessary for the piece of legislation coming forward and that was not being presented and indeed the witness was being obstructive. So..
- B. JD At no time throughout the hearing was the word obstruction used. You refer to Mr Allister robustly questioned Mr Pauley and Mr Pauley acknowledges that. He didn't complain about Mr Allister. He complained about Mr Wells and his comments inappropriate as they were and Mr Wells has acknowledged they were inappropriate and he has complained about your conduct and the apologies that you had to offer and that's a matter of record as well. So effectively he was concerned that as chair you didn't give him sufficient protection from the annoyance, anger, frustration that you and your members were feeling
- C. AR Can ask a question of Mr Devitt
- D. Commissioner You know what I really don't think that is appropriate. You are here to observe. This is not a courtroom. Go ahead Steve would you answer that please
- SA Yes I will do but I look I am, I wish to put on record
- Commissioner Carry on. It's not normally the way I operate
- E. SA No but look it is adversarial because I find particularly the use of the piece brought by an opinion piece from the Irish News particularly, not 44:39 particularly concerning I think it takes it completely out of the context of Northern Ireland. I also find the evidence being presented by Maoliosa McHugh bearing in mind Sinn Fein were trying to frustrate the bill at every opportunity.
- Commissioner The response to this is not the context, it's not the.. it's the response that you make to that if you follow what I am looking at the behaviour side of it. It's not. It's not that its McHugh, it's not that it is Tom Kelly, it not that it's actually..the context of behaviour and what has occurred and I am asking you to just express what you think. You have apologised a number of times is the thing. I really didn't think. I thought actually if I am being 100% honest, I actually thought your apologies meant that you understood that your frustrations were taking over you. But I guess it
- G. SA I apologised because the, I did not like the way the committee meeting was moving. I did not like the frustration that was in there. But again that frustration was based on the fact that the witness was not giving information. And I do not know how often I need to say this, the fact that we were being misled and he was deliberately impugning me from the beginning as we were coming through. That is not
- H.

- A. acceptable. It is not acceptable in a committee. It's not acceptable in the Assembly. It wouldn't be acceptable anywhere. And the fact that I apologised should not be taken as a view of my guilt or whatever happens to be.
Commissioner No I
- B. SA I apologised because I did not wish the tone of the meeting to disintegrate or descend any further and I did not wish the witnesses to feel as if they were being unfairly treated. Now if Mr Pauley felt he was being unfairly treated that is one thing but there is another substantial issue is the fact that he was misleading the committee.
Commissioner But does that mean that anybody comes to you into your committee meeting who is telling a known, their version of an event that you disagree with because you happen to believe and know even that it is untrue or something or whatever along those lines that that warrants aggressive behaviour? You are not calling it aggressive behaviour Mr Pauley is. Mr Pauley is calling it aggressive behaviour
- C. SA But the behaviour is not aggressive and if you would look at any of the committees within the Northern Ireland Assembly if you look at the Health Committee, Infrastructure Committee, The TEO
D. Committee and the rest of them, if anything I would say that I was probably one of the more reasonable of the committee chairs to do that as well. A comparison of what let's say would happen within the Health committee would be extraordinary and to say that if you chair if you compare the chairing of all the Finance Committee meetings that we have had have you had any complaints from any other witness?
- E. Commissioner I am not really at liberty to say
SA Let's just on this occasion that Mr Pauley who obviously been sent in by his Minister to disrupt the evidence gathering for this bill felt that it was he who was the one who was going to complain or was it a distraction technique to take away from the fact that he tried deliberately to mislead the committee. That is the question that I believe should be answered
- F. JD Mr Pauley is entitled to make whatever complaint he wishes. The role of the Commissioner is to investigate that complaint and seek the evidence. The evidence in this case Dr Aiken is a recording of that meeting of the 17th in its totality.
SA Yes but the evidence that you have presented to me you have also produced an opinion piece from the Irish Times and you are also producing with me a piece of video documentation that we have seen of the 24th
- G. JD Well let me deal with the Irish News article. The purpose of that is because that is in the public domain. It is a matter of public interest as is
SA But all the proceedings are in the public domain. They are broadcast
- H.

- A. JD That's correct. So therefore I am interested as is the Commissioner are you not concerned about the public impression that they get whether it is fact or fiction from your committee meetings
- SA Of course we are concerned. Our job is to make sure that the evidence that comes before the committee is factual and in fact if the civil servant is not giving factual information, I think that is a truly understandable sort of position to do that from. I am feeling really uncomfortable now about this trial by Irish News and whatever happens to be. I think this is ..yep. I am really not happy about where this is going to
- B. JD Well certainly this isn't trial by media. This is simply
- SA it is trial by media you have just mentioned the Irish News. It is obviously trial by media
- C. JD It is an article that is in the public domain in the same way that your committee meeting is in the public domain through the video and through Hansard
- SA Correct
- AR Can I make a small point
- D. Commissioner I just missed whatever that last bit was from where you said .. my internet went, when you said I am very uncomfortable right now. Can you repeat that please because it won't be on the recording
- SA I am very uncomfortable that the weight of this discussion seems to be based on an Irish News article.
- Commissioner It is not Steve. I totally refute that. I think you are making something out of , you are making that be the case and you know it's not. The Hansard and the video are what we are basing it on. That is what Pauley's complaint is on.
- E. SA Then why , sorry excuse me
- Commissioner But it is important. Public interest you know. I don't understand why you want to argue, why you see this as. I am just doing my job and investigating this and seeing what is out there what is going on here and that was brought to our attention. So I can't see. I don't understand this behaviour toward me asking you the question when I am not doing anything other than investigating this. You understand that.
- F. SA Take from my position. OK
- G. Commissioner OK
- SA This Irish News opinion piece that you have mentioned to me comes from a commentator who is noted for commentating on let's say Sinn Fein issues
- Commissioner OK
- H.

- A. SA And therefore there was an attempt to discredit the chair of the Finance Committee
Commissioner Look I understand where you are going
- SA To make sure. You have mentioned, you have brought it in front of me. I am dealing with what you have brought OK
Commissioner I know, I know
- B. SA OK. Let's be clear you raised that in front of me and that is something that is making me very very disquieted.
Commissioner Your discomfort, your discomfort tells me that you don't understand why I am showing you it. your discomfort tells me that you don't understand that I am showing you it to show you that that is what was perceived. You are then suggesting that this could all be political. Regardless of that
- C. SA Yes
Commissioner Right but regardless of what or why someone would have written that they are basing it on the video evidence is all I am showing and I have no political interest in this whatsoever. Whatsoever. So I need to be clear on that because I know it seems. I have been here 20, I have been here a long long time. I understand that showing you an Irish News thing could possibly have sparked but I did not expect you to not understand why I was showing you it. So I am sorry if you are uncomfortable with it but my intention was to show you what was out in the public domain and wondering whether you saw that.
- D. SA Commissioner you need, you need to look at the opinion piece and without me spelling it out you need to look at who the author is of that opinion piece. It is not a piece of journalism it is an opinion piece and you need to take the view I seriously suggest that you take the view of why that was written. What was the reasoning for writing it and bearing in mind all the other sort of discussions that happen and the number of times I appear in the media and the number of times the Finance Committee appears in the media on discussions about RHI or discussions that have to do with fire safety or any of those other issues that can be deemed to be contentious. This was the one thing that was picked up. Now, speaking as somebody who is a leader of a political party who day in day out is subject to mass abuse on social media and media in all other forms and rest of it from people from that, from areas of that persuasion you must see right now why I am really concerned about the fact that that was raised as an issue during this interview
- E. Commissioner No I don't understand that. But let's
- F. AR Can I make a point
- G. Commissioner I really don't think that you should because that is against the rules of the investigation
- H.

- A. AR Can I make a point on the rules of the investigation, fundamental issues of fairness in these proceedings
Commissioner Fairness?
- AR Yes fundamental issues of fairness in these proceedings,
Commissioner Commissioner
What is your
- B. AR My client is entitled to be accompanied. The rules state that I can not give evidence on his behalf.
Commissioner You can't answer questions
- AR I have not sought to answer questions. I have sought to ask them.
- C. Commissioner OK
- AR And to comment upon evidence now in other similar investigations whether it be a professional investigation by a statutory authority and 54:46 you are a creature of statute and a statutory obligation to investigate these matters or indeed of the equivalent body in local government, The Local Government Commissioner for Standards.
- D. Members are entitled to be legally represented, entitle to make points on legal issues and I am entitled to question evidence albeit not to give evidence. And 55:09 and I believe atht my client has a right for me to question evidence and if I am denied the ability to question evidence 55:15 in these proceedings and they will be unfair.
- Commissioner I was under the impression you were an observer under my legislation that I read you were here to observe the proceedings. I really was under the assumption and probably wrongly if what you are saying is correct that you know you are an observer and in that, that your role there, I didn't think that you would interject as much but if that is, but I need to look into that because this is one of my first
- E. AR Please do Commissioner as I have appeared on countless occasions before the Local Government Commissioner for Standards and my role is to be a legal adviser and to comment on points of law and to question evidence and I believe that for these proceedings to be fait that is something that needs to be afforded to Dr Aiken.
- F. Commissioner OK
- AR I wish to make a small comment on the Irish News article. And that is repeatedly stated both by Mr McDevitt who has said that it is evidence of public perception and by you, who said that are you concerned it's what people are talking about or people perceiving . An opinion piece is not evidence of public perception. It is evidence of one person's perception. You are holding this out as the sole evidence as how the public
- G. Commissioner No I am not
- H.

- A. AR I believe that is unfair
- Commissioner Well I believe you are taking it out of context too so I can say this for certain, that I am not holding that out there. I have expressed to you it is an opinion piece. I am holding it out there as 'did you know this existed and this is what someone out there wrote and it's now in the public domain'. It doesn't, I mean I don't think I am saying what you are suggesting I am saying is why I am taking it
- B. AR Commissioner, whether or not a comment is in the public domain is not in my view relevant to these proceedings.
- JD Mr Redpath if I can interject. You are entitled to your view and opinion. The Commissioner has articulated very clear your role in these proceedings is that of observer. Your role in other jurisdictions may differ and there we will park that matter. I think the context of the media article is one part of this jigsaw in this complaint process. So you will have to take that into context. The major part of the complaint and the evidence that we are examining as part of the complaint process is the audio of the meeting of the 17th. We will then as the Commissioner will do share with you the additional evidence that we going to put forward to you in due course.
- C. Commissioner Yeah we will share that. I am still waiting Dr Aiken, waiting on a copy of a few different documents from the clerk to the Finance Committee which I have requested which I haven't received. And that is just something I needed to look at because it is agreed protocols for witnesses and you agreed them back in 2020
- SA You will see them footnotes of the evidence that I provided and they serve a statement I sent to you on the 9th December
- E. Commissioner Can you say that again I am so sorry I didn't hear it
- SA Sorry On the 9thDecember the email that I sent you, forwarded again today the bottom of it is the footnotes in that it has the rules of procedures from standing orders within the Assembly
- Commissioner OK and does it have a copy of those
- F. SA It is within the footnotes
- Commissioner Yeah, no I was looking just for a copy just so I could see what it actually says because it is a good reference point but I haven't received it yet. I am hoping to get it maybe this week. Why don't we reconvene and I just want to remind you because as you know there was another newspaper article which I don't have a copy of where there was a leak of this case. When I suggested this also to Mr Wells who also said that he was telling everybody about it. so he has admitted that. But I have to remind you that Rule 17 of the code says that you shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority because I really wouldn't want this to be something leaked. I think it is a really important issue. I think there is a lot to be learned or
- H.

- A. discussed and I think further discussions are going to be necessary around this with you. But I wouldn't like to think that any of it would be become public, in the public domain when it would be a breach of the code further.
- SA I can give you the assurance of the leader of Ulster Unionist Party and my assurances as chair of the committee that there will be no attempting to leak or brief the media from my perspective. However I
- B. am coolly aware that the media are aware of discussions that are ongoing and indeed that is, I have no doubt that there will be questions being asked but I will and I want to have it formally recorded at this stage that I am particularly unhappy with the mentioning of the Irish News article and I believe that the use of that in many respects has undermined my confidence in this process
- C. Commissioner Ok I will take that note. It is on the recording.
- AR Can I ask a very brief process question Commissioner?
- Commissioner Sure
- AR Would you have any objections to a supplemental written statement?
- D. Commissioner I don't yet because I will tell you why. We had some of the.. what I am trying.. if I .. if you don't mind me saying so, there is a whole lot of things that are being expressed here that have absolutely nothing in my view to do with the complaint that I am trying to investigate, and so a lot of the contextual things are fine and they probably should go within complaint that perhaps Dr Aiken has mentioned he wants to complain to the Civil Service about Mr Pauley, this is about a complaint about the behaviour towards Mr Pauley so I can only look at that. I can't look at whether he lied or whether it promoted the behaviour. That's not the role of my so for me
- E. SA But that is the context with which..
- Commissioner I know. I understand. I understand
- F. SA Look this. Put it this way. If they and you used the word lied and I am glad you did. The fact that the official as you stated lied.
- Commissioner No I didn't. Stop it right there because I am going to re-structure this. You never used the word lied so I will not use the word lied. That he was telling you a mistruth
- SA You did, you did
- G. Commissioner You believed that he was telling you something that was not the truth, that you believed to not be the truth
- SA I should state for record now. If he had not come into that committee and made a factually incorrect remark from the beginning the tone would have been entirely different and in fact the tone would have followed that of every other committee of the Finance committee that I have chaired throughout. The extenuating circumstances are the
- H.

- A. fact that he had to sit deliberately decided to mislead the committee, right from the beginning. That is the extenuating circumstances, so when you look at behaviour or perceived behaviour of the committee that has to be the germane fact because that is the one thing that characterised the difference between that committee meeting and other committee meetings that we have had.
- B. Commissioner I totally heard your view on that. I totally understood your frustration and you have expressed it very well. I don't know that does that mean that anybody who comes in and tells you what you believe to be a mistruth deserves aggressive behaviour towards them. Because what he is alleging
- SA You have made a presumption that my behaviour was aggressive without taking
- C. Commissioner I am making the assumption on the alleged behaviour that Mr Pauley is alleging. I don't know if you were aggressive or not. Mr Pauley is the only one who is saying you were. He is saying, he was sitting in his seat and he is saying he felt uncomfortable. He felt that it was bullying behaviour. He is saying that not me. I am only investigating it. What I am saying to you, whatever he has done that you believe that he deserved your reaction whatever that was, you don't think it was aggressive but he does. I can't change what he thinks, I can only investigate what he thinks and so that's what I am doing. I don't know how else to say it so I guess..
- D. SA My concern is and it goes back to the Irish News piece and I don't want to push words into your mouth and I won't because I understand that you trying to do your job and you are trying to investigate this condition but the mere fact that issue of the Irish News piece was used as somehow how the perception of the committee meeting was seen outside which was probably an entirely politically motivated and was part of a wider campaign that was about used to frustrate the bill. I find that is particularly worrying and again that is something that needs to be investigated as part of this process as well.
- E.
- F. JD Can I just clarify Dr Aiken does that follow on from your thought process that if an article appears on any media outlet, television or media that that shouldn't form part of a complaint process?
- SA No I don't think it should form part of a complaint process because the complaint process is obviously based on in this case it is Mr Pauley's perception of my role as chair of the committee. It is not based, it should not be based on whatever other particular role there is because if that way you would have to investigate every 50 media articles or whatever it is on a day that or come out about me or come about the party or our party's position on everything. To me that seems to be, you are picking one particular item out of the panoply of items that are out there
- G. JD But as I explained, I explained to you we didn't. It's one part of a jigsaw puzzle
- H.

- A. SA But you presented it to me. That's the bit, you didn't present any other piece to me, you presented a piece to me from the Irish News by somebody who is noted as being a , somebody who would never be sympathetic to Unionism as a and you are asking me to comment on it. Can you not see how that is making me feel right now particularly about this process and the process that is ongoing
- B. JD But I am asking you to understand that the media article is specifically relevant, evidentially and factually to the events that took place on the 17th where Mr Pauley believes that he was subjected to aggressive bullying behaviour and that your chairmanship wasn't appropriate
- SA That has to be entirely disputed. That is an opinion piece by somebody who would not be in anyway sympathetic towards unionism. This is Northern Ireland. You cannot make, you cannot make a degree of linkage in that direction. I made statements yesterday in the Assembly to do with the protocol. There are articles that have been written about me today in newspapers all over the place that have accused me of everything from misrepresentation to whatever. That is normal political discourse and that is being used as evidence against me. I find that very disconcerting.
- C. JD Well they are facts that can't be ignored and can't be brushed under the table
- SA Right, it is not a fact, it is an opinion piece written in a newspaper. It is not even by a journalist.
- JD Well
- E. SA An opinion piece which you presented to me
- JD But it was presented to you in the context of Mr Pauley's complaint which he complained to the Commissioner about and which he then saw the Irish News article which further reinforced his belief that he was being treated aggressively and was bullied in his appearance before you committee
- F. SA That, sorry, we, let's go back right to the first point. The reason why, when Mr Pauley came in front of the committee he misled the committee. He deliberately disputed the evidence that I gave to him as chair who was actually at those meetings during New Decade, New Approach.
- JD That is not a matter that this Commissioner or this investigation can examine
- G. SA But it has to be because it is germane.. Sorry it has to be because it is germane to this discussion.
- JD No The complaint that we are investigating is your conduct and your management of the committee and the conduct of other members of your committee. That's what we are investigating
- SA But you cannot investigate without the context. To do that without the context is not only unfair but I think is. You know. I cannot understand
- H.

- A. JD how this ..It is like taking a snapshot of what is happening and then using that..This is not how the process is supposed to work.
Well let me put in another fashion.
- SA Please
- B. JD A set of events has taken place. You have attended your committee meeting and as a result of whatever events you have attended those events have put you in bad form.
SA No. they were .. it is not a question of bad form. It was an attempt to deliberately mislead the committee.
JD Yes but you have said yourself that you felt frustrated and the committee were very annoyed because they knew that they knew that they were being told untruths, facts that weren't correct. But it is not your role as chair to take your frustrations out or any members frustrations
- C. SA Sorry, are you pre-judging what this this process is going to be
JD No I am trying, I am trying to understand how your chairmanship
- D. SA 1:09:29 my frustrations out, you telling me I took my frustrations out on the witness and therefore even though the witness was deliberately misleading us and you are saying I took my frustrations out but my frustrations was we were not getting to the truth and we were not getting factual evidence to the committee. We were not getting the necessary evidence to allow us to do the job. The Frustration was not with the individual it was the fact that we were not being able to do what we are supposed to do which was to examine evidence for a critical bill
- E. JD But is there not another method that is acceptable that is less hostile to achieve that objective
SA But you are presuming, you are presuming it was hostile. What evidence do you have that is any different from how any other committees are produced in the Assembly or how any other committees are done in Westminster or how committees are done in the other legislative assemblies. Can you show me evidence that what was doing that during the committee that I was chairing of that particular session given the circumstances we were in. That wasn't in anyway different than any other legislative assembly or indeed any other sort of committee here in the Assembly
- F. JD But what happens in other jurisdictions, other assemblies is not relevant to ..
SA I asked you, I asked you a specific question, how does that differ from what is going on in other committee within the Northern Ireland Assembly and you know we have quite clearly seen within the Health Committee and other Committees very hostile questioning of witnesses that haven't been subject to this and we have seen officials that have been subject to considerable other sort of views so
- H.

- A. JD But this complaint is specific to you and your committee and your members.
SA Sorry but your, you keep on changing the context. I am saying our frustration was the fact that we were not getting the necessary information that we needed which we knew was factually incorrect . so what is my role of chair of the committee? Is my role to seek the evidence for the, seek the evidence for the legislation that is before us which is what my role has been and indeed through period of time as being committee chair I have assiduously done that for a wide variety of issues. Sorry I am sort, I am again you seem to be making out that in some way what I was doing was different from what happens in the rest of the Assembly
- B.
- C. JD It's not for me or the Commissioner to tell you how to manage or chair your committee
SA Thank you that is a very clear point. It is my job to get evidence for the committee so that we can scrutinise legislation and to make sure the best legislation comes out of Northern Ireland and that is the process we were involved in and yet the fact that we are involved in that process doesn't seem to be part of the sort of the discussion that we have had here at the moment which I have found quite strange
- D. JD But I understand what your committee is trying to achieve. I am trying to establish given what you have shared with us today that the frustration that existed, the annoyance, I am just simply seeking, did you give consideration to another alternative way to achieve your objective.
SA How could there have been consideration when the witness in front of us was a senior member of the Department of Finance who was supposed to be the expert on it and was deliberately misleading the committee
- E. JD Well
SA And wasn't giving the evidence required so..
- F. JD Did you give any consideration to calling a point of order and asking the witness to come back at a later time?
SA Why would I have done that. He is the senior civil he is the senior responsible civil servant for that position
JD Because you have just told me that you believed that he was telling the committee factually incorrect information
SA Yes but there is an expectation that the senior civil servant. I do not expect and I don't think anybody in Northern Ireland expects senior civil servants to come to committees and deliberately mislead the committee. Do you expect that to be the case? Because I didn't. I had expected him to be able to answer the questions. We had a short, a relatively short evidence session, we .
- G. JD And I am simply asking you as chair
- H.

- A. SA We speak to many other officials and indeed where there is no indication that any other official 1:14:04 attempt to mislead what we were trying to do. So I am you know you seem to be thinking, saying that I should be using a particular point of procedure on this issue, bearing in mind that the considerable volume of evidence we need to receive particularly on the bill, the position that we are in, the fact that
- B. there is not an expectation that you have indeed a witness who comes in front of the committee who is going to deliberately try and mislead the committee or indeed tries to impugn the chairman of the committee right from the beginning and I find that ..
- JD But because you didn't
- C. SA Why did I not consider calling a point of order and asking him to come back again when we were trying to gain as much evidence as possible and again you are saying you shouldn't be taking it in the context of what else was going on and I have informed you of the context of what else was going on and indeed we were in dispute with the very department over the issue of sort of emails on PPEs that were seeking to get Section 44 from.
- D. JD But in the matter in which you achieved your objective as you would see it you have had to make numerous apologies in the process and I am simply trying to understand was there not another mechanism that you could have adopted to have avoided having to make apologies and seek the same information in a more acceptable manner.
- E. SA Sorry again this is very theoretical because at the time we were, we did not expect a leading civil service to come in front of the committee and not answer the question. That has not been our experiences that we have had so far and indeed if he wasn't going to answer the questions, who was going to answer the questions because indeed we had the Permanent Secretary in front of us, we had the Minister in front of us we even had the Head of the Northern Ireland Civil Service in front of us answering questions. Where was the expectation that
- F. he would have been any different from them when it came to answering questions. I am sort of I am ..
- JD I don't have the answer to that question.
- G. SA But I do have the answer to that question. The answer to the question is that there is an expectation that we should have been treated with the respect by the witness that the committee should have received and indeed we received from the other members of the Finance, Department of Finance and we do regularly, virtually every week and will be in sort of about 40 minutes time as I continue that process. I am really at a loss at.. and the reason I apologised is because I am a naturally polite person and I apologised if people are feeling uncomfortable but you will hear me through various committee meetings indeed even in the recent one we did on sort of fire safety and fire regulations with a company known as Kingspan and I
- H.

A. apologised all the time for bad communication links and the rest of it. It is a degree of natural politeness and I think if my chairing of the committee over this particular issue you feel that I was there was an overwhelming of frustration you need to put it in the context of why that frustration was there. But of course the good piece of news is that despite sort of being denied the evidence we managed to get the legislation through in the end so the process was seen to be

B. successful.

JD Your comments are on the record

Commissioner OK

AR Commissioner

C. Commissioner Yes

AR If I provide my assurance that any supplemental statement will deal exclusively with my client's conduct and the conduct of the today's meeting, would it be acceptable and useful? It will make no reference to the actions of the complainant.

D. Commissioner I think so. I think if you were able to. We do want to introduce this continuation thing. It is not because. It is because it has been brought up to us by the complainant. And so I don't know. John, what do you think

JD I think that the reality is and you will know this Mr Redpath that technically and legally you can't submit anything. This has to come from Mr Aiken

E. AR 1:18:29 the document on Mr Aiken's behalf.

SA I will submit it

JD Yes. Ok well I think that is a matter for the Commissioner. It doesn't however negate the need to reinterview at a later time

AR Of course and we fully expect that a re-interview will be required. We do have. Obviously there are points which have come up during the course of this investigation which I believe will which we will comment upon, factual points. There are also some procedural points that I want to bottom out in the balance of the next meeting just to ensure the smoothness of that meeting and I feel it would be unfair to raise those now as the Commissioner may well wish to consider them in detail or indeed take independent legal advice on them

G. JD Sure

AR And they are by their nature legal and I don't feel it would be appropriate to expect an on the spot answer

Commissioner Ok Yeah. I mean look. Let's just work through the process. I am not, I am not suggesting, I really would have hoped this would have been much less adversarial that it's become. It is just not what I would have envisioned of this meeting. I don't really like the tone that it has

H.

- A. taken but that is the way it is I guess and that's the way we go. I will look forward to hearing, receiving what you are sending and we will take it from there. There will be obviously you a time period where we want to bring things to a close so as quickly as we get any other interviews in we will try to do so. OK
- AR
B. Commissioner, would it be possible to be provided with the audio recording of today's proceedings in advance of that statement. I can turn the statement around very quickly upon receipt of the audio evidence of today's hearing.
- Commissioner
C. Let me check what the regulations are. I really don't know what the regulations are on that.
- AR
Commissioner
C. OK Thank you. The time is 12:40 and it's over. Thank you.
- D.
- E.
- F.
- G.
- H.

Date: 1 April 2021

- Commissioner: [00:01](#) Okay, here we go. So, this interview is being tape recorded. I'm Melissa McCullough, Assembly Standards Commissioner. The other person present is John Devitt. We are interviewing by Zoom and the date is the 1st of April 2021, the time by my clock is 14:58. I'm interviewing Dr. Steve Aiken, and the other person present is Mr. Alex Redpath.
- Commissioner: [00:26](#) Dr. Aiken I want to remind you that Mr. Redpath is here only as an observer, and is not permitted to ask or answer any questions on your behalf. If you need to speak with him, I'm happy to allow you to do that by stopping the interview and taking a short break while you do so. Now I will formally ask you to take an oath, which I'll just get the slide up. Okay? You can go ahead.
- Steve Aiken MLA: [00:48](#) I do solemnly, sincerely and do truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.
- Commissioner: [01:10](#) Thank you. For any reason the technology should fail any of us, can I ask that we wait for each other to reconnect, so there's no need to panic should that happen. This is a continuation of our previous interview of the 24th of February 2021. At your request, I had agreed to suspend the interview to allow time to review the recording of the finance committee of the 24th of June 2020 that I had wished to ask you questions about, as it's directly linked to the complaint made by Mr. Pauley. I also agreed to revisit further disclosure requests you made and you'll be aware that on the 16th of March, I provided you with the following additional disclosure material, which I would intend and likely refer to during this interview.
- Commissioner: [01:56](#) Those items are your interview transcript from the 24th of February 2021, the finance committee of the 17th of June 2020 video and Hansard, the Irish Independent Opinion piece, by Tom Kelly, the 22nd of June 2020.
- Steve Aiken MLA: [02:11](#) Sorry, the Irish News or Irish Independent piece?
- Commissioner: [02:15](#) This was the Irish News piece from the first interview that we covered.
- Steve Aiken MLA: [02:19](#) Yeah, sorry. You said the Irish Independent. Sorry, I didn't realize that.

Commissioner Interview with Steve Aiken

Date: 1 April 2021

- Commissioner: [02:24](#) The finance committee meeting video of the 24th of June 2020, Newsletter article by Adam Kula on the 28th of October 2020, the Private Members Business Functioning of Government Miscellaneous Provisions Bill, final stage continued at page 47, Official Report Hansard, Volume 135, Number Six of the 2nd of February 2021.
- Commissioner: [02:49](#) The documents that were referenced in the minutes, the proceedings of the Committee for Finance of the 22nd January 2020, they are mainly the appendix items of Committee Approach to Preparation and Questioning, the Agreed Protocol on Conduct and Courtesy at Committee Meetings and the Guide to the Role of Committee Chairpersons and finally, I provided you with Mr. Bill Pauley's interview transcript on the 25th of March 2021. Am I right that you received all that, Dr. Aiken?
- Steve Aiken MLA: [03:16](#) That's correct.
- Commissioner: [03:18](#) Okay. So, for the purpose of clarity, the matters that I'm investigating relate to that complaint made by Mr. Pauley when he appeared before the Finance Committee on the 17th of June 2020. You chaired this meeting. Also in attendance were a number of other MLAs including Mr. Wells, MLA. The substance of Mr. Pauley's complaint is as laid out in his correspondence dated the 1st of July 2020, and which I notified you about in writing on the 29th of September 2020. I have now provided you additional material in respect of that same complaint which, as I have stated above, includes a full transcript of your interview with us on the 24th of February 2021.
- Commissioner: [03:58](#) Now, Dr. Aiken, throughout your interview with us on the 24th of February, you made a number of statements and comments which are now a formal matter of record. Throughout you denied Mr. Pauley's allegations that your conduct, behavior and treatment of Mr. Pauley breached any of the Rules within the Code of Conduct. You indicated throughout the interview that you believe Mr. Pauley was telling the Committee incorrect information, which therefore justified your behavior and conduct. Do you still stand by your denials and your belief that the treatment of Mr. Pauley was acceptable?
- Steve Aiken MLA: [04:30](#) Not denials. I believe the way I conducted myself was in a fully professional manner.

Commissioner Interview with Steve Aiken

Date: 1 April 2021

- Commissioner: [04:40](#) Noted. Okay, so as before, I want to take you back through the stuff we missed from the 17th, we didn't get through all that and take it from there and we'll move quickly onto the 24th.
- Steve Aiken MLA: [04:53](#) Okay, just before we go Commissioner, I just wanted to inform you that there's a particularly developing political situation here at the moment and I'm due to do a media interview at 16:10, which I apologize about, but has been brought forward and I understand that thereafter, there might be a meeting of the party leaders, so I might have to be called out at short notice.
- Commissioner: [05:18](#) We can reconvene after that. Okay. Okay, so I'm going to show this clip. This is from the 17th of June, 30 minutes, 14 seconds. "[inaudible 00:05:39] your point. Is that seriously the department's position?"
- Bill Pauley: [05:47](#) "Firstly, on the point about whether really the difference really is culture and legislation, I think I would accept that fairly as we said, and I said again in the introduction, we accept the need for change and [inaudible 00:06:02] responded to in the new decade new approach. [inaudible 00:06:06]."
- Steve Aiken MLA: [06:06](#) "Sorry to cut across here, but just to put on the record, I've already put this in record with the Minister. I've already put this in record with the Permanent Secretary. Unlike anybody else in this room, I was actually sitting at the party leader's group at those talks. The discussion about what we were going to do to restore accountability and responsibility to this assembly and to control the ministers and process of, was not what ended up in the New Decade, New Approach. And was not what was in this code."
- Steve Aiken MLA: [06:44](#) "So just so that is on the record. I want that made abundantly clear, so every time I hear an official turn around and say, "This was agreed between the party leaders and parties as part of the new decade, new approach," it wasn't. That's not what was agreed and what ended up in New Decade, New Approach, was something very clearly that the Ulster Unionist Party never signed up to, and it was something, as a party leader, I never signed up to. So, right now, let's make that abundantly clear. I do not want to hear that put in front of this committee again. Sorry, I'm sorry for being angry, but I'm getting really fed up with this. Sorry."

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- Commissioner: [07:24](#) Okay. Do you want to just make any comment on that in relation to Mr. Pauley's complaint that this was aggressive behavior?
- Steve Aiken MLA: [07:31](#) No, it was a statement of fact. It was the number of times officials had tried to make out that the Ulster Unionist Party and I, as party leader, had signed up for the New Decade, New Approach and agreed to these particular changes did not happen. I was a party leader. I was at the party leader's meeting. And I was there along with the Secretary of State, and the Minister for Foreign Affairs from the Irish Republic during those meetings. At no stage did we ever sign up to those agreements and rules.
- Commissioner: [08:00](#) I'm not looking at the facts of the case, I'm asking you about your behavior. Do you think that was aggressive behavior?
- Steve Aiken MLA: [08:08](#) No. I think that was robust behavior, and that was behavior that indicated my annoyance of the fact that I'd been misrepresented.
- Commissioner: [08:16](#) That's noted, thank you. I'm going to take you onto the next clip. This is 57:31 minutes, following on from the other:
- Steve Aiken MLA: [08:29](#) "Just need to be careful in our tone. I, as a chair, I accept the fact that my tone has been slightly exasperated during this as well, but there's good reason for it. [inaudible 00:08:38], go ahead."
- Maoloisa McHugh...: [08:38](#) "Thank you. Well, just through the chair, in fact, what I was interjecting was for that very reason, and I thought it down right rude that when this gentleman started to speak, as soon as he got the first couple of words out of his mouth, with you and [inaudible 00:08:54] jumping down his throat. And I just thought that downright rude. And just on the information that you did provide to the meeting and that there, I appreciated that in every respect. I also appreciate the fact too, that we do look at what happens in other jurisdictions, what Sinn Féin stands for or fails alone, we don't believe in reinventing the wheel. In other words, we do look at what is happening in other jurisdictions, and that as well too, and look to the best possible practice in every respect. And I just felt embarrassed there from the way you were treated."
- Steve Aiken MLA: [09:32](#) "Thank you very much, indeed Maoloisa your comments have been noted. I apologize if I've embarrassed anybody, but yet

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again, I state this is about Northern Ireland, and I'm not taking any more lectures about when we're being told we're being in a unique situation and then I'm being explained that we're not. Okay? Next up, Bob?"

- Commissioner: [09:53](#) So Dr. Aiken, in Mr. Pauley's transcript he says, "I was effectively told that I couldn't present the evidence." This was in relation to when you told him you didn't want to hear it, and also in relation to the jurisdictional question which he was told, I'm sure you've read Mr. Pauley's transcript, but it said that he had presented that information based on what the Committee had asked him to present. But anyway, he states in his transcript, "I was effectively told that I couldn't present the evidence, that is what I was there to do. The manner in which he did it was completely unacceptable." And a few sentences later he goes on, "He was preventing me from presenting evidence on the basis it was not his position. He did so in an angry manner. I found his behavior threatening and intimidating."
- Commissioner: [10:40](#) I wonder would you like to comment on that?
- Steve Aiken MLA: [10:43](#) No, I didn't think my behavior was threatening or intimidating. It was robust and it reflected the situation we were in.
- Commissioner: [10:51](#) Thank you for that. I'm going to take you on to the Finance Committee of the 24th of June. This is the following week. Just to further, for the record and to further assist your recollection of the events, I'm going to play a few relevant clips. This is a long clip, but it's important that I play this.
- Steve Aiken MLA: [11:15](#) "Do you want to go ahead?"
- Maoluisa McHugh....: [11:17](#) "Chair, just this notion that I feel that I have to address, and it's in relation to this committee, and whenever we're actually hitting the national headlines, that's saying something about this committee, and I'm not that sure you're aware of or that you have seen the articles in the Irish News this week, in relation to the Finance Committee where a particular reporter had tuned into this meeting and had watched it all the way through. And he described the way that we had actually treated officials and that from the department who'd attended to give evidence."
- Maoluisa McHugh....: [11:57](#) "I hadn't the opportunity to have viewed this Committee on other occasions, yet we've seen probably the very same attitude being displayed towards people who do present themselves to

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this Committee. There's an expression in Irish, *bruite buailte agus briste*, which means battered, bruised and broken. I often think is that how one could describe the way we do treat officials who are only but doing their job coming in here to present evidence to us. That whatever we subject them to, the interrogation, and I've been [inaudible 00:12:31] familiar with people ask questions one way or the other, none whatsoever, but I do think that there's a degree of civility that's required. And it isn't limited to those who've come in here to give evidence."

Maoloisa McHugh...: [12:45](#)

"On a number of different occasions, I've had to look to the chair when I would have spoken in the past that I was hearing the dawn chorus coming from behind me, shouting at me or passing comment, whenever I'm speaking and the likes of it. And I think too, that's a reflection of the bad manners that is displayed by this committee. Now, whenever it's got to this stage that we're actually being presented in the national newspaper and everyone else is talking about it, and in fact even here within this Parliament, that all of the committees are commenting about the poisonous atmosphere that exists on this committee, I think it is something that has to be taken onboard. And I think it's a very, very serious issue for you as chair to take it onboard."

Maoloisa McHugh...: [13:31](#)

"And since every one of us as to, as well, ensure that anything that we do say, that we're not there shouting and roaring or going down someone else's throat attempting to intimidate them one way or the other. But I know one way, from what I've been experienced in here, I don't like it. And I really do think it's about time that people called a halt to that. We showed much more respect to each other, in particular, to those... funny enough, I've often heard my mother say, "You never insult anyone in your own house." That seems a very cowardly thing to do. And I can only but describe at times the attitude displayed in here towards those that have come in to give evidence, we are the ones that's in our chamber, we have been insulting to them. And I think that was to stop."

Steve Aiken MLA: [14:19](#)

"Thank you very much indeed. Noted."

Jim Wells MLA: [14:24](#)

"I think the gentleman has a lot to learn, he's only in this institution, I've been here 26 years. Can I just assure him that having sat through committees, I think every committee in this building for 26 years, what he has seen of your Chairmanship Sir has been absolutely nothing compared to what I've witnessed

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when things get really hot and heavy. That is the nature of politics. I don't agree the word often he says, I have a right to say it and he feels offended, well that is just unfortunate."

- Jim Wells MLA: [14:51](#) "As far as the officials are concerned they are very senior level civil servants we are dealing with, extremely well paid. They've had a benefit over the last three years without any public scrutiny because of the suspension of the assembly, therefore part of the deal to get their fabulous salary is to take a very tough and robust questioning from us as MLAs. They expect it, they get it, they take it on the chin, they go home and they laugh about it over tea. So therefore, had there been some junior rank, I could understand what the gentleman was saying, but that is just the nature of politics. And frankly, if he doesn't like it, there is always Londonderry and Strabane council to return to."
- Maoloisa McHugh...: [15:35](#) "I'm sorry, there's no longer Londonderry and Strabane Council. It's Derry City and Strabane."
- Steve Aiken MLA: [15:37](#) "Sorry, excuse me one second Maoloisa. As chairman of this committee, the purpose of the finance committee is to hold the Department of Finance and the Minister to account. The mere fact that we are having to hold officials to the degree of account that we are shows the effectiveness of this committee. And I value every single member of this committee and your ability to do your job. I value every member of the committee and their commentary, and I give you all equal time. But the one thing I will not have in this committee is any slacking on our ability to hold truth to power. Because the reason this Assembly came down, because there was no accountability and responsibility and there was no push the truth to power. That is what we're going to say, and I'm going to move on to the next item."
- Jim Allister ML...: [16:41](#) "Just before you do, can I ask, has there been any complaint from any official to this committee?"
- Steve Aiken MLA: [16:46](#) "No."
- Jim Allister ML...: [16:46](#) "Thank you."
- Commissioner: [16:51](#) Okay, so the reason and purpose that I played that whole clip was the fact that Mr. Pauley indicated that he and his team also viewed the session and felt it directly relates to his complaint and his treatment, as a follow on from the 17th of June. So, I didn't know if you wanted to make any comments on-

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Steve Aiken MLA: [17:07](#) Commissioner, I'm getting an interference on the screen. I've got big interviews and assembly plenary setting that has just come up on my screen. I can't see.

Commissioner: [17:19](#) You can't see me.

Steve Aiken MLA: [17:21](#) Nope, can you still see me.

Commissioner: [17:24](#) Yeah.

Steve Aiken MLA: [17:27](#) Okay, sorry. Can you make your question again?

Commissioner: [17:30](#) Yes. I wanted to ask you if you would like to comment on some of the comments made by members there.

Steve Aiken MLA: [17:38](#) No, the members spoke for themselves.

Commissioner: [17:41](#) Okay. Do you accept that the terminology maybe is a little bit concerning, that one of the members feels like the committee, he describes, Mr. Pauley, his treatment as being 'battered, bruised and broken', does that concern you Dr. Aiken?

Steve Aiken MLA: [17:58](#) The members spoke for themselves and made their statements as they saw fit. As I said, and you will record my remarks, I said I value all statements from all members of the committee in keeping their role within the committee. I stand by that statement.

Commissioner: [18:14](#) And what about Mr. Wells' comment about civil servants. About getting large salaries and going home and laughing about it. Did that concern you at all, Dr. Aiken?

Steve Aiken MLA: [18:24](#) May I refer you to my previous comment, my comments I've made that I value comments from all members of the committee and I give them equal time, if necessary, to say what they need to say. If that is his particular view, that is his view that he is entitled to make, same as any other member of our committee.

Commissioner: [18:41](#) I mean for the record Mr. Pauley and his interview transcript, which you are well aware you have it at hand, he says he accepts he is well paid, but "to suggest we go home after an experience like that and laugh about it while we are having our tea was certainly not my experience on the evening of the 17th of June".

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Steve Aiken MLA: [18:57](#) May I refer you to my previous remarks about the members of the committee and that they are entitled to make their own remarks.

Commissioner: [19:03](#) And you didn't feel that was any sort of... There was no point at which you thought you should challenge Mr. Wells on those comments?

Steve Aiken MLA: [19:11](#) May I refer you to my comments that I made on the video, and you have those on record.

Commissioner: [19:20](#) Okay, I'm just going to play you another clip from the 24th.

Maoloisa McHugh...: [19:30](#) "Not to lead with this, but I think it was a bit much for people to attempt to hide behind investigative parts of, let's say, this committee, when in fact I was talking not about the investigative parts of this committee or not in any way at all to attempt to limit anyone in their questioning. What I was talking about was something much more basic than that, basic good manners and that I talked about seeing an end to the bullying that goes on whenever officials start with-"

Steve Aiken MLA: [20:01](#) "Can I just... Maoloisa, Maoloisa, before you go on with this. Very careful with your use of language. We do not permit bullying or aggressive behavior beyond any of the normal binds of the assembly or good procedure."

Maoloisa McHugh...: [20:18](#) "I'm glad to hear that. And I have to say that hasn't always been my experience, but I'm glad to hear that. What I'm saying is that I still think that people should have, as we do have, that right to interrogate and to investigate. And in no way at all am I attempting to limit the committee's powers in that respect."

Steve Aiken MLA: [20:40](#) "Okay, thank you Maoloisa."

Pat Catney MLA: [20:40](#) "Thanks very much, Chair. I know it's under any other business."

Commissioner: [20:50](#) Now, could it be argued that you're saying in this video clip, that you don't tolerate bullying? In fact, Mr. Pauley is saying that he felt bullied a week before in the finance committee. Would you like to comment on that?

Steve Aiken MLA: [21:08](#) No, I stand by my previous comments and my comments that I've made, both on the video and on the record.

Commissioner: [21:12](#) Thank you. Last clip of the 24th that I would like to play for you.

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- Pat Catney MLA: [21:24](#) "And just one more little point, folks. I look at the committee and we are blessed with just one lady in it. I know when we bring in some of our witnesses, I know it is not meant to be, but we are the eight or nine eight men and we only have the one really, so I'm not accusing anyone, I'm just saying if we could temper to that just a little bit."
- Jim Wells MLA: [21:58](#) "Rubbish, rubbish! She's no shrinking violet."
- Steve Aiken MLA: [22:03](#) "Jim, Jim, through the Chair through the Chair."
- Pat Catney MLA: [22:06](#) "I didn't interrupt you, Jim. I just felt uncomfortable two weeks ago. We've had the discussion and it's not to reopen it, but I have to agree with what our other member has said across the table."
- Steve Aiken MLA: [22:19](#) "That has been duly noted, and your comments too, Jim, have been duly noted."
- Paul Frew MLA: [22:23](#) "Can I just add that the Member here has made accusations around bullying and intimidation, I would like that member to list out those incidents so that we can investigate, because that's a very serious accusation to make. On the point about robust and challenging questions, that is our role, regardless of gender or sex. In fact, that should not at all, ever come into it. Nor do I ever look at someone in that guise. So, to be labeling that, to labeling the committee as having some sort of discrimination against that, I think that is really bad. I think that is a really bad signal to send out, because that is not my intention one bit. And I don't think any member here is in that way inclined. "
- Paul Frew MLA: [23:11](#) "So, I think this committee, some of our members need to maybe take a look at what a scrutiny committee does, what it is meant to do and its rules functions, how it is meant to operate. I think this committee operates very good, robust and challenging as it is. But I would like to see those accusations listed down, of bullying and intimidation."
- Steve Aiken MLA: [23:35](#) "Noted. Jim."
- Jim Wells MLA: [23:38](#) "Well, first of all the honorable Member from Belleek has been here for three years, she is certainly no shy retiring violet and at no stage... I understand why, because of her long journey, but at no stage, either remotely or in the speaking, has she or any other lady complained about the conduct of her fellow

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committee members. It does nothing for the emancipation of women and the quality of women, to treat them any different in this assembly than any other MLA. They've had a tough, rough election campaign. They have knocked doors, they've been chased, they've been insulted. And therefore they are ready for the rough and tumble that we all have to face in this Assembly."

- Jim Wells MLA: [24:17](#) "I can tell you, we endured Caitriona Ruane around here for nine years, and I can tell you after you faced her, give me any rough, tough man any day, because she gave as good as she got. And that's the way it should be."
- Pat Catney MLA: [24:28](#) "And just for the record, through the Chair I wasn't speaking of the member. I'm speaking of the witnesses. Bad hearing mate, bad hearing."
- Steve Aiken MLA: [24:40](#) "Ladies and gentleman, ladies and gentleman."
- Commissioner: [24:42](#) So, I just wanted to ask you a few questions about that. We moved on with Jim Wells to an idea of Caitriona Ruane and a number of other MLAs. The question at hand was about witnesses, so just wondering, did you think that was relevant when Jim Wells spoke about women in general like this? Did it elevate the topic at hand?
- Steve Aiken MLA: [25:12](#) Sorry, is this a specific question related to the comments from Mr. Pauley? Or is this specific questions related to issues to do with interviews with witnesses, and I think the reference if memory recollects me, with Sue Gray, who was the permanent secretary. That was held in closed session. I'm not quite sure of what you're trying to...?
- Commissioner: [25:31](#) I'm just asking you, as the chairman of that committee, I'm curious as to Mr. Wells went on in a totally irrelevant fashion about Caitriona Ruane and about various MLAs and the question actually was about witnesses, not about female MLAs. I just didn't know if that had struck you? Clearly you didn't say anything, you let him speak, which is your prerogative. I'm just wondering if you felt it was irrelevant or not irrelevant.
- Steve Aiken MLA: [26:00](#) That's correct, it was my prerogative and in the context of the overall discussions, and I think Mr. Wells is a very experienced MLA and his comments he made about Caitriona Ruane I think were probably apposite. But I stand by, as I've always said, the MLAs within the bounds of what I consider are acceptable, they are given their opportunity to make their point clear, and every

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one of my MLAs within that committee's view is equally valid and acceptable. Unless it goes beyond those bounds.

- Commissioner: [26:35](#) Thank you. I'm going to hand over to John now.
- Steve Aiken MLA: [26:38](#) Sorry, just for our own record, John, what is your position within this inquiry?
- John Devitt: [26:48](#) My position is that I'm assisting the commissioner with her investigation and analysis of facts.
- Steve Aiken MLA: [26:54](#) Okay, sorry, the one thing I was going to try to do, is we tried to find out a bit more about your detail and background. Are you a legal professional?
- John Devitt: [27:05](#) I'm an independent professional investigator.
- Steve Aiken MLA: [27:07](#) Okay. And you're employed by the commissioner?
- Commissioner: [27:11](#) No.
- Steve Aiken MLA: [27:14](#) So, you're not employed by the commissioner?
- Commissioner: [27:15](#) I've have no powers to employ anybody Dr. Aiken. I simply contract the services-
- Steve Aiken MLA: [27:25](#) Genuinely I wish to know what the role of John is and where his legal powers lie within this?
- Commissioner: [27:33](#) He doesn't have legal powers in this situation, I do.
- Steve Aiken MLA: [27:36](#) Why is he asking me questions?
- Commissioner: [27:37](#) He assists me as a second interviewer, which is only the good practice that should be happening, and should always have been happening in any interviews that the Commissioner does. Because if you look at any ombudsman or any good practice guide, it should not be just one individual doing an investigation on their own. You should have a second investigator to sweep up when they are doing interviews, it is only acceptable. So, Mr. Devitt has many years working with... John, what organizations have you worked with?
- John Devitt: [28:09](#) Well, if you wish to have my background Dr. Aiken I am happy to provide it, but my background is in policing and oversight to policing with police ombudsman's office and as an independent

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investigator. So, I have a substantial amount of independent investigation and interview experience. And extracting the facts from any given set of circumstances. So, I don't know if that provides you with any reassurance or not, as the case may be.

- Commissioner: [28:39](#) Also, I should add that when I was looking for someone who could provide this service, because we need it badly, to have a proper coherent interview structure, I was provided as a recommendation from Marie Anderson, who is the Police Ombudsman.
- Steve Aiken MLA: [28:56](#) Okay, John are you still employed by the Police Ombudsman?
- John Devitt: [28:59](#) No, I'm freelance. I left the Police Ombudsman's office in 2018.
- Steve Aiken MLA: [29:15](#) Okay.
- Commissioner: [29:15](#) Okay, you happy to proceed Dr. Aiken?
- Steve Aiken MLA: [29:15](#) Please.
- Commissioner: [29:15](#) Okay, John.
- John Devitt: [29:16](#) Okay, Dr Aiken I just want to return to the session of the 24th of June when Mr. McHugh informed you, as the chair, that your conduct of that meeting of the 17th of June attracted some media attention. And as per our disclosure to you, you now have had time to view the article from both the Irish News and the article from the Newsletter. I presume you have had time to review that and digest that?
- Steve Aiken MLA: [29:48](#) Yes.
- John Devitt: [29:49](#) Okay, so during our interview on the 24th of February you dismissed the article in the Irish News as an opinion piece and you did not understand it's relevance. So, my question is, how do you describe the article written on the same topic in the Newsletter?
- Steve Aiken MLA: [30:09](#) I have no opinion on either of the pieces, there are considerable amounts of correspondence in the media, both about myself as political leader, about myself as an MLA and also as the chair of the committee. I have no comment to make.
- John Devitt: [30:27](#) Well, you did make a comment in our first interview that it wasn't relevant and it was an opinion piece, I'm asking you

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whether you consider that same view in relation to the article in the Newsletter.

- Steve Aiken MLA: [30:41](#) May I refer you to my previous comments where I made clear that there are numerous areas the of media that is written about me, I have no further opinion on them.
- John Devitt: [30:49](#) Okay, well then let me move on to the next question, which is that both the media articles did appear in the public domain, as did your finance committee meeting via its online portal and via Hansard. So, consequently all of that material is a matter of public record and is relevant to your conduct, behavior, style and the complaint that Mr. Pauley makes against you. Therefore, we are trying to understand your mindset and the culture that you are promoting during these committee meetings.
- Steve Aiken MLA: [31:25](#) You have heard me and may give my evidence that I gave during the committee in the video records that you have shown, I've made my position abundantly clear as the role of the chairman and my role within that committee. You have that evidence in front of you.
- John Devitt: [31:38](#) So, am I correct in understanding then that the conduct in which you manage your committee meetings is acceptable to you and the rest of your committee, and the public should accept that also?
- Steve Aiken MLA: [31:53](#) It is my belief that my chairmanship of the committee, my role and responsibilities as chairman of the committee and how I conduct that committee, particularly in relation to the scrutiny and requirement to gather evidence to make sure that effective legislation in Northern Ireland is in fact correct.
- John Devitt: [32:09](#) Okay, well it is fully evidenced from the video recordings of the meetings and from the report in the Newsletter and the Irish News that you have made a number of apologies for your behavior. Is that not a strong indication that you are unable, or unwilling, to manage your frustration, annoyance with individuals in a public setting? And is this the leadership style that you wish to promote?
- Steve Aiken MLA: [32:35](#) Absolutely not. You will have noted from my considerable media appearances, my media appearances within the Assembly, my other meetings of committees, a myriad of times for good governance and also for the ability to ensure that

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people feel as if they are not put under particular levels of pressure or whatever it is. I have used the method of giving apologies. What could have been deemed as I apologize if people feel uncomfortable, because that is my natural leadership style and flare. I do not wish people to feel uncomfortable, but it is my duty and responsibility to see that effective legislative scrutiny is conducted, particularly from civil servants.

- John Devitt: [33:15](#) Well, I accept that that's part of your role, but there is a number of ways of achieving that objective and I've got to remind you of... Let me take you to the top of the third page from your interview on the 24th of February, you said, "It is my job to get evidence for the committee so that we can scrutinize legislation and to make sure the best legislation comes out of Northern Ireland, and that this is a process we are involved in. And yet the fact that we are involved in that process doesn't seem to be part of the discussion that we have had here at the moment, which I find quite strange." Now, I understand what your committee is trying to achieve, but I'm trying to establish from you, why have you consistently shared your frustration and annoyance in the way that witnesses are presenting their evidence?
- Steve Aiken MLA: [34:21](#) Sorry, I think I've already given that in some of the other statements I have given, and the rest of it I have nothing further to add.
- John Devitt: [34:29](#) Well, you did respond to my previous question on the 24th, and you replied, "How could there have been any consideration when the witness in front of us was a senior member of the Department of Finance, who was supposed to be the expert on it, and was deliberately misleading the committee?"
- Steve Aiken MLA: [34:46](#) You have my evidence, I have made that statement and I have nothing further to add.
- John Devitt: [34:52](#) Well, I'm asking you to clarify. Does that give you-
- Steve Aiken MLA: [34:57](#) Nothing further to add.
- John Devitt: [34:59](#) And I'm still entitled to ask the question, and I intend to ask it.
- Steve Aiken MLA: [35:03](#) Continue asking questions and I will say again, I have nothing further to add.

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- John Devitt: [35:08](#) So, that justifies the use of aggressive behavior in front of the witness and having to make multiple apologies?
- Steve Aiken MLA: [35:15](#) You are implying that it was aggressive behavior and you are implying it was aggressive behavior from a statement you have had from a complaint. I have nothing further to add.
- John Devitt: [35:25](#) Okay, well then let's move on to the next question. The bill at the center of these events was formally passed on the 2nd of February 2021. And Mr. Pauley has remarked that on that occasion you commented that it had been an unifying experience of the senior civil servants of the department being there during that session. The Hansard extraction is within your disclosure bundle and it should be on screen, if it's available.
- Commissioner: [35:57](#) Yeah.
- Steve Aiken MLA: [35:59](#) It is.
- John Devitt: [36:00](#) Okay, I have lost my screen for some reason.
- Commissioner: [36:01](#) I have it up there, John.
- John Devitt: [36:03](#) Okay, I've got it back again. What did you mean by unifying experience?
- Steve Aiken MLA: [36:12](#) No, it is very clear and you will have heard it from the evidence that I've already given. The fact that a senior member of the civil service was not being clear and was misrepresenting what was actually happening. And indeed, if you went through the entire process of the bill, at each stage civil servants that were in front of the committee were obviously under direction of the minister not to answer the necessary questions that would enable us to gain the evidence as we came through. And that was very clear throughout the whole process that we followed. And indeed if you listened, and you probably have done, if you listened intently to when we were asking questions about the necessity of whether there was a need for either to have a legislative process, or whether it would be done through custom and practice.
- Steve Aiken MLA: [36:59](#) At each stage, the civil servants from the Department of Finance made clear that their view was that they represent their Minister's view that they did not believe legislation was the appropriate way forward. The fact that we managed at considerable length and time to get legislation passed, I think

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would demonstrate to any observer quite clearly that it was an unedifying process to get to that point, the fact that the legislation was actually passed.

John Devitt: [37:30](#) Well, the dictionary meaning of unedifying is distasteful and unpleasant. And the reason that I raise that is that in Mr. Pauley's complaint that is how he describes it. Mr. Pauley describes in his account under oath at page six of the transcript, "As I say for it to be described my Mr. Aiken yesterday as an unedifying experience of the civil servants of the department being there during that session. Well, it didn't feel very nice, I can tell you that." So, what is your response to Mr. Pauley in regard to your unedifying remark? In that context.

Steve Aiken MLA: [38:10](#) I have made my remark very clearly that it was an unedifying experience for those people who tried to put through the legislation and publish through the committee. And indeed the MLAs who debated it at considerable length in the assembly, it was an unedifying experience. It was a situation that should never have developed, because if we had been serious about repairing and making sure that the executive of working correctly, and particularly the issues of special advisors and the roles and responsibilities of ministers, we wouldn't have to have that legislative process put forward. And that is indeed the purpose of the Northern Ireland assembly, is when the executive can't pass legislation it is up to the assembly to do so, which we did.

John Devitt: [38:51](#) Melissa, I'm going to hand back to you.

Commissioner: [38:58](#) Thanks John. Just going over some finance committee documents that I have requested and your clerk kindly sent without delay actually, so I thank him for that. The first, this is the letter, and I asked for a few different things. I'm just going to be looking at Appendix A, B and D, as outlined there. In relation to the committees approach to preparation and questioning, which I'm going to because I just want to find out what the committee did in preparing. It says, "Depending on the purpose of the session," this is about a third of the way down the page, "Depending on the purpose of the session, members may wish to consider how they wish to prepare for the session, both individually and collectively. In addition, the committee will wish to agree a general protocol for questioning witnesses." And my question is, I wondered if... you or the committee undertake or consider this process for the session on the 17th in

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any way? Just out of curiosity. I know it says 'you may' but I'm just wondering did you?

- Steve Aiken MLA: [39:56](#) You will be aware of course of the considerable time pressure of trying to get the bill through and the legislative process through, you will also be aware that several members of the committee, those members from Sinn Féin, had indicated they wouldn't be supportive of the bill in any form or any shape, and would do anything they could to prevent the bill going forward. So, if the question... It would have been an abuse of process of only the committee members who had believed in the bill going through, and that would have meant the exclusion of the Sinn Féin members. And if you look at the general other rules and regulations of the committee and how we presented ourselves to do that as well, that is the process we followed through.
- Commissioner: [40:35](#) Okay, thank you. This is the sample on conduct and courtesy in committee meetings, number seven is of particular interest, which is: Treat witnesses, members of the public, staff and other members with respect and courtesy. So, do you think this was followed in relation to Mr. Pauley's attendance, which he is alleging was not courteous and respectful?
- Steve Aiken MLA: [40:57](#) Yes, I do. I believe that we were courteous. If he felt any offense and felt uncomfortable, I apologized for it so he didn't feel uncomfortable in the committee. And that is not an admission of guilt, or an admission of the fact that I believe I was being overly aggressive.
- Commissioner: [41:19](#) Just moving on to appendix D. And this is about, I will show you the main ones that I picked out, to uphold the standing orders from procedures governing operation of committee and encourage conduct and behaviors conducive to the effective operations of the committee, and to act fairly and objectively at all times. Do you believe that during the 17th of June that you, as chair, met these requirements?
- Steve Aiken MLA: [41:45](#) Yes.
- Commissioner: [41:48](#) You understand Mr. Pauley would think that you didn't? Correct? By his statement.
- Steve Aiken MLA: [41:52](#) Correct.
- Commissioner: [41:52](#) Okay. Lastly, I read this and I wanted just to bring it up to you in terms of... It says, "Chairperson should ensure that members'

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contributions are relevant to the subject under discussion, and respectful to other members and witnesses. And it is for the chairperson to advise members that they are out of order if the point they raise is not relevant." And this I'm just reflecting back on, just perhaps on the idea of some of the things that were raised that were not relevant. And I just wondered is it often that you would have to point out or raise things that are not relevant within your committee?

Steve Aiken MLA: [42:37](#)

Sorry, could you expand on that further?

Commissioner: [42:40](#)

I guess I have noticed from when I have interviewed Mr. Wells and the complaint in general, there were a few things that came up in relation to, in the context of women, and I noticed that he spent a lot of time talking about the women in the MLAs, which I spoke to and referred to earlier in this, and I'm wondering, you didn't say it was relevant or irrelevant, you gave him... Which clearly is your right to give him the floor, if you so desire as chair. But in the fact that it might not have been relevant to the question that was asked, I wondered if in that case, you did not actually point out or raise a point of order around that. But is it often that the committee would verge into areas that are not relevant? And have you had to use this idea of saying this is out of order if it was irrelevant?

Steve Aiken MLA: [43:38](#)

No, because generally the depth and breadth of the committee with the issues it is involved in, and I know and I trust that you've been doing an analysis of the considerable level of work the committee has been doing. Everything to do with fire regulations to dealing with taxation issues, to dealing with funding, to dealing with a wide variety of issues that come in front of us as well. Is that we normally stay very closely both to the agenda and the areas that we do that as well. I hope by your implication of your question that you're not trying to make out in any way that I'm a misogynist, in which case I would absolutely refute that in every way.

Commissioner: [44:19](#)

I'm not making out that, I can tell you that for certain.

Steve Aiken MLA: [44:22](#)

I will absolutely... I find that, even the perspective of that in raising that questions, an issue of concern.

Commissioner: [44:31](#)

No, I was actually wondering how often you need to do a point of order or call anybody out if they go on on tangents. I just was wondering that.

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- Steve Aiken MLA: [44:41](#) Well listen, fairly regularly that I do it, quite often. I try and keep, because of the scope of what we have to do as well.
- Commissioner: [44:50](#) Okay, thank you. I was wondering also, from one of the committee meetings of September 23rd that I happened to come across, you had asked the new head of public sector reform what her mission statement was, and I wondered did you have a mission statement for the finance committee.
- Steve Aiken MLA: [45:09](#) The mission statement for the finance committee is the appropriate scrutiny of legislation and to be able to support the minister if we so wish, to what we are trying to achieve for good governance in Northern Ireland.
- Commissioner: [45:20](#) Okay, thank you. Now, before I conclude the interview is there anything further you wish to say, in relation to this complaint, that would assist me in my final assessment of the overall evidence?
- Steve Aiken MLA: [45:33](#) No, I think that in the process over the two interviews and the rest of it I have endeavored to give the clearest answers possible. I state again that I have tried to do my job to the best of my ability. I do not wish to make anybody feel uncomfortable, but at the same time it is my responsibility to ensure the proper scrutiny under the legislative function and the rolls of the committee, and indeed the roles of the Assembly, are followed through.
- Commissioner: [46:02](#) Okay, listen thank you for your time today. Good luck later and I have a happy Easter weekend to both of you.
- John Devitt: [46:09](#) Commissioner, can I just ask a couple of follow up questions before we conclude?
- Commissioner: [46:14](#) Sorry John, yes I should have thrown back to you. Sorry about that.
- John Devitt: [46:17](#) Dr. Aiken I am interested to know in relation to the committee meetings that you hold, and in particular these events that have resulted in this complaint, have you and your committee, or you as an individual, conducted any reflective practice?
- Steve Aiken MLA: [46:37](#) The one area I have a degree of concern reflecting is the fact that the details of the fact that a member of the civil service had raised a complaint about members of the committee had appeared in the media. And I have considerable interest and

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concerns in discovering where that leakage of that information came from. Because I understand it didn't come from myself and it didn't come from Mr. Wells. So, there's a degree of the reflection on how that degree of information got into the media.

- John Devitt: [47:06](#) Okay, that's one element. I am more concerned with your conduct and behavior, and the complaint that has generated this process. Have you reflected on that?
- Steve Aiken MLA: [47:19](#) You're implying that in some way my conduct and behavior was inappropriate, I refute that.
- John Devitt: [47:26](#) Well no, I'm asking you simply the question would you have done anything different in retrospect? Or are you comfortable that you would do the same thing again?
- Steve Aiken MLA: [47:36](#) In retrospect in examining the evidence and the discussion of the fact that the official was deliberately trying to mislead me, I would have asked him to have been removed and I wouldn't have wanted him to be in front of the committee.
- John Devitt: [47:50](#) But you had the option available to you as chairman, because if you had thought he was telling you untruths or incorrect information, as you saw it, you had the benefit within the codes to suspend that meeting and recall him and ask him to provide his evidence under oath. Is that not correct?
- Steve Aiken MLA: [48:12](#) That is correct. But again, your method of asking your question doesn't take into account the time pressure that the committee was on, the fact that we were having difficulties of having officials come to the committee itself to talk about the evidence of the bill, and the fact that there was a pressure to get the bill through its various stages. I think if you reflect on that and you realize the decision making process I have to have having an official in front of us to be able to answer questions, any questions, was at that stage I judged it was more appropriate to do that.
- John Devitt: [48:40](#) Okay, and my final question to you Dr. Aiken, is that in relation to your role as chair of this committee, or any committee meeting, what training, if any, have you had?
- Steve Aiken MLA: [48:51](#) I've had considerable meetings as being a chairperson. I've had considerable meetings both in private industry and in public industry. I have attended civil service training courses on

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chairperson's roles. I have attended the training within the assembly and I have been the chairperson, indeed I have been a chief executive, board member and a chairman of many boards. Indeed probably somewhere in the region between 20 or 30 of them. I have considerable experience of being a chairperson.

John Devitt: [49:22](#) That's great. Thanks for your cooperation. I'm going to hand you back now to the commissioner.

Commissioner: [49:25](#) Thanks John. I have [inaudible 00:49:27] that we ask Mr. Wells equally that question about training, and I forgot to ask you, so thank you for picking that up, John. Okay, so if you have any questions, I'll be sending you, as per the legislation, a full transcript now, which you already have half of it. And then the 14 days in which to make any minor changes or reflect on any changes it may need and put that through, but I will send you all the details of that process so you know where it is. It usually takes a couple of days, it will be after Easter now, to get the full transcript, or the second part back. And I will send you that part so you can ask any questions you may have. And I suppose if there is anything in between then you can let me know.

Commissioner: [50:10](#) We are going to end and the time is 15:48 by my clock. Thank you both for attending, I appreciate it.

Document 5: Steve Aiken MLA Statement

20201208/UUP PL/Response to allegations by Mr Bill Pauley (Department of Finance)

09 Dec 2020

Commissioner for Standards
Gen Secretary
Pol Director

Response to Allegations of Breach of Code of Conduct – Mr Bill Pauley

Ref:

- A. Committee for Finance – Official Record (Hansard) Functioning of Government (Miscellaneous Provisions) Bill: Department of Finance – 17 June 2020
- B. Guide for Witnesses appearing before Assembly Committees¹
- C. RHI Inquiry Report – Recommendations R.38[Strengthening Assembly Scrutiny Committees]; R43[Independent Mechanism for Scrutiny]²

Overview

1. The Finance Committee, of which I am Chair, sat to consider evidence for the Functioning of Government (Miscellaneous Provisions) Bill on the 17 June 2020. The Bill is sponsored by Mr Jim Allister QC MLA, a member of the Finance Committee (FC). The evidence session, with senior civil servants from the Department of Finance, followed on from similar sessions held with the Minister of Finance, the then Head of the Northern Ireland Civil Service (NICS) and the Permanent Secretary to the Department of Finance (DFI). The evidence being received from the civil service and the Minister has all followed a line that legislation was not required, rather a series of guidelines and ‘codes’ would be adequate to prevent a repeat of the RHI debacle.

2. The Committee was broadly in support of the need for change, although at this stage, there was not an acceptance that the legislative route was to be followed. The Sinn Fein members of the committee made no disguise of their disquiet about Mr Allister’s Bill, and had indicated very clearly that they supported their Ministers line – an approach that had been followed through by all senior civil servants giving evidence, both oral and written.

3. There was, at Ref A, discussion about the ‘New Decade New Approach’ [NDNA]. The Chair of the Committee, as both Chief Whip, and then Leader of the Ulster Unionist Party, was involved in all the discussions throughout. At no stage did all ‘Executive’ parties sign up to the provisions, and that the ‘codes’ referred to at Ref A in Mr Pauley’s evidence *“As did the talks process that the codes responded to in ‘New Decade New Approach’ document”*. The very clear inference from a senior grade civil servant that the talks process supported the application of codes rather than legislation was at best, a gross misrepresentation, and followed a party political trope of the Minister of Finance.

¹ 27. Committees of the Assembly have an important scrutiny, policy development and legislative role and proceedings are, therefore, relatively formal. Committee members, however, will often encourage a more informal and participative approach.
28. The committee chairperson will open the meeting by asking the lead witness to introduce his/her team to the committee, and may provide an opportunity for a witness to make a brief opening statement before inviting fellow committee members to ask questions.....

29. A witness invited to appear before a committee will be expected to answer detailed and probing questions on the subject under consideration but may also, for the purpose of placing facts or opinions on the record, be invited to respond to some very straightforward questions. In answering either type of question, succinct, clear and unequivocal responses should be given. Where a witness does not know the answer to a question, an indication to that effect is preferable. If necessary, a witness may offer to provide a note, which will answer a question, especially if the information requested is very detailed....

² RHI Inquiry Vol 3 March 2020 Chapter 56 p202-211.

Furthermore, he impugned the integrity of the Chair by indicating that the Chair was in some way unfamiliar with events that he was in attendance, and that Mr Pauley was not [This will be subject to formal complaint to Interim Head NICS after this investigation].

4. In preparation for the committee, Mr Pauley, an experienced and senior civil servant should have, in accordance with Art 29 of Ref B, have familiarised himself with the previous evidence, and, as a senior witness, when referring to NDNA, have appraised himself of the actual positions of political parties within those discussions.

5. In mitigation for actions of the committee it should also be pointed out that when the Permanent Secretary of DFI had given evidence earlier in the month to the Committee on the adequacy of 'codes' and the commitment her department had to 'openness and transparency', the committee was also having to consider the invocation of Art 44 to compel the department to give evidence on other issues. The DFI was not, and had not, acted in good faith in fulfilling its duties and responsibilities to the committee.

Key Points

- **The Chair of the Finance Committee completely refutes all allegations made by Mr Pauley**
- **That the complainant at best misrepresented evidence to the committee is unacceptable in a senior civil servant and indicates that the lessons of the RHI Inquiry have not been met**
- **That other members of the committee were equally exasperated by both the tone and demeanour of Mr Pauley and that the Chair intervened on several occasions to ensure that decorum was maintained; often when the response to their legitimate questions was poorly answered.**
- **That it is clear that the culture of the NICS has not changed and that the policy of denying evidence that was contra to the wishes of the Minister (or his political party) remained in place.**

Detail

6. The covering letter from the Commissioner for Standards and the complaint states that he expects the Chair to comply with the Code of Conduct for behaviour and to enforce these standards from other members of the committee. The evidence shows (Ref A) not only did the Chair act with restraint when his own integrity was impugned he actively sought, despite the provocation of the witness, to control the actions of other committee members, who felt similarly aggrieved by the way Mr Pauley gave his evidence. Furthermore, the Chair, on several occasions apologised for the forthright questioning but, in his primary role, sought to get the necessary information needed to help support the Functioning of Government Bill.

7. The gathering of evidence and its interpretation, was, and continues to be, the primary role of the Chair and of the committee. That a senior civil servant sought to frustrate this process, when it was his duty to do be forthcoming, was at best disappointing – however, this has regrettably underlined how far the culture of the senior NICS needs to change. It reminded the Chair of similar behaviour of senior civil servants when he was the acting Chair of the Economy Committee leading up to the Assembly collapse in 2017.

8. As to the specific issues it is regrettable that Mr Pauley did not show the degree of respect to the Chair, the facts of the NDNA discussion, or answer the questions from committee members fully. Any perception of unreasonable behaviour or attack was dealt with swiftly by the Chair, despite the very obvious frustration of several committee members – indeed the approach of a senior civil servant in showing obvious bias against a Bill under consideration, when he should have been taken an informed, but policy neutral stance, was again a worrying indication. That the Chair in some way 'failed' to control MLA's who have had many years of experience, some who held Ministerial position, and have all served on senior positions within committees before, who wished to exercise their democratic rights, could be considered derisory.

Conclusion

9. Finally, Mr Pauley states that having raised two complaints against two committee members, he feels he cannot appear in front of the Finance Committee to give evidence. We can assure him that if he actually answers questions, provides information that is appropriately asked, and takes a more supportive line rather than following Ministerial or other lines, and undertakes not to impugn the integrity of the Chair, he may be asked back.



Committee for Finance

OFFICIAL REPORT (Hansard)

Functioning of Government (Miscellaneous Provisions) Bill: Department of Finance

17 June 2020

NORTHERN IRELAND ASSEMBLY

Committee for Finance

Functioning of Government (Miscellaneous Provisions) Bill: Department of Finance

17 June 2020

Members present for all or part of the proceedings:

Dr Steve Aiken (Chairperson)
Mr Paul Frew (Deputy Chairperson)
Mr Jim Allister
Mr Pat Catney
Ms Jemma Dolan
Mr Seán Lynch
Mr Maolíosa McHugh
Mr Matthew O'Toole
Mr Jim Wells

Witnesses:

Mr David Hughes	Department of Finance
Mr Bill Pauley	Department of Finance

The Chairperson (Dr Aiken): We welcome Bill Pauley, who is the director of the strategic policy and reform division, and David Hughes, who is head of the renewable heat incentive (RHI) inquiry sponsorship team in the Department of Finance. I remind everybody that the item is being recorded by Hansard. Bill, can you make an opening statement, please?

Mr Bill Pauley (Department of Finance): Thank you, Chair. I will say briefly that the Minister and our permanent secretary gave evidence to the Committee a couple of weeks ago. David and I, in our respective roles, report to them in the normal ways. What they said will overarch what we might say here in looking at things in more detail.

We will also briefly refer the Committee to some of the generic issues that were raised in the Minister's cover note to it on 27 April. Much of what is proposed relates to the issues that were covered in the revised codes for Ministers, spads and civil servants. Those codes were completed after the talks process last summer and were reflected in the 'New Decade, New Approach' document, which recognised the need for a new approach as well as transparency about and accountability for what happened in the past, and that is entirely accepted. Having rules and standards for Ministers, spads and civil servants is an important issue, as is its enforcement.

We have a couple of points about the Minister's cover note from 13 June. The view is that the codes sufficiently address the issues and that legislation is not necessary. That overarches what we might say in our responses to questions. Also, the codes will be re-examined in light of the RHI recommendations.

Mr Allister: Mr Pauley, I want to return to the codes, because the Department's basic message is not so much to dispute the content of the Bill but the "how" of the Bill and whether legislation is needed or it is sufficient to put it into codes. The Department's basic stance is, "Even though they failed us in the past, codes are enough", but, when it comes to appointment, the codes that failed us in the past were better than the codes that we have today, because, as I have put to you before, the very significant fact on the code for the appointment of spads is that it stripped out all the process of selection by the Minister. Two weeks ago, the former Commissioner for Public Appointments, Mrs Felicity Huston, whom you probably know, said this to the Committee:

"we have to ask ourselves whether the code" —

the code of appointment —

"as it stands looks like a credible document in the eyes of the public. Does a code that sets aside all recognised appointment procedures, because of the personal nature of the spad appointment, persuade the public that all is well?"

She went on to say:

"it would provide tremendous confidence for the public if they thought that, in appointments like this, some sort of process could be seen and there was some sort of evidence of why x or y had been appointed."

You are coming to the Committee and telling us that you want to stand over a code that makes sure that no sort of process can be seen in the selection and no sort of evidence can be available for why X or Y was appointed. Is that seriously the Department's position?

Mr Pauley: I accept your point about whether the difference is codes or legislation. Certainly, as we said, and, as I said in my introduction, we accept the need for change, as did the talks process that the codes responded to in the 'New Decade, New Approach' document, just, I suppose —.

The Chairperson (Dr Aiken): I do not wish to cut across, but just to put this on the record — I have already put this on the record with the Minister and the permanent secretary — unlike anybody else in this Chamber, I sat at the party leaders' group at those talks. The discussion about what we would do to restore accountability and responsibility to the Assembly and to control Ministers and processes is not what ended up in 'New Decade, New Approach' and was not what is in this code. For the record, I make that abundantly clear. Every time I hear an official say, "This was agreed between the party leaders and by the parties as part of New Decade, New Approach", I say that it was not. That is not what was agreed, and, clearly, the Ulster Unionist Party never signed up to what ended up in 'New Decade, New Approach'. As a party leader, I never signed up to it. Let us make that abundantly clear right now. I do not want to hear that put in front of the Committee again. I am sorry for being angry, but I am getting really fed up with this.

Mr Pauley: Following the 'New Decade, New Approach' document, which indicated that the codes should be put in place as a matter of urgency, the Civil Service put that to Ministers and asked them to respond. All the new codes and their supporting documents have been agreed by the Executive and published with the exception of the code of ethics document, which is going through the agreement processes and has been provided to the Committee because it relates to some of the documentation. That is what we have been doing, and the codes have been agreed by the Executive.

Mr Allister: I know that they have been agreed, but I am asking you the question because Sir Patrick Coghlin, in his report, says that the letter and the spirit of the codes need to be seen to be implemented. Why, before that report was ever published, had the Executive agreed to strip basic things that Mrs Huston referred to as "recognised appointment procedures" out of the code of appointment? A pool of candidates, criteria, personal abilities etc are all stripped out. Now, you cannot say that that strengthens the code. The protestation of the Minister is that he strengthened the codes, but he has shredded the code of appointment.

Mr Pauley: The codes have been agreed by the wider Executive, but, yes, it was the Minister of Finance who brought them to the Executive as proposals —.

Mr Allister: Do you agree that it is a weaker code in terms of its process?

Mr Pauley: I have not come to the code of appointment yet. The first question that you put to me and was whether we agreed that, broadly, it was about whether this is a code or legislation. The other point — I am not sure if I made it, but I will say it again — is that three clauses in the Bill are not covered by the codes, as we understand it, and relate to reducing the number of spads, the power to make the special appointment and the requirement to publish a biennial report. It is our understanding coming here that those matters are not covered by the codes, wherever they might be done.

We believe that the code of appointment is a much simpler code, reflects the reality of what happens when appointing spads and is consistent with the Civil Service (Special Advisers) Act (Northern Ireland) 2013. The code for the appointment of spads requires the appointing authority, which is the Minister, to apply all appropriate employment law in their work to appoint their spad. Subsequent to that, when we are informed by the appointing authority, which is the relevant Minister, who the spad is, the Department takes over the work and takes the process from there. That is a much simpler version that reflects the reality of the situation.

Mr Allister: Mr Pauley, the code kicks in only when the Minister has hand-picked whomever he wants. He does not have to consider a pool of candidates or what the criteria for the job are, assess anyone against any criteria or even keep a note of why he made the choice. Please, do not suggest to us that the code is compatible with the good practice of the past, which had all those elements. It is weakening the code, not strengthening it, and anyone, except the Department, it seems, can see that.

Mr Pauley: The code requires that the appointment is made in line with all aspects of employment law. That is a statement in the code.

Mr Allister: Let me move on. You mentioned one of the clauses that are not compatible with and not covered by the codes. That is the clause on subjecting the exercise of prerogative powers to Assembly resolution. We are a legislative Assembly, yet, we have a situation where, in the past and into the future, the First Minister and deputy First Minister had and will have the opportunity to, in secret and with no appointment process open to scrutiny, as they did with Mr David Gordon, make an appointment at £75,000 a year and never inform the Assembly about it. Clause 3 makes any such proposal subject to the approval of the Assembly. Why would a Department want to disbar the approval of a legislative Assembly in situations such as that? Why would you want to hide that from the Assembly?

Mr Pauley: We have responded to the point about that clause in the comments that we made to the Committee. As we said, we believe that it would remove the power of the First Minister and deputy First Minister to engage any specialised, expert support that they might need in some form of emergency or other situation through such an appointment. We have not got an example for you of a situation that might arise. There have been no such appointments made under this Administration. There has only ever been the one to which you referred. Since then, the normal processes of recruitment and appointment have been applied where the individual is not advising one Department as a civil servant in that way. The processes that exist can be applied to recruit experts when we have sufficient time and when it is appropriate to do that to recruit the expertise that we need. We are looking at how we —

The Chairperson (Dr Aiken): Excuse me, Bill. Speaking as somebody who has been a chief executive and all the rest of it, I know that, when you have to bring people in at short notice, you bring them in on a consultancy basis; you do not bring them in as full-time employees. You do that in the Civil Service as well. If you need somebody in a specific area, you bring them in as a consultancy service. You spent a fortune on PwC to bring it in as a consultancy service. I do not get that.

Mr Pauley: That is another route by which temporary specialist appointments can be made for different periods of time.

The Chairperson (Dr Aiken): What you are talking about is short-circuiting the system so that you can have a full-time appointment. How is that following normal human resources (HR) process?

Mr Pauley: That is an option that is open under the legislation but that has not been used by this Administration. It has been used once in the past for the individual Mr Allister referred to.

As part of our wider thinking about Civil Service reform, we are, indeed, looking at how our Civil Service Commissioners work and the role that they play, and we are looking at, for example, the

number of exemptions to the merit principle. Fewer exemptions are available to Civil Service Commissioners here than to Civil Service Commissioners in Britain, so there is a difference in what can be applied in expertise or whatever. It takes you to look at some wider issues of getting the expertise that we need when we need it, which is an RHI issue, and that will potentially lead to that and to Civil Service reform. In this instance, the Department's comment on the clause is to note that it would remove from the First Minister and deputy First Minister the ability to appoint in this way —

Mr Allister: And make it subject to the Assembly.

Mr Pauley: — to make it subject to the Assembly — and to note that it is not a power that has been used.

Mr Allister: Yes, so why are you so precious about it?

Mr Pauley: We are precious about the need for legislation in this area and whether —.

Mr Allister: You see, Mr Pauley, if you were concerned —.

Mr Pauley: The overarching point is about whether legislation is needed in this area to serve what we need.

Mr Allister: You see, Mr Pauley, I could understand your position — the Chair pointed out that you could simply go to consultancy, and there is no real answer for why you could not do so — if you were coming to the Committee and saying, "OK. We get it that it does not look good to have prerogative powers exercised behind the back of the Assembly, and, therefore, although we are concerned about the need for speed, we suggest that, instead of having a positive resolution procedure in the Bill, you have a negative resolution procedure". I could understand you taking that stance, because that would maintain a role for the Assembly, but you are coming to the Committee and saying, "We do not want anyone to touch the facility to appoint behind people's backs by virtue of the royal prerogative". You are saying that to elected Assembly Members, who are supposed to legislate.

Mr Wells: Do you want to phone a friend?

The Chairperson (Dr Aiken): No. Through the Chair, please. Please withdraw that remark.

Mr Wells: OK. Sorry about that.

The Chairperson (Dr Aiken): That is beneath you, Jim. Sorry about that, Bill. I apologise.

Mr Pauley: In relation to the clause, we said that, as an overarching position, we do not believe that legislation is required in this area or around it. If we were to make legislation solely for this clause, we point to the fact that it has been used once and is not used now, and we point to the responses that we made —.

The Chairperson (Dr Aiken): Just for clarification, you said that it has not been used recently and that you think that there is only one example of where it has been used. Are there any other examples of where it has been used?

Mr Pauley: Not locally, no. This is 2016 legislation that has been used once — that is my understanding — for the individual whom Mr Allister named and has not been used since.

The Chairperson (Dr Aiken): If it has been used only once, why are you so determined to keep it in? I do not understand the logic.

Mr Pauley: We pointed out in our response that it would remove this facility from the First Minister and deputy First Minister now, and we have —.

The Chairperson (Dr Aiken): But we have already explained —.

Mr Pauley: No —.

The Chairperson (Dr Aiken): Excuse me: I am the Chair here. I already explained that there is a very normal process that happens across all government of bringing in consultants. There is a process of bringing in consultants at short notice to specific roles. You explained to us that there is an issue here with HR issues. The only thing under HR issues that would protect somebody who did not get that role is that the royal prerogative had been used. Therefore, that would be the defence if somebody who did not get the job and decided to take legal proceedings. If it has only ever been used once, I am really struck by why you want to retain it.

Mr Pauley: We say in the later responses to the question that there is a broader issue about how the Civil Service can recruit at short notice and, at times, get the expertise that it might need. This is a facility that exists at the moment. It has been used once and not in the most current Administration. In terms of how we believe that these things should be done, in a reformed Civil Service or a new approach, in this new decade, there might be linkages to that.

I also pointed to the fact that the Civil Service Commissioners oversee how we appoint people to the Civil Service and the process of doing that. I indicated to the Committee that the list of exemptions to that, where the full merit principle and the full application of recruitment processes have to be applied, is less for us than it is in Whitehall and other areas. Until such time as we look at wider Civil Service reform, we do not see a need to legislate solely to remove the clause or solely on this area. As I said, it is not something that we covered in the codes. It is not something that we covered in how we looked at or responded to the issues on it or how it became part of that process. It is something that was put in place, was used once and has not been used since. There are, to my understanding, no plans in any Department, but certainly not in ours —.

Mr Allister: The power still exists. Let us understand —

Mr Pauley: The power still exists, as we have acknowledged.

Mr Allister: — it was not just that David Gordon was appointed — it could have been anyone — it was that the First Minister and deputy First Minister made legislation.

Mr Allister: They exercised an executive power to change the Civil Service Commissioners Order 1999. They made, by prerogative order, new legislation called the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016. They made the law. They did not tell the Assembly that they had made it. The clause is about making sure that they cannot change the law again without the consent of the Assembly. It is as basic as that, but you want to keep a power that was created in that way, saying, "It won't be used, but it could be used". Chair, there is one other area, but I am conscious that I have hogged the proceedings. I will come back if there is time.

The Chairperson (Dr Aiken): I will give you the opportunity to speak now, Jim. Just go ahead.

Mr Allister: OK. Clause 5 is about suggesting that we need a more objective process of investigating breaches of the ministerial code. The Department's stance is, "We do not need clause 5 because, under New Decade, New Approach, we will appoint three new commissioners who will survey all these matters and deal with any complaints against Ministers". Is it correct, Mr Pauley, that, whereas the standards commissioner, to whom I say that function should be given, is appointed by open competition in a transparent way, there is no such parallel with the hand-picking of three commissioners by the First Minister and the deputy First Minister? Secondly, whereas the standards commissioner has the power to compel witnesses, to compel documents and to take evidence on oath, the three commissioners suggested in 'New Decade, New Approach' would have no such powers and could only ask the head of the Civil Service about factual matters?

With the Commissioner for Standards, there are, for good reason, disqualifications around who cannot hold the post, such as a former senior civil servant; in fact, 20 disqualifications are listed in the legislation. There would be no disqualifications when the First Minister and deputy First Minister appoint suitable commissioners. Even from the point of view of a presentation of objectivity, is it not clear that giving the function to an independent standards commissioner would be far more presentable and acceptable from a public perception point of view than giving it to three hand-picked commissioners who cannot even compel documents or evidence or take evidence on oath?

Mr Pauley: The proposed enforcement process that has been agreed by the Executive includes provision for a panel of three, one of whom is, in an ex officio role, the Assembly Commissioner for

Standards. We believe that that commissioner would be part of the potential panel of commissioners who would look at this. It was discussed during the talks process that taking the role of the Assembly Commissioner for Standards, who is responsible mainly, as I understand it — I have not looked at the legislation in detail — for maintaining standards among MLAs and solely reading that role across to make it apply to maintaining standards among Ministers could lead to some areas where that was inappropriate. However, we felt that it was appropriate that he or she — whoever is appointed to the role — should be a part of the panel, because it is likely that there could be breaches of standards that would also be breaches in respect of the fact that the Minister is also an MLA. The proposed panel is a multiple-person panel, and that is to allow different areas of expertise or knowledge among the individuals who will be appointed. They can then use that to carry out investigations into breaches or complaints and determine the person who is best capable of investigating the matter.

Mr Allister: Without the powers.

Mr Pauley: Certainly, it is envisaged that those people will be expected to comply fully with the panel for ministerial standards — I think that that is what we call it — when that panel is carrying out investigations. Certainly, when they needed to come to the Executive secretary for any information, that would be fully complied with *[Inaudible.]*

Mr Allister: Mr Pauley, may I demonstrate to you the absurdity of the situation? The independent Commissioner for Standards investigating an MLA has the right to call for documents and call witnesses to take their evidence on oath. That same person, ex officio as one of the trio of ministerial commissioners, if he is performing that role in respect of a Minister, cannot call for evidence, cannot administer an oath and cannot take evidence in the manner in which he can against an MLA. Is it not absurd that Ministers are treated with the kid glove approach of three commissioners who are toothless and without powers and depend for their facts and what the head of the Civil Service tells them, as opposed to a commissioner who, when interrogating an issue in respect of a mere MLA's alleged breaches, has that whole panoply of powers? Is that not plainly absurd?

Mr David Hughes (Department of Finance): If I may just make an observation on how this operates in other jurisdictions —.

Mr Allister: Look, we are worried about here. It is here that had the catastrophe of RHI.

The Chairperson (Dr Aiken): Just be aware that the Committee has heard time and time again from the permanent secretary and head of the Northern Ireland Civil Service that Northern Ireland is a unique situation. Now, you are trying to tell the Committee that it is not unique. Please, give us the benefit.

This is a Northern Ireland situation that was brought about because of RHI, and the aim is to make sure that it does not come happen again. That is why, specifically, we are doing that.

Mr Hughes: Sorry, if —

The Chairperson (Dr Aiken): Sorry, Jim is still giving evidence. I will bring you back in in a second.

Mr Allister: I think that the gentleman wants to reply.

Mr Hughes: I just want to mention the experience of Scotland and Wales, where independent advisers have been appointed. In Scotland, the First Minister made the appointment for the investigation of the First Minister. In that context, it has been publicly acceptable that, of course, the First Minister will appoint an independent adviser; otherwise, that investigation has no credibility. The two current independent advisers have not only that standing but, because of their background as prosecutors, carry standing from their previous employment and background. It is important to recognise that there is precedent for the approach being taken, but an enforcement mechanism here means that the panel has a greater capacity to bring things into the open than is set up in the Scottish context.

It is also worth noting that the method of appointment of the panel has not been settled. It is not explicitly set out in the enforcement mechanism.

Mr Allister: Will it be set in legislation?

Mr Hughes: I am not aware that there are any plans.

Mr Allister: No. It will be hand-picked. You know that perfectly well. It will be three individuals hand-picked by Ministers who could themselves be subject to an investigation. If not them, the majority of Executive Ministers come from the same parties. Those are the people who will hand-pick the panel, instead of having an open competition such as we have for MLAs.

Well dare an MLA step out of line. MLAs are subject to the full panoply of investigation, sworn evidence and everything else, but a Minister might step out of line, and some hand-picked individual with no such powers reaches some conclusion that they suggest to the person who appointed them, and the person who appointed them decides whether to take any action. Really?

The Chairperson (Dr Aiken): We need to be careful with our tone. As Chair, I accept that my tone has been slightly exasperated during the session as well, but there is good reason for it.

Mr Allister: OK. Thank you.

The Chairperson (Dr Aiken): Maolíosa, go ahead.

Mr McHugh: I am interjecting for that very reason, Chair. I thought that it was downright rude that, when this gentleman started to speak, as soon as he got the first couple of words out of his mouth, you and Mr Allister went down his throat. I thought that that was downright rude.

I appreciate, in every respect, the information that you have provided during the meeting. Although Sinn Féin stands for "Ourselves Alone", we do not believe in reinventing the wheel. In other words, we look at what is happening in other jurisdictions and look to the best possible practice in every respect.

I felt embarrassed for a minute because of the way in which you were being treated, Mr Pauley.

The Chairperson (Dr Aiken): Thank you very much, Maolíosa. Your comments have been noted. I apologise if I have embarrassed anybody, but, yet again, I state that this is about Northern Ireland and I am not taking any more lectures or being told that we are in a unique situation and then it being explained that we are not.

Mr Frew: Thank you very much. You are very welcome here. It has been very informative.

Are you here, Mr Pauley, as an individual, with all your years of experience and as the director — the role that you hold now — or are you here to represent the view of your Minister?

Mr Pauley: I am here to represent the view of our Minister. That is the basis on which all civil servants attend all Committees, and that is the basis on which I am here.

Mr Frew: Would there never be a time, at an evidence session like this, when you would say, "The Department is going in the wrong direction" or, "The Minister may well be incorrect"?

Mr Pauley: No. I act under the direction of my Minister. In our opening statement, I referred to the fact that he was here a few weeks ago with my permanent secretary. I report to both those people in different ways that, I believe, are widely understood, and that is the basis on which I give evidence to the Committee.

Mr Frew: Thank you for clearing that up. That is helpful.

I want to ask about the appointment of a person of expertise. I was part of the talks process, and you have already mentioned that talks process. A lot of the time, the language used was about co-design. How does this law, this rule, this royal prerogative sit with the concept of co-design?

Mr Pauley: Is this the prerogative?

Mr Frew: Yes.

Mr Pauley: It is not the wider bit about the codes and the practices.

Mr Frew: No. The power to appoint a specialist.

Mr Pauley: It is not a policy that has been subject to co-design, as I understand it to mean when it is used to refer to consulting the third sector or when it was used, for example, in the draft Programme for Government and for other things, that our policymaking processes and that should be subject to co-production and co-design or the different terms that relate to consultation with wider stakeholders.

Mr Frew: In your answers, you have basically justified having the power by saying that it has not been used this term and has only been used once ever. Am I correct in saying that you said, "We have this power, but it has not been used, except once, and that was a one-off"?

Mr Pauley: I do not think that I ever said that the power was justified. I said, as reported in the response to the Committee, that this is a power that, if it were removed, would remove the capacity of the First Minister and the deputy First Minister to appoint a specialist or expert or whatever an emergency situation might require. I also said that, looking forward, as is in the written submission, there are aspects of Civil Service reform that are being kept under review. We were asked what it means for the provision to be kept under review, and I have alluded to the fact that we believe that the Civil Service Commissioners, the requirements on our Civil Service for recruitment, our ability to recruit and the exemptions from the recruitment process, where the full rigour of the merit principle must be applied, are different here from elsewhere. There may be a time when we need expertise to take things forward as expeditiously as possible, but I have no example of that or thought of what the situation may be, and I know of no part of our current Administration that is considering using the power at this time.

Mr Frew: You started your answer by saying that you never said that the power was justified: are you saying that it is not justified?

Mr Pauley: No. I am explaining the impact, as the Department sees it, of the clause, should it remove the power from the First Minister and the deputy First Minister.

Mr Frew: Again, I do not understand this. Does the power allow the First Minister and the deputy First Minister to appoint one person of expertise or more than one?

Mr Hughes: Only ever one at any time.

Mr Frew: You have painted a scenario in which we are in a bit of a sticky situation, for which we really need to get in expertise from somewhere, and we cannot find it anywhere — anywhere — in our Civil Service. Is there not a real danger that, by plumping for and appointing only one expert, one scientist or one medical expert, you are limiting the scope of your expertise? We know that science and expertise vary on any subject matter.

Mr Pauley: Yes. That would be a risk in the scenario that you have painted. I indicated that I cannot see a scenario in which we would want to use that power again, but that would be a risk in your scenario.

Mr Frew: Are there any other ways in which the Civil Service can temporarily appoint experts to get it through a period of review or emergency?

Mr Pauley: Yes.

Mr Frew: Will you explain what those are, please?

Mr Pauley: The Chair outlined how, through our procurement approaches, some framework contracts are in place for some types of expertise or for individuals, depending on whether they are available or whether they offer their services on a consultancy basis. I was going to say that that happens every day of the week, but I will say that it is common for that to happen. It happened on many occasions as we prepared for Brexit, and it happens where other particular aspects of expertise have been sought by the Civil Service.

Mr Frew: You say that it is common. Is the Civil Service comfortable instigating that function? Is it an everyday, mundane area of work, with nothing controversial or contentious about it? Do you simply employ a temporary consultant to advise on a certain subject?

Mr Pauley: Beyond the fact that the use of consultancy, and the extent and nature of it, has been much criticised in the past, it is not a controversial process. It is a common process. It happens often. The overall level of consultancy, however, is monitored because of those other wider uses to make sure that we are not using consultants for something that could be done internally.

Mr Frew: You are here —.

The Chairperson (Dr Aiken): Paul.

Mr Frew: Last question. You are here at the behest of your Minister. An awful lot of your answers in red in the paper start off, "The Minister has", "The Minister is bound" or, "The Minister has the power". You, as civil servants, are bound by your Minister. Is there a concern, when you are talking about other Ministers having the power to —?

Mr Hughes: Sorry, but can you point us to some examples? Some sentences start that way for different reasons.

Mr Frew: I read it earlier. It is in the tabled papers. I certainly was paraphrasing, but let me check. Under the response on clause 1(2), you state:

"In terms of their role within government, individual SpAds are accountable to the Minister who appointed them."

Under the response on clause 1(3), you state:

"Ministers are responsible for the conduct and discipline of their special advisers".

At the top of the next page, it is stated:

"Whilst the investigation of misconduct may, for instance, be undertaken by a civil servant, the Minister is ultimately responsible for the discipline of a special adviser, though the civil service may be expected to contribute".

In answer to question 2.d., you state:

"All Ministers have agreed the current codes and guidance."

We are putting a lot of weight on Ministers here. All Ministers.

Mr Hughes: The answer is there under clause 1(3), which refers to all Ministers or the Minister who has appointed the special adviser. It is a point on which everyone is agreed: that there has to be absolute clarity that the appointing Minister is responsible for the discipline of a special adviser.

The answer at 2.d. outlines how the Executive have agreed the codes and guidance that exist. In some places, the answer will refer to the Minister of Finance, who has responsibility — I cannot think of an example for this instance — for the publication of the Civil Service code of ethics. That is a Department of Finance responsibility, under the Minister's direction and control. It depends on context, obviously, but there are areas in which the Minister of Finance has a responsibility. Some answers in the paper come from the Executive Office and therefore have been seen and agreed by the First Minister and the deputy First Minister, because it is an Executive Office remit.

Mr Frew: OK. That will do me, Chair.

Mr Wells: You have watched this place collapse for years on the back of absolutely appalling behaviour by spads. You are now sitting here advocating no real change other than a slightly beefed-up code to cover the affairs of spads. You have looked uncomfortable throughout the hearing, Mr Pauley. You are a gentleman of vast experience. You have been around here longer than me, and

that is saying something. I dare not tell you how long I have been around here. Are you uncomfortable with some of the things that you are being asked to say here this afternoon?

Mr Pauley: No.

Mr Wells: Having witnessed the absolute chaos that spads have caused to devolved government in Northern Ireland, you are personally standing over what you have been asked to say to the Committee.

Mr Pauley: Subject to the Chair's comments about the New Decade, New Approach agreement. During suspension, the Civil Service, on a number of occasions, through the head of the Civil Service and others, made it clear that it wanted our institutions back and called for that to happen, just as much as — in fact, more than — anyone, and we needed that. I fully concur with all the things that were said and done. We value and appreciate our institutions, because we live here too. These things are important to us.

As I intimated in reference to what you said, the New Decade, New Approach agreement acknowledged that change from what had happened in the past was necessary. I do not want to split hairs, but a couple of questions posed by the Committee were framed "in light of" previous events. My understanding is that the reference is to the RHI situation and others. Our Department, my Minister and the Executive have accepted all 377 findings in the RHI inquiry report. We have decided to accept them. I believe that New Decade, New Approach, whatever its standing — doubt has been raised here about whether it was an agreement — indicated that people wanted the institutions to come back to deliver public services again in Northern Ireland, if the approach that emerged during RHI, and more broadly, could be changed. If that can be delivered, do we want our institutions? Yes. Do I want them? Yes, I do. I believe in them.

Mr Wells: That is not the question that I asked. Are you comfortable with what you have been asked to say here today?

Mr Pauley: I am comfortable with the basis of New Decade, New Approach. People said that in light of the things that had happened, there had to be change, and they expected that there would be change. In all of this, I personally believe that people have to change and respond to that change, whether that is through legislation or codes. There are those who are committed to behaving badly. Every day, people break laws — that is commonplace — just as they can breach codes, but they have to be committed to all of the institution. That applies to Ministers, spads, civil servants and Members of the Assembly. It is about how we treat each other every day, and there have been questions about that today. There has to be a new approach across the full gamut.

Mr Wells: One of the things that emerged during the Red Sky issue was the conduct of Stephen Brimstone. I am interested not in the facts of that case but in the allegation that the conduct of the special advisers fell far below acceptable standards. The Minister was the only person who could take disciplinary action against Mr Brimstone, and he opted not to do so. How does that change under your code?

Mr Hughes: The critical change is to the ministerial code of conduct, which makes clear that the Minister is required, under that code of conduct, to ensure that the rules on the management and conduct of special advisers, including discipline, are adhered to.

Mr Wells: Who forces the Minister to do that?

Mr Hughes: I understand that a failure to fulfil the terms of the ministerial code of conduct is a breach of the Pledge of Office. One deals with such a breach through the Assembly rather than any other mechanism. An enforcement mechanism has been designed to be introduced, and it can, if necessary, help that. The disciplinary authority for Ministers rests in section 30 — I am sure that someone will correct me if I am wrong on that — of the Northern Ireland Act, where it falls to the Assembly. That insertion into the ministerial code of conduct is new. It had never been expressed so clearly at that level and with that degree of impact where a breach might have taken place.

Mr Wells: What happens if a Minister decides not to let the Assembly know what has been going on?

Mr Pauley: Our response to the Committee states that there would be a key role for the Civil Service in this process, depending on the nature of the behaviour. Certain behaviours, such as bullying and harassment, cannot be tolerated or accepted in our workplace, no matter who the perpetrator is. The Civil Service, if and when necessary, would intervene and go to the Minister and, if necessary, the head of the party. It would then be reported to the ministerial standards panel, and its investigation, carried out according to the outlined enforcement process, would be made public.

Parts of our enforcement mechanism are much stronger than those elsewhere, in that anyone can make a complaint. It is not confined to the Prime Minister or head of the Government, as it is elsewhere. There are tight timescales within which any investigation should be carried out. Whatever failing existed, if the Minister was not taking action, it would be the Civil Service's role to call that out and to intervene to say that such behaviour must not continue in our workplace. In the nature of different breaches, the code of conduct covers everything from how we conduct ourselves in our daily interaction with people to behaviour that could be illegal.

Mr Wells: Is that the same radical action that was taken when it was discovered that two super-spads were operating on the Falls Road and that information was being taken from Stormont Castle?

Mr Pauley: What happened in the past —.

The Chairperson (Dr Aiken): Jim, I think that you have made your point.

Mr Wells: OK. I will move on to my last question. The whole argument that you are dying in a ditch over — I think that you are very uncomfortable about dying in a ditch about this — is whether there should be a statutory code or legislation. We are all dancing on the head of that pin. The best legislation is legislation that never has to be used because it is a deterrent.

You have not convinced me that we could not have the best of both worlds: a statutory code and, overarching that, legislation. Then, when somebody steps out of line, you have that ultimate deterrent of a court case, with all the evidence having to be collected, the cross-examination and the disclosure of all documents. That is a real deterrent, far more so than any Civil Service investigation. Why can you not accept your idea of a code and Mr Allister's overarching legislation? What is wrong with that?

Mr Pauley: I have addressed a question previously as to whether I was uncomfortable with deviating from the basis and principles for which I am here, which is that I am under the direction of my Minister. The position of my Minister is that we do not believe that legislation is necessary in this area. The Executive have agreed new codes. They have agreed that, in other areas, there needs to be a changed approach. They have agreed that increased transparency and accountability need to be applied across a whole range of areas. I am entirely comfortable and agree with the fact that those changes need to happen and need to be taken forward.

Mr Wells: If your code will be so successful and so effective, why are you worried about there being legislation that may never have to be used?

Mr Hughes: I just want to add a point about the deterrent effect of legislation. We have to bear in mind the chilling effect, as it were, or the deterrent effect on someone doing the right thing in the circumstances if it means that they fall foul of the legislation. A code allows for the interpretation of what the rules and the breaches might be.

Mr Wells: As could legislation.

Mr Hughes: Once the legislation has determined that something is wrong, there may be a defence, absolutely, but having to consider the defence may well be a deterrent to or chilling element in someone doing the right thing.

Mr O'Toole: I will be brief. Earlier, we discussed clause 3, which is about the prerogative power to appoint civil servants. I want to absolutely clear, because I was not in Northern Ireland at the time, never mind Northern Ireland politics, that the only time when that was ever used was for David Gordon.

Mr Pauley: That is my understanding.

Mr O'Toole: Are you aware of any other discussions in which it was considered?

Mr Pauley: No.

Mr O'Toole: Fine. The purpose of it being there is to appoint someone to a Civil Service role. There are provisions whereby, as the Chair mentioned, you could appoint someone as a consultant — if you needed someone from PwC, if you needed an actuary for something or if you needed a lawyer or whatever — but this is about having the legislative power to appoint a civil servant in extremis. Is that what you are saying?

Mr Pauley: Yes.

Mr O'Toole: You talked about this earlier. David Gordon is a former journalist. Basically, he is a comms person/press officer, and I would not demean either role because I performed both. Of course, I regard them as highly expert and specialised roles, but others might not. What other roles do you imagine that power being used for, given that the Department has responded by saying that, effectively, it believes that the power should be retained, whatever about the transparency issues and the irregularity of it?

Mr Pauley: I indicated that I did not have an example or a role, but I know the type of role. It is common for a PwC-type person, for example, with expertise in trade to be recruited to the Department for the Economy to work on Brexit-type issues.

I cannot think of all the exemptions as I sit here, but the list of exemptions to the merit principle that is available to the Northern Ireland Civil Service through our Civil Service Commissioners is shorter than the one in GB. It does not include all those that can be applied by the Civil Service Commissioners in Britain.

The use of exemptions as a means of expediting a recruitment process is permissible by the Civil Service Commissioners. How and why ours is different is a question that we are thinking about, among others, in relation to future Civil Service reform.

If you compare the two lists of exemptions, you see that GB has a couple of categories that we do not, and those might be in the area into which you want to move. We would be happy to send you the two lists so that you can see that they are different.

The Chairperson (Dr Aiken): Yes, please. Thank you.

Mr O'Toole: I am thinking of examples in Whitehall when a body is set up and an appointment made. A few years ago, the UK Government set up a body on infrastructure and appointed Lord Adonis, a former Minister, to chair it. I presume that that will not have gone through an open competition based on Civil Service rules. If a similar public body were set up here, would that provision be more limited in terms of making that appointment? I really cannot see why that power is required, given that we are all finding it quite hard to give an example of where it would be used.

Mr Pauley: The example that you describe was much more akin to a public appointment. If he was to be paid, and I imagine that he was, it was certainly a public appointment as opposed to an appointment to the Civil Service.

Many people sit on advisory panels for the greater good. They provide those services for some hours per week for free, or it might be related to another role that they have. There are numerous scenarios where you can have advice and expertise. Experts write to us every day with their views about things that should be different.

Mr O'Toole: There is no rule that says that a special adviser has to be a party member or even a party sympathiser.

Mr Pauley: No.

Mr O'Toole: It just happens to be the case here that DUP, Sinn Féin, SDLP, UUP special advisers tend to have worked for, sympathise with or have been councillors for those parties, but that is not always the case in special adviser appointments. It could be that an urgent appointment is wanted. If

the First Minister and deputy First Minister decide that they need particular expertise, whether from David Gordon or anyone else, they could appoint a special adviser, and that person would have to comply with the special adviser code or the updated legislation that Mr Allister is putting forward, if it passes. That appointment could be made, could it not? Someone could be appointed in that way.

Mr Pauley: I believe so. When developing and considering the salary scales of special advisers, we looked at other jurisdictions. Pay bands with a difference of up to three points took into account that special advisers might bring expertise as well as a political perspective. Indeed, some of our special advisers, as well as being party members, have experience and a background in the area to which they have been appointed.

Mr O'Toole: I will be quick, because I know that Seán wants to come in. Is there a degree of circularity in saying that you —? Actually, I will leave it. I have asked enough questions.

Mr Lynch: Most answers today have provided clarification. Bill made a very good point, which was that, whether you have legislation or codes, if there is a culture of bad behaviour, that is different and will not change. Mr Wells asked, "What do you do with a Minister?". We know the case that he is talking about. Elections are the final arbiter in such cases, and the people of North Belfast made a decision on the Minister.

Mr Wells: Wrong Minister.

The Chairperson (Dr Aiken): Hold on. Go ahead, Seán.

Mr Lynch: I just wanted to say that it does not matter whether we have codes or legislation.

Mr McHugh: Tá failte romhaibh anseo inniu fosta. You are very welcome here this afternoon. I want to reinforce Seán's point. A lot of our discussion has been about the appointment of special advisers. Matthew expanded on that. In many respects, a special adviser does not have to have a particular qualification. People can be experts and play significant roles in certain fields without having GCSEs, A levels, degrees or the like.

If we move away from looking at the appointment of advisers and qualifications, what is required out of New Decade, New Approach is a change of culture. You more or less confirmed that. A member referred to Mr Brimstone. Whether it is Mr Brimstone or Mr Johnston, that reflects a culture, and it is the very thing that has to change in every respect. The same member talked about Sinn Féin having two special advisers on the Falls Road. We do not have any special advisers in any office on the Falls Road operating independently of this institution in any way. I refute that entirely.

Mr Catney: This is not an attack, but, in the private sector, I am telling you, for £85,000, I would want people to have all the qualifications, skills and necessary experience that they could have.

Is there anything in the code of appointment to stop a Minister from appointing a chum and bringing him in with no qualifications, special skills or experience? There is nothing, is there?

Mr Pauley: There is nothing in there about what a Minister does before he informs the Civil Service of the appointment or about what he considers the job and role to be. The Civil Service role begins when we are told of the appointment, and issues such as that are taken into account when we determine the salary.

Mr Catney: I am speaking not only about the Minister of Finance but about all Ministers. I am just looking for good government.

Mr Allister raised this point, as did the former Commissioner for Public Appointments, who stated:

"as we have seen with the publication of the Code of Appointment for special advisers ... if a code is basically silent on procedures then it can be very easy to comply with".

What is your response to that?

Mr Pauley: The code of conduct for special advisers begins, very deliberately, by setting out the valuable role that special advisers can play and are expected to play in good government. The code

sets out what special advisers can bring to the role and how they interact with the Civil Service and Ministers. Advisers can go to certain places that are difficult for the Civil Service to go to in place of Ministers. They play a very valuable role in decision-making and the process of good government here.

Our expectation is that the job description for special advisers is the code of conduct for special advisers. Paragraphs 1 to 4 of that document set out the role that they are supposed to play. The code also details some roles that they cannot play. Our expectation is therefore that the people who are recruited to the role can perform those functions. The merit principle is set aside for spads, because it is accepted, I think by all, that special advisers should have a similar political affiliation or outlook to their Minister so that they can advise him or her. Special dispensation from the merit principle is allowed, but, as you said earlier, that could mean that they have no qualifications at all. I cannot, however, foresee a scenario in which Ministers would want to do that, as they would be left with a fistful of Executive papers twice a week, with little advice given on them.

Mr Catney: Can we get a criminal offence out of your code? Is there a tariff or are fines applied?

Mr Pauley: There are sanctions that can be applied to special advisers if they behave badly, in different ways. Most of the sanctions relate to the fact that complying with the special adviser code and the Civil Service code of ethics is part of a special adviser's contract. We received questions on the ways in which people can be disciplined for misconduct.

The Chairperson (Dr Aiken): It is up to the Minister to terminate the contract.

Mr Pauley: Normally, we would expect an investigation to be carried out if it is about something that happened in the Civil Service.

The Chairperson (Dr Aiken): The Minister is ultimately responsible for the spad.

Mr Pauley: Yes.

The Chairperson (Dr Aiken): If the spad has therefore done something that breaches the Civil Service code of conduct, he is, by your legal definition, in breach of contract.

Mr Pauley: Yes.

The Chairperson (Dr Aiken): He is in breach of contract. Who therefore terminates his contract? Is it the Civil Service or is it the Minister?

Mr Pauley: Ultimately, it has to be the Minister who does it, because he is the appointing authority. The last question in, I think, a series of five about one of the subsections was, "Would it be acceptable for no action to be taken?". Our response is a clear no. The Civil Service would have to take the issue further. There are certain behaviours and things that we cannot allow in our buildings. If special advisers are working among, with and alongside our employees, there are standards of behaviour and conduct that must be observed that are slightly different from political standards.

The Chairperson (Dr Aiken): Let us say that somebody breached cybersecurity or computer security or did something along those lines that is a very definite breach of the Civil Service code. Would you be allowed to exclude that special adviser from the building or the system, or would that be a ministerial decision?

Mr Pauley: The ultimate application of the sanction would have to be by the Minister.

The Chairperson (Dr Aiken): I appreciate that this has been quite a long day —

Mr Pauley: You are all right.

The Chairperson (Dr Aiken): — but there is an issue on which we have to ascertain the answer. Obviously, if the Minister does not impose the ultimate sanction, the Minister then comes before the Assembly, but what sanctions can the Assembly impose on the spad who is in breach of the code of conduct? The way in which I read the ultimate sanction is that, if the Minister does not do anything

about the spad, he or she somehow ends up in front of the Assembly, and the Assembly then decides. What is the sanction that the Assembly can use?

Mr Hughes: I would have to go back to the Northern Ireland Act, to, I think, section 30.

The Chairperson (Dr Aiken): Yes. I think that it is.

Mr Hughes: My recollection is that it is suspension of up to 12 months and that that can be renewed, but apologies if I cannot say that with absolute confidence. It has been a long time since I have looked at the Act. The sanction is therefore removal from office for a period.

The Chairperson (Dr Aiken): It would have to be done by cross-community vote in the Assembly.

Mr Pauley: Yes.

Mr Hughes: There is certainly a threshold.

The Chairperson (Dr Aiken): There would be a considerable threshold. We just needed to ask that.

Pat, are you finished?

Mr Catney: I was not. Thanks anyway. I want confidence built into the foundations of what we are trying to do as legislators.

I cannot see where the policing is here if the issue goes back to a Minister. As you have stated, Ministers appoint their special advisers, and spads then follow their Minister's direct line. There is no guarantee that we, as a legislative Assembly, can overturn or overrule a decision or speak of any wrongdoing that has happened.

I am looking for sanctions, tariffs or some accountability, and there does not seem to anything available. I am sorry, Chair, and this is an observation, but I find myself supporting Mr Allister's Bill more, the more that I hear.

Mr Pauley: The sanctions that can be applied to any civil servant are set out in our handbook. They range from a verbal warning to a written warning, right through to a formal written warning. Warnings can be about attendance or for behaving inappropriately by bullying staff. There are overarching degrees of misconduct. There are also elements about email security and being in breach of the code around gifts and hospitality.

The Chairperson (Dr Aiken): This speaks back to the role of a consultant. If you bring a consultant into an organisation, that consultant abides by the terms, rules and conditions of the organisation. The difference here is that, if a spad does something wrong and breaches the Civil Service code, unless the Minister agrees to sanction the spad and agrees with the sanction, the process goes all the way to the Minister being hauled in front of the Assembly, and the Assembly has to go through the entire process in order to get to a cross-community vote. That is the problem with the code.

Mr Pauley: If we all behave differently —.

The Chairperson (Dr Aiken): Yes, but we do not, so —.

Mr Pauley: If our parties here say that they are not going to behave differently, yes.

The Chairperson (Dr Aiken): We have had an example. I am really sorry for keeping you for this length of time, but this is important legislation. I started off quite agnostic about the Bill. The more evidence that I have heard, the more that I am becoming convinced that it is important that we go down the legislative route, as Pat said.

We are trying to extract emails from the Department. We are trying to do all sorts of things, but we are not seeing that cultural change. Anybody who comes to the Committee says every time, "It's a cultural change, and everything's changing". I will put my hands up. I am not being party political about this. I

am somebody who really wants to see Northern Ireland work and work well, and I am not seeing that change of culture. That is what bothers me.

Bill and David, thank you very much indeed. I know that we have probably been slightly more robust with you than we would like to be. Please take an apology from me for that. Thank you very much for coming to the Committee, and we look forward to seeing you again soon.

Mr Pauley: Thank you.

Document 7: Excerpt Assembly Plenary Sitting 2 February 2021



**Official Report
(Hansard)**

Tuesday 2 February 2021
Volume 135, No 6

Session 2020-2021

and the deputy First Minister to accept and make a commitment to follow through on the Committee's recommendation. I also ask colleagues in the Committee for the Executive Office to read the relevant section in the Committee's report and to take steps to help to ensure that we achieve a position where the Office of the Commissioner for Public Appointments can truly be considered to be independent.

Finally, I thank the Committee staff for their work in supporting the Committee through its consideration of the Bill in these extraordinary circumstances. I thank the Bill Clerk, Claire McCanny, for her advice to the Committee and the RalSe researchers for their first-rate work and support in preparing papers and presentations. I thank the organisations and individuals who provided evidence to the Committee in order to enable members to scrutinise the Bill and help to shape what is before us today.

That concludes my remarks as Chairperson of the Committee for Finance. I will now make a few short remarks as the Ulster Unionist Party finance spokesman and party leader. The Ulster Unionist Party supports the Bill, but we approached it in the beginning with an open mind because we believed that, as part of the discussions that led up to New Decade, New Approach, we would be in a position where significant reform would be brought forward by the Executive on how the Northern Ireland Assembly and the Executive are run.

As we worked our way through our evidence sessions, it became quite clear that there seemed to be a reluctance on the part of the Department of Finance and the Executive to make the changes that were needed. Indeed, we had the rather unedifying experience of being given evidence by senior officials in the Department of Finance who told us how guidelines were much more appropriate and that discussions had been held during the New Decade, New Approach negotiations. I was involved in those negotiations, which bore no relation whatsoever to what those discussions eventually became. At the same time, our Committee had to consider potentially compelling the Minister and the Department to give us the information that we sought.

There is, very definitely, a need for legislation, and I encourage all parties in the Assembly to realise that the credibility problem that the Northern Ireland Assembly and the Northern Ireland Executive have, and the very process of democracy in Northern Ireland, mean that the safeguards that exist in other areas cannot

apply here. We need the appropriateness of legislative force behind what we do. The Ulster Unionist Party fully supports the Bill.

Mr Frew: I support the process that the Bill has seen; it has been through the democratic wringer. I commend that process and the democratic accountability that makes a Bill as fit for purpose as possible.

I also thank the Bill's sponsor for introducing the Bill. It is a healthy sign that Members, whether as part of their party or independents or simply as private Members, can introduce a Bill and can do so with the support of the Bill Office, Assembly staff and the Speaker's Office. It is up to us to vote on it and to support it or not. That is democracy. I welcome that system.

A Member: Will the Member give way?

Mr Frew: I will, but I do not want to leave yet what I am saying about the Bill's sponsor. It is a bit unnerving when you hear the Bill's sponsor talk in very conciliatory terms. That was welcome, and I commend his workmanlike approach, his respect for all members of the Committee, and, indeed, his respect for all Members of the House as his Bill has progressed through its stages. Sometimes, Members have been more focused on the Bill's sponsor than on the Bill, and that is regrettable. We are now at the end of the process and look forward to the Bill, hopefully, passing today and becoming law.

I thank the Bill's sponsor. I have enjoyed working with him and all the members of the Committee in scrutinising the Bill. It was very useful to have the Bill's sponsor on the Committee. The Committee on Procedures should look at that very carefully, because it is an important point. Having the Bill's sponsor on the Committee adds something to the Bill's sponsor, but it also gives a greater awareness to the Committee of the questions that we may ask officials and the answers that they provide. Having the Bill's sponsor, who has known the Bill inside out from the get-go, asking pertinent questions of witnesses — departmental officials, outside bodies or vested interests — and hearing their responses was very informative in shaping dialogue, questions and commentary throughout the process.

The Assembly should look at allowing a Bill's sponsor a place, even if it is in an ad hoc fashion, on Committees to ask questions. They may not necessarily have the right to vote, but they should have a presence and be allowed to attend and ask questions. That would create a

Document 8: Irish News Article by Tom Kelly, 22 June 2020

18 MONDAY JUNE 22 2020
www.irishnews.com

editor@irishnews.com

THE IRISH NEWS

Pro fide et patria

OPINION

Leaders
must speak
out against
bigotry

C OVID-19 has dominated every aspect of our lives for the last three months and beyond but it does not mean that other serious issues on a range of fronts have simply gone away.

Sectarianism is seldom far from the surface in parts of Belfast and elsewhere, often at this time of year, and its dark shadow has sadly appeared again in recent days.

The Grove playing fields in north Belfast is a publicly owned shared space which is open to all, and has been a hugely important facility for both adults and children during the pandemic, but acts of intimidation against anyone vaguely connected to the GAA have been escalating there over the last week.

It needs to be stressed that no section of our divided society has a monopoly on bigotry, and people from all backgrounds have been the victims of sporadic and entirely unacceptable incidents in the north of the city, but it is the level of organisation involved at the Grove which is disturbing.

Firstly threatening banners targeting GAA members appeared at the park, then a group of up to 50 men assembled there and ordered anyone wearing particular jerseys to leave immediately, and a series of provocative social media messages have followed.

The playing fields should be open to all sports, but what makes the episodes at the Grove even more sinister is that it does not have GAA pitches and there is no evidence that any form of organised Gaelic games activity has ever taken place there.

Loyalist elements have instead aggressively objected to individuals attending soccer training sessions while wearing GAA or Glasgow Celtic tops or even casually picking a hurling ball across the grass.

This represents blatant sectarianism, and it is essential that it is firmly rejected by community leaders and elected representatives, but sadly some have remained silent and others have offered bland statements suggesting that both sides somehow share equal blame.

It would be appropriate if senior politicians from all the main parties made it clear that everyone is welcome at the Grove playing fields, regardless of their personal sporting affiliations.

There will also be a firm expectation that the police will comprehensively investigate all the developments there over the last fortnight and ensure that those who have broken the law are brought before the courts.



REACTION: UUP leader Steve Aiken now appears as the angry man of politics who gets 'outraged' a lot

Public interest is not
served by grandstanding

L IKE most people I am bored with semi-lockdown. I even find myself watching the Arlene and Michelle Show for evidence of a sneaky makeover or a trim but no, our doughty leaders brave the bi-weekly media maelstrom unvarnished in solidarity with the rest of us.

So welcome news that barbers, hairdressers and beauty salons are to reopen, even if a visit may require a radioactive spacesuit. There is a 'Price is Right' feel about aspects of the reopening process as the public demands, so the politicians follow as long as we remember to wash our hands!

Over the past few months, I have taken exercise, read books, worked, written columns, cooked, created travelogues, cleaned, shielded, painted, planted, created date nights, studied mindfulness and even tried yoga. It was therefore inevitable that I would eventually get around to watching NI Assembly TV. Riveting viewing it is not.

Perhaps my choice was unfortunate. I chose the Finance Committee chaired by Steve Aiken, Ulster Unionist and former submarine commander. Unlike a submarine, the inmates are not in close proximity as all are appropriately social distancing. In a report about UK Select Committees, the Institute for Government said "some failed to understand the difference between making a headline and making an impact".

After nearly three hours of watching the proceedings on June 17, I could not help but feel if this committee achieved either or understood the difference.

Two senior civil servants from the Department of Finance were present, taking questions and providing answers to those listening. To this casual observer, there was an apparent lack of

Tom
KELLY

civility or respect towards them. Public scrutiny must never descend into public put-downs.

Occasionally, the chair intervened to rein in some comments by members but then also undermined those rebukes with his own side quips.

Steve Aiken came into the leadership of his party with onlookers being quite optimistic. Here was an individual with a professional background, choosing public life and drawn in by the secular and inclusive unionism of former UUP leader, Mike Nesbitt.

Aiken supported remaining in the EU because it was right for Northern Ireland and he bravely said he would break the mould by running candidates in all Northern Ireland constituencies, only to embarrassingly back down on that pledge.

Subsequently, his party was eclipsed in so many unionist constituencies by the

Alliance Party. Aiken now appears as the angry man of politics who gets 'outraged' a lot.

During the proceedings, he hectored the civil servants then later apologised.

The conduct of any meeting is often set by the style of the chairman. Aiken's approach seems more confrontational than inquisitorial.

Another committee member remarked that a witness looked uncomfortable as he answered their questions. It was not surprising, I felt uncomfortable watching. Cringing with embarrassment as the hand of the witness trembled on camera.

To his credit, Jim Allister is Jim Allister, forensic in style; others less so.

Civil servants are well able to cope with the content of any questions relating to policy. Politics is not their bailiwick.

Ironically, the politics behind the new policy on executive and spud reform has been agreed by the entire executive, whose ministers cover seven of the nine members of the finance committee.

Constant barracking of civil servants to say whether they agree or not with their minister is inappropriate.

Civil servants at hearings represent the views of their minister. Politicians know that and if they don't they should. A committee is not a star chamber nor is it the Nolan Show. Public interest is not served by grandstanding.

The Institute for Government which encourages good practice also said of Select Committees that they don't always appreciate or seek feedback. Mr Aiken and his committee colleagues would do well to watch re-runs of their own proceedings.

Aspiring to have civil servants 'quaking in their boots' is no measurement of political performance.

*Civil servants at hearings
represent the views of their
minister. Politicians know that
and if they don't they should. A
committee is not a star chamber.
Nor is it the Nolan Show*

Document 9: Newsletter article by Adam Kula, 28 October 2020

NEWS

News Letter Pg 10

WITNESS AT STORMONT COMMITTEE SAID HE FELT 'INTIMIDATED'

Senior civil servant levels 'bullying' claims against UUP and DUP MLAs

BY ADAM KULA
adam.kula@newsletter.co.uk
@News_Letter

One of NI's leading civil servants has lodged formal complaints about the behaviour of two MLAs, stating that they left him feeling intimidated.

Bill Pauley is head of the Strategic Policy and Reform Directorate, a group within Conor Murphy's Department of Finance (DoF) which is tasked with improving performance across the whole civil service.

He came before Stormont's finance committee on June 17, and has now complained about the conduct of committee members Jim Wells and Steve Aiken.

The focus of the hearing was Jim Allister's 'Functioning of Government (Miscellaneous Provisions) Bill', a piece of law which the TUV man says is aimed at eliminating the kind of government culture which led to the RHI catastrophe.

It would – among other things – make it an offence for ministers, civil servants or special advisors (Spads) to use private email accounts to keep government business of the official record, and place curbs on the appointment of



Bill Pauley during the June committee hearing

Spads (whose conduct was put under the spotlight during the inquiry into RHI).

Mr Pauley indicated that Sinn Féin MLA Mr Murphy believes a mere code of conduct – rather than an actual law – would "sufficiently address the issues".

Mr Pauley at one point referenced the 'New Decade New Approach' deal (which

had emerged out of long-running political talks, and led to Stormont being revived), saying the deal had "recognised the need for a new approach".

UUP leader Dr Aiken – the committee chairman – interjected to say that the Ulster Unionists believed the deal had been too weak on reforming Stormont so he had "never signed up" to its provisions.

"Let us make that abundantly clear right now," said Dr Aiken. "I do not want to hear that put in front of the committee again. I am sorry for being angry, but I am getting really fed up with this."

The quizzing of Mr Pauley continued, with the civil servant repeating that "we do not believe that legislation is required in this area" – and also

stressing he was there to repeat Mr Murphy's view, not his own opinions.

At one point in the questioning, DUP MLA Jim Wells asked Mr Pauley: "Do you want to phone a friend?" (He then withdrew the remark with an apology.)

Mr Wells suggested that Mr Pauley looked so uncomfortable because he did not relish

the idea of "dying in a ditch" in order to defend the idea that no new legislation is needed for reforming Stormont – adding that the best "deterrent" for bad behaviour would be to have both a written code and a new binding law, in case the code ended up being ignored.

Sinn Féin MLA Maolisa McHugh said the behaviour towards Mr Pauley had been "downright rude" during the evidence session.

In his complaint to Stormont's standards commissioner, Mr Pauley wrote he had been "treated with a lack of respect" and was "subjected to unreasonable and excessive personal attack" and "personally threatening behaviour".

The "bullying behaviour" made him "extremely uncomfortable" and "intimidated".

The News Letter contacted both Mr Wells and Dr Aiken, but neither would comment.

Standards Commissioner Dr Melissa McCullough said: "The law prohibits me from confirming or denying that a complaint against a particular MLA has been received or from disclosing any information on any complaint under investigation."

● See a full account of exactly who said what at www.newsletter.co.uk

Document 10: Documents received from Finance Committee



Committee for Finance

Dr Melissa McCullough
Northern Ireland Assembly Commissioner for Standards
Room 283 Parliament Buildings
Ballymiscaw
Belfast BT4 3XX
Elizabeth.mckenna@niassembly.gov.uk

25 February 2021

Our Ref: 2021: 114

Dear Dr McCullough

At its meeting of 24 February 2021, the Committee for Finance considered your recent correspondence requesting a copy of the documents referenced in the minutes of proceedings of the Committee for Finance on Wednesday 22 January 2020.

The Committee agreed to reply to you providing the information that you had requested. The following is appended:

- **Appendix A** - Committee approach to preparation and questioning (Item 7)
- **Appendix B** - Agreed protocol on conduct and courtesy at Committee Meetings. (Item 8)
- **Appendix C** - A copy of the Guide to Declaration of Interests (Item 12)
- **Appendix D** - A copy of the Guide to the Role of Committee Chairpersons (Item 13).

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

Peter McCallion

Peter McCallion
Clerk to the Committee for Finance
Enc.

Committee approach to preparation and questioning

The purpose of each individual Committee session will determine the type of preparation and approach to questioning that are required. The purpose of the session could be:

- To gather initial evidence from a stakeholder or the Department on a particular topic;
- To scrutinise and debate with a stakeholder or the Department evidence already in the Committee's possession on a particular topic; or
- To deliberate on and evaluate evidence received from stakeholders or the Department to allow the Committee to form a view or take a decision.

In terms of the practicalities relating to questioning, options include:

- Members will be taken in the order they indicate or alternatively the deputy Chair will be called after the Chair's opening question(s).
- Members will agree to limit the number of supplementaries they ask, and if necessary, the Chair will allow a second round of questions, once everyone has had the chance to ask an initial set of questions.
- Members will agree to limit the length of any opening statement they make, and will move quickly to a question.
- Members will agree not to repeat a question that has already been asked and answered.

Depending on the purpose of the session, Members may wish to consider how they wish to prepare for the session, both individually and collectively. In addition, the Committee will wish to agree a general protocol for questioning witnesses.

Preparation for meeting

There are various options available to Members in terms of preparing in advance of evidence-gathering or scrutiny sessions, to ensure that they are aware of the key issues.

- Preparing individually based on the analysis provided by the Clerk and associated papers.
- Preparing with party colleagues based on the analysis provided by the Clerk and associated papers.
- Arranging a short meeting with the Clerk, either as individuals or with party colleagues in the few days before the meeting.
- The Committee holding preparatory sessions during committee meetings the week before a formal evidence session in order to review key research findings, and gaps/weaknesses/inconsistencies in the evidence. The Chair and/or Clerk can brief the Members on the objective of the forthcoming session, the key information that needs to be obtained from the witnesses, any discrepancies or gaps in the evidence already obtained from other witnesses on the same topic, and the witnesses' likely approach to dealing with questions from Members.

- The Committee holding a pre-meeting directly in advance of the formal meeting (5 - 30 minutes, depending on the issues). The Chair and/or Clerk can brief the Members on the objective of the session, the key information that needs to be obtained from the witnesses, any discrepancies or gaps in the evidence already obtained from other witnesses on the same topic, and the witnesses' likely approach to dealing with questions from Members.

Training for Members in the previous mandate demonstrated that collective preparatory sessions can provide particular value for evidence sessions with key witnesses or before scrutiny sessions on critical or complex issues.

Questioning witnesses

There are various options available to Committees in terms of the approach they use to question witnesses.

- Members agree in advance of the session to focus their questions on a particular theme or aspect of the issue (key themes and issues will be outlined in papers from the Clerk and/or RaISe to the Committee). This could be done at a pre-meeting or by Members e-mailing the Clerk in advance of the meeting.
- Members agree to work in pairs on a particular theme, with one asking the lead questions and the other the supplementaries. This could be done at a pre-meeting or by Members e-mailing the Clerk in advance of the meeting.
- Members agree a system to indicate that they want another Member to come in with supplementaries on the theme they are pursuing with a witness, perhaps to allow the Member time to develop their next line of questioning.
- Members agree in advance of the session who will ask specific questions and in what order, if questions have been prepared by the Clerk.
- The Chair will ask any questions which have been missed or not fully answered by the witnesses at the end of the session.
- Members will not agree in advance of the session who is focusing on a particular theme/question and instead Members will simply indicate to the Chair that they wish to ask a question.

There is significant benefit for committees in considering and agreeing to the purpose of a session and the approach to be used in advance of the session commencing.

Sample protocol on conduct and courtesy in committee meetings

1. Provide an apology in advance when Member is aware that they will not be able to attend a meeting.
2. Arrive in time for the start of the meeting.
3. Remain in a meeting once an evidence session or briefing has commenced.
4. Ensure mobile phones are on silent mode and keep them as far away from the microphones as possible to avoid interference with the audio system.
5. Use tablet devices discreetly and in a way which does not interfere with proceedings, and be aware of the cameras when using the tablet device.
6. Be aware of general noise levels and refrain from conducting private conversations with other members during evidence sessions.
7. Treat witnesses, members of the public, staff and other members with respect and courtesy.
8. Respect the authority of the Chairperson.
9. Respect Committee decisions and maintain confidentiality when dealing with matters in closed session.

Appendix C

FROM: Jim McManus, Clerk to the Committee for Finance
TO: Chairperson, Deputy Chairperson and Committee Members
DATE: 17th January 2020
SUBJECT: Declaration of Interests in Committees

1. Standing Order 69(5) states:

“A member who has:

(a) A financial interest in any matter; or

(b) A relevant interest in any matter, must declare that interest before taking part in any proceedings of the Assembly relating to that matter.”

2. The requirement to declare an interest complements the registration requirements and applies to almost every aspect of your Assembly duties, including work on committees. The requirements for declaration cover a broader range of interests than registration.
3. Members of committees are required to declare, at various times, any relevant financial or other interests which relate to the work of any committee of which they are a member. In particular, **a financial or other relevant interest should be declared if it might reasonably be thought by others to influence your approach to the matter under consideration** (in this case, by the Committee).
4. The requirements for declaration include the following types of interests which relate to a matter under consideration: financial interests which have been registered; past financial interests (normally limited to those active within last 12 months); indirect financial interests (such as the financial interests of a third party); expected future interests; financial interests of a sort which do not require registration; and any non-financial interests.
5. At your first meeting of a Committee you should declare financial and other interests relevant to the remit of the Committee. In addition, you should declare financial and other relevant interests as and when they arise on the Committee (e.g. when deciding on the subject of an inquiry, during evidence sessions involving witnesses to whom the interest is particularly relevant).
6. Circumstances may arise when you should consider whether, on the grounds of conflict of interest, you should stand aside from the Committee proceedings relating to the matter. In that regard, you should note that, under Rule 1 of the Code of Conduct, all Assembly members are required to 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.

7. Members should also be mindful that, in addition to the rule on declaring interests (Rule 5), other rules contained in the Code of Conduct are applicable when sitting on committees. These include, for example, the rules prohibiting paid advocacy (Rule 7 and Rule 8). **It should be noted that failure to comply with the rules on registering and declaring interests and on paid advocacy may be an offence under section 43 of the Northern Ireland Act 1998.**
8. Members should refer to “The Guide to the Rules relating to the Conduct of Members” for further information on declaring interests (Chapter 2) and on paid advocacy (Chapter 3). Members will already have received a copy of the Code of Conduct and Guide to the Rules. Further advice and guidance is available from the Clerk of Standards, Mr Shane McAteer in Room 254, Parliament Buildings.

Jim McManus Clerk to the Committee for Finance

Guide to the Role of Committee Chairpersons

Introduction

1. The role of a committee chairperson is crucial to the effective operation of committees whether statutory, standing or ad hoc. It is vital therefore that chairpersons prioritise this role. When appointed as chairperson to a committee, the Speaker will write to the member detailing their roles, responsibilities and obligations as a committee chairperson. Some of the main responsibilities of chairpersons are as follows:
 - To uphold the standing orders and procedures governing the operation of the committee and encourage conduct and behaviours conducive to the effective operation of the committee
 - To prioritise their duties as committee chairperson and ensure that they are adequately prepared for committee proceedings
 - To represent the committee publicly, in the media and during Assembly Business
 - To act fairly and objectively at all times
 - To seek to ensure the engagement and commitment of all members of the committee and to encourage members of the committee to develop the knowledge and skills necessary to discharge their duties effectively
 - To promote openness and transparency in committee proceedings
 - To develop the strategic direction of the committee and ensure that delivery of agreed priorities is subject to regular review
 - To ensure that the committee is provided with the expert advice, information, evidence and support necessary to fulfil its agreed priorities
2. This paper includes further details of (a) the procedural role of the chairperson as set out in the Standing Orders of the Assembly or in legislation governing the operation of the Assembly and (b) roles and responsibilities falling to a chairperson to ensure that the committee discharges its duties effectively.

(a) Roles in Standing Orders

3. Chairpersons and deputy chairpersons of statutory and standing committees are appointed using the d'Hondt system as required by the Standing Orders of the Assembly. In the absence of the chairperson, the deputy chairperson will assume responsibility for undertaking the roles detailed below.

Quorum

4. If, at any time, during the sitting of a committee, the quorum of members is not present, the clerk of the committee shall call this to the attention of the chairperson. The quorum for all but one of the statutory and standing committees is five (the Audit Committee's quorum is two), except when no decision is taken or question put, when the quorum is four. The chairperson must suspend the proceedings of the committee until a

quorum is present, or adjourn the committee to some future day. (Standing Order 46(6)).

Voting in the Assembly Chamber

5. Where it is known to a committee that a vote of any kind is to be taken imminently at a sitting of the Assembly in plenary session, the chairperson must suspend the proceedings of the committee to enable members to vote. (Standing Order 62).

Media access to committee proceedings

6. In relation to committee proceedings, news media are only allowed into places reserved for them by the chairperson. They are not allowed to have any item in a public area which the chairperson considers could interfere with the preservation of order, and the chairperson may, in the interests of preserving order, require them to leave (see Standing Order 67). Increasingly, committee meetings are live streamed. However, if this arrangement is not in place it is the convention that chairpersons will seek the prior agreement of the committee to any request from a member of the news media, to film or record any part of a committee meeting.
7. Should members of the press indicate that they wish to take photographs or film parts of a public committee meeting, the committee clerk will inform the chairperson of the request.

Public access to committee proceedings

8. In relation to committee proceedings members of the public are only allowed into places reserved for them by the chairperson. They are not allowed to have any item in a public area which the chairperson considers could interfere with the preservation of order, and the chairperson may, in the interests of preserving order, require them to leave (see Standing Order 66).

Matters of joint concern

9. Where legislation or other subject matter due for consideration appears to fall within the remit of more than one committee, it may be dealt with in the following ways (Standing Order 64):
 - By one of the relevant committees taking the lead and disposing of the matter;
 - By the entirety of 2 or more committees sitting concurrently;
 - By an ad hoc joint committee established for that purpose.

Disposal by one committee

10. In accordance with Standing Order 64A, the chairpersons of the relevant committees are required to consult and agree upon which committee the matter should fall to for disposal. Where they are unable to agree, the chairpersons affected should make their views known to the Business Committee which shall rule on which committee the matter should fall to for disposal.

Committees sitting concurrently

11. In accordance with Standing Order 64B the relevant committees are required to consult and agree that the matter will be disposed of by the committees sitting concurrently and operating as a single committee. The relevant committees must then formally record the decision to sit concurrently in their separate committees. The relevant committees should also formally record a completion date for this type of joint committee.
12. With regard to the chairing arrangements for committees sitting concurrently, the chairpersons of the relevant committees are required to consult and agree that:
 - One of them shall act as chairperson and another as deputy chairperson; or
 - The posts of chairperson and deputy chairperson shall be rotated between them.
13. In making the decision the chairpersons should prefer that the person acting as chairperson should not be of the same party as the Minister who the committees sitting concurrently may advise or assist. The provision in Standing Orders that prohibits a member from being a chairperson of more than one committee (statutory or standing) does not apply to committees sitting concurrently. Where they are unable to agree, the chairpersons affected should make their views known to the Business Committee which shall rule on the matter.

Establishment of a joint committee

14. In accordance with Standing Order 64C the relevant committees are required to consult and agree that the matter will be disposed of by the establishment of an ad hoc joint committee. The relevant committees must formally record the decision to ask for an ad hoc joint committee in their separate committees and then make a joint request to the Business Committee who will bring a motion to create the ad hoc joint committee to the Assembly for approval. The ad hoc joint committee will have a designated remit, terms of reference and timeframe.
15. Membership of the ad hoc joint committee shall be drawn from the memberships of the relevant committees. The ad hoc joint committee shall appoint its own chairperson. If it fails to do so, it should make its views known to the Business Committee which shall rule on the matter.

Legislation

16. Guidance on the Assembly stages of a bill is provided in Standing Orders. The chairperson may table a motion seeking the extension of the Committee Stage of a bill - (Standing Order 33(4)).

Evidence under Oath/Affirmation

17. Standing Order 72 provides that in addition to the Speaker a deputy Speaker, committee chairperson, deputy chairperson, Clerk/Chief Executive, Director of Parliamentary Services, a clerk assistant and committee clerk may administer an oath/affirmation and require any person giving evidence in the proceedings of the Assembly or its committees to take such an oath. Such practice is not usual.
18. The decision to require a witness to take an oath or affirmation would be susceptible to judicial review, for example, on the grounds of unreasonableness, irrationality or illegality.
19. Under no circumstances should a committee take evidence under oath/affirmation without providing prior notice to a witness.
20. Before a committee makes a decision to take evidence under oath/affirmation advice must be taken from the clerk assistant and the Head of Legal Services as knowingly making a false statement whilst under oath/affirmation may constitute a criminal offence. The committee should agree and record in the minutes of the proceedings the reason(s) it has decided to take evidence under oath/affirmation.
21. There are a number of steps that should be taken in advance of administering the oath/affirmation to ensure that the process is fair to the witness and the committee clerk can advise on the procedure.
22. In the context of the potential implications for a witness of knowingly making a false statement under oath/affirmation, it is more likely that the committee will receive requests for legal representation or for witnesses to have someone in attendance to support them during the evidence session. It is for the committee to decide whether to agree to such a request. However, in relation to any request for legal representation the committee may also wish to seek legal advice and consider what if any legal representation it may require.
23. When taking evidence under oath, the chairperson has an important role in ensuring that questions relate to the matter(s) notified to the witness, in advance of the evidence session. Should witnesses feel that questioning is not relevant or appropriate they should ask the chairperson for a ruling.
24. If a person is required to give evidence under oath/affirmation, they will be required to take the oath or affirm on each occasion when they attend before the committee in relation to the particular item of business. If the meeting suspends, but resumes on the same day, the oath/affirmation stands; it does not need to be re-administered.

Contempt of court under the strict liability rule

25. Section 50 of the Northern Ireland Act 1998 affords protection from the risk of strict liability contempt of court for publications made in the context of Assembly proceedings relating to legislation.

26. A person may be guilty of strict liability contempt of court under the Contempt of Court Act 1981 where they publish any matter which creates a substantial risk of serious prejudice to particular, active, legal proceedings – there is no requirement to show that the person intended to cause prejudice.
27. The committee clerk can advise on the effects of, and protection offered, by Section 50 and, if there is any doubt, the clerk will consult the Assembly's Legal Services.
28. The risk of prejudice to active legal proceedings arising in the course of committee proceedings (and the associated risk of committee members committing a contempt of court) is managed by the committee chairperson's application of the sub judice rule in Standing Order 73 which is discussed below.

Application of sub judice rules to committees

29. The sub judice rule required by section 41 and Schedule 6 of the Northern Ireland Act 1998 is intended to protect the distinct constitutional roles of the legislature and the court. Generally, when a matter is sub judice (under consideration by a court) it should not be referred to in committee proceedings. The sub judice rule is contained in Standing Order 73 which provides that any matters in respect of which legal proceedings are "active" should not be referred to in committee proceedings (except to the extent permitted by the committee chairperson). It does not apply to contemplated or hypothetical legal proceedings, nor does it apply to investigations prior to their constituting "active" legal proceedings.
30. The committee clerk can advise on the circumstances when proceedings become, or cease to be, "active" but legal advice should be sought as required.

Defamation

31. Under Section 50 of the Northern Ireland Act 1998, for the purposes of the law of defamation, absolute privilege applies equally to:
 - the making of a statement in proceedings of the Assembly; and
 - the publication of a statement under the Assembly's authority.
32. The term 'proceedings of the Assembly' includes the work of committees. A report ordered to be published by a committee would attract absolute privilege, as the report would be published "under the Assembly's authority." However, it cannot be assumed that a press release agreed by the committee is covered by Assembly privilege. In relation to press conferences, even if members stick to the content of the press release, it is unlikely that an action for defamation could be defended on grounds of absolute privilege since the statement would not be made "in proceedings of the Assembly".

33. This privilege also covers all evidence given by a witness to a committee, whether in oral or in written form. As a result, no action may lie in defamation against a witness in respect of statements, whether written or oral, to a committee. However, committees may be reluctant to provide a platform to allow potentially defamatory remarks and, should concerns be raised, the committee may wish to adjourn to consider how it wishes to handle such evidence. The committee will also need to consider issues relating to the publication of the evidence.

34. Informal proceedings, such as stakeholder meetings or events or conferences do not attract absolute privilege.

(b) Roles in ensuring the effective operation of the committee

Order and conduct

35. The chairperson must ensure that order is observed in committee meetings.

36. Chairpersons should encourage committees to agree a protocol on the conduct and operation of committees to ensure that conduct and behaviours are conducive to the effective operation of the committee.

37. A key aspect of keeping order is calling members to speak. Chairpersons should call members fairly and not favour members from any particular party. Chairpersons should ensure that members from all parties have the opportunity to speak if they wish.

38. In practical terms, chairpersons may find it helpful to identify speakers they intend to call. The committee clerk can assist in this by keeping a running list of members wishing to speak.

39. Chairpersons should ensure that members' contributions are relevant to the subject under discussion and respectful to other members and witnesses. It is for the chairperson to advise members that they are out of order if the point they raise is not relevant.

40. Chairpersons must ensure that members speak 'through the chair'.

41. It is important that chairpersons summarise and confirm decisions taken by the committee following discussion.

Declaration of interest in committees

42. The rules governing the declaration of interests by committee members are contained in "The Guide to the Rules Relating to the Conduct of Members". The chairperson should ask members to declare their interests in items of business considered during meetings of a committee. For a more detailed explanation of the requirements to declare an interest in committee see "A Guide to the Powers and Operation of Statutory Committees for Chairpersons and Members".

Progressing business

43. It is the chairperson's responsibility to control the committee meeting and retain focus so that, where possible, the items of business on the agenda are progressed within the time available.
44. The chairperson should ensure that members receive prior notification of substantive items of business that are to be discussed/considered by including them on the agenda for the next meeting rather than allowing them to be raised under AOB or matters arising.

Voting in committee

45. It is for the chairperson to determine when a decision is to be taken on any item of business. It has been practice to date that committees do not routinely divide, but rather seek to take decisions by agreement.
46. Where it is necessary to have a vote at a statutory, standing or ad hoc committee meeting all questions are decided by a simple majority. Voting shall be by the show of hands unless otherwise requested by a member of the committee (Standing Order 49(7) and 52(6)).
47. Chairpersons do not have a casting vote.

Planning and managing the workload

48. Planning and managing the committee's workload in line with members' wishes is a key task for clerks and chairpersons.
49. Committees have well established processes for identifying strategic priorities and for agreeing forward work plans. The chairperson plays a lead role in the development of the committee's priorities and in working alongside the clerk to ensure that a deliverable plan of work is prepared for agreement of the committee.
50. It is important that, in addition to reacting to items of business referred to the committee, the clerk and chairperson undertake effective forward planning and actively manage the committee agenda over a period of weeks. It is, therefore, strongly recommended that a chairperson and his/her clerk meet regularly to discuss the planning and conduct of committee business.

Frequency of committee meetings

51. The frequency of committee meetings and the date of the next meeting is agreed by the committee. However, in practical terms the clerk will liaise with the chairperson in relation to the proposed meeting dates and times.

Advice, information and evidence

52. The chairperson will work alongside the clerk to support evidence based decision making within the committee by ensuring that the committee has access to the expert advice, research, information and evidence necessary to enable the committee to fulfil its role.
53. The chairperson shall ensure that members are reminded of their responsibilities when considering evidence of a confidential nature.

Representational duties

54. The chairperson represents the committee at meetings with the Minister and other groups. The chairperson should apprise the committee following meetings with the Minister or groups.
55. The chairperson also represents the committee at meetings with the media. In dealing with the media, it is important that, when speaking on behalf of the committee, chairpersons ensure that the views expressed are those of the committee.
56. The chairperson will normally sign on behalf of the committee, any motions that the committee wishes to have debated in plenary session.

Chairpersons' Liaison Group

57. Chairpersons of statutory and standing committees are members of the Chairpersons' Liaison Group and are encouraged to attend its meetings. The remit of the Liaison Group is to consider matters relating to the work of Assembly committees.



Northern Ireland
Assembly

SECTION 6.07

DIGNITY AT WORK

Introduction

1. The Northern Ireland Assembly Commission (the 'Assembly Commission') is committed to equality of opportunity and to creating and sustaining an environment where everyone is treated with respect and dignity, free from any form of inappropriate behaviour, and one in which all employees can give of their best.
2. Unwanted, unreasonable and offensive conduct can occur in any workplace and at any level. It detracts from a productive working environment and can affect health, confidence, morale and performance.
3. The aim of the Dignity at Work Policy is to make staff members aware of the types of behaviour that might cause offence, to highlight the sources of information and assistance which are available and the procedures for dealing with unwanted, unreasonable and offensive behaviours. There are separate informal and formal procedures for resolving complaints under this Policy, the details of which are set out in the appendix to this section of the handbook. It is important to highlight that it will be necessary for a complainant to clearly specify which 'category' he/she is making their complaint under. It is also important to highlight from the outset that the Assembly Secretariat's ('the Secretariat') Equal Opportunities Officer (the Equal Opportunities Officer) has the authority to turn down a request for a formal investigation. For example, a refusal to carry out a formal investigation might occur when it is considered that the nature of the complaint can be dealt with more appropriately under grievance procedures, i.e., the matter is neither harassment, bullying, discrimination nor victimisation. The designated Equal Opportunities Officer, at any time, will have the necessary knowledge and skills to carry out their role and responsibilities.

What type of behaviour may affect dignity at work?

4. A variety of terms can be used to describe inappropriate behaviours that may impact on your dignity at work. These are harassment, bullying, discrimination and victimisation. This Policy defines these behaviours as:
5. **Any form of unwanted, unreasonable and offensive conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Conduct shall be regarded as having this effect only if, having regard to all the circumstances and in particular the complainant's perception, it should be reasonably considered as having that effect.**
6. At times the offensive conduct can be unintentional on the perpetrator's part. However, it must be emphasised that it is the impact of the conduct on the recipient and not the intention of the perpetrator that is significant. Staff whose behaviour constitutes harassment, bullying, discrimination or victimisation can be liable for disciplinary action which could lead to their dismissal. To view forms of unwanted, unreasonable and offensive conduct click [here](#).

7. It will always be assumed that complaints have been made in good faith unless there is evidence to the contrary. If it is found that an accusation was deliberately false, mischievous or vexatious, and was not due to a misunderstanding or genuine mistake, it will be treated as a serious matter and will lead to disciplinary action.

Data Protection Act

8. While a complaint under the Dignity at Work Policy is confidential, information and documentation pertaining to a complaint will as far as possible be shared with all parties to the matter. Under the Data Protection Act you have the right to request information held on you and this may, in certain circumstances, apply to information provided in connection with a Dignity at Work complaint. On request the Equal Opportunities Officer will consider supplying information held about the individual making the request, taking advice from the Information Officer as appropriate. The consent of the person who supplied the information will be sought before any disclosure is made. However, if consent to disclose information provided by one individual about another is not given, and it is considered necessary to comply with the request for information, anything that would identify the supplier of the information will be redacted (in other words edited for publication). There may be exceptional occasions where copies of witness statements and other documents and information may not be provided, particularly if a witness has expressed genuine fears. Further information can be obtained from the Human Resources Office.
9. Records will be kept for at least 6 years by the Human Resources Office regarding your complaint and will be retained in accordance with Data Protection provisions. These records will include a copy of your written complaint under the Dignity at Work Policy and will detail the nature of the complaint, the response of the Equal Opportunities Officer, documentation and witness statements pertaining to any investigation and appeal, a record of actions taken and reasons, reasons for any delay in the process and minutes of all interviews/meetings. Copies of minutes of interviews/meetings will be given to the employee attending same.

Unacceptable Behaviour

a. Harassment

10. There is no single, established definition of harassment. Understanding harassment requires an appreciation that those on the receiving end of certain sorts of behaviour may find it threatening, humiliating or offensive. What might be harmless fun in one context can be very damaging in another. It is not necessary for there to be intent to harm or cause offence for harassment to exist. You should give thought to how your words and actions might impact on others. Physical contact can constitute harassment, as can words, spoken and written, images – including those on computer such as jokes and video clips - and gestures.
11. Harassment is unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person and which is linked to any aspect of an individual's personal characteristics, for example their appearance, gender, trade union membership, sexual orientation, gender re-assignment, individual mannerism such as accent, race/ethnic origin, marital or civil partnership status, religious belief, political opinion, age, disability, sexual orientation or whether or not they have dependants. To view examples of harassment, click [here](#).
12. The key point is that the behaviour affects the dignity of men and women. It is unwanted behaviour, which is not encouraged or reciprocated by the recipient, regardless of whether it was meant to cause offence. The test of harassment is not purely objective. If someone makes it clear that the behaviour is unwanted or inappropriate (even if it is not on the face of it behaviour that would offend an objective bystander) then to continue such behaviour may still constitute harassment.

b. Bullying

13. Where the unwanted conduct is not linked to an individual's personal characteristics then it is often referred to as bullying. There is no legal definition of bullying. However, it is generally accepted that bullying comprises "offensive, abusive, intimidating, malicious or insulting behaviour, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines his/her self-confidence and which may cause him/her to suffer stress". Such behaviours will normally be displayed on a frequent or persistent basis. Equally, bullying at work may also be caused by a single act. It can be carried out by senior staff against more junior staff, by staff of the same grade as the victim(s) or by junior staff against more senior staff. Bullying usually results from a misuse of individual power derived from status/position, physical strength or force of personality. It can also arise from collective power arising out of strength of numbers.

Bullying at work may amount to more than an occasional display of anger or the occasional argument. To view examples of bullying click [here](#).

c. What is not bullying

14. Legitimate, constructive and fair criticism of an employee's performance or behaviour at work is not bullying. Isolated incidents of behaviour such as abruptness, sharpness or rudeness, while unacceptable, should not be described as bullying. These should be dealt with in the first instance by letting the person know how their behaviour has made you feel. Only persistent offensive behaviour, or offensive behaviour which is displayed in a single act, should be regarded as bullying.
15. Managers and supervisors have a duty to manage performance, provide employees with accurate feedback, which may be critical, and to take steps to achieve an improvement in performance where that is required. Similarly, managers must take reasonable action to control absenteeism or misconduct by the legitimate exercise of managerial control.
16. Bullying is something more than just a firm management style. If a manager issues an instruction which an employee considers unreasonable, the employee may have a legitimate grievance. However, this should be pursued through the normal grievance procedure.
17. The behaviour of individuals in the workplace can vary from day to day. Someone who is normally perfectly civil may occasionally appear impatient, pre-occupied and fail to show the courtesy expected of them. This may be for a variety of reasons including pressure of work, domestic difficulties or ill health. This Policy is not intended to deal with occasional minor lapses of good manners, courtesy or respect, unless a pattern of behaviour emerges that becomes objectionable or intimidating in itself, in which case such behaviour can constitute bullying.

d. Discrimination

18. Discrimination is unlawful when someone is treated less favourably or unfairly compared to others on the grounds of a protected characteristic, for example their sex (or gender re-assignment), marital or civil partnership status, religious belief and/or political opinion, race, disability, age or membership/non-membership of a Trade Union. It can be direct – when people are treated less favourably because of a protected characteristic, or indirect – when a condition or requirement is applied equally to all but which is harder for one group to meet than another or which has a disproportionate or otherwise detrimental impact on them and cannot be justified. A failure to make a reasonable adjustment for a person with a disability is also a form of discrimination.

e. Victimisation

19. This Policy will also protect staff who make complaints of harassment, bullying or discrimination and others who give evidence or information in connection with a complaint from victimisation. Victimisation occurs where a person who has made a complaint or assisted a complainant or alleged offender under this Policy, is treated less favourably than others as a consequence.

f. Work-related social events

20. Inappropriate behaviour can lead to complaints of bullying, harassment, discrimination or victimisation whether they occur at the workplace or at other venues during work-related events. Recent case law has made it clear that such events are considered under the law as a continuation of the workplace and that inappropriate behaviour which occurs at training courses or social events such as Christmas parties, or in the pub after work, can constitute unlawful discrimination in the same way as if it had occurred in the workplace.

g. Social media

21. Staff should be aware that unacceptable behaviour in another forum e.g. during a conversation, will also be unacceptable behaviour if it is conducted on an online forum. In other words, staff should treat 'electronic behaviour' as they would treat 'non-electronic behaviour'. For example, staff are prohibited from using social media in a manner which is offensive to other staff. Further information is contained in the Social Media Policy.

What can you do if you feel your dignity at work has been affected?

22. If you feel you have been subjected to unwanted, unreasonable and offensive conduct you should discuss your concerns with someone and explore with them your options for resolving the problem. Work

colleagues are obvious sources of help. However, you can also speak to your line manager or supervisor (unless this is the person who has caused the problem, in which case you can speak to another person in the management chain) or a Harassment Contact Officer. Harassment Contact Officers are fully conversant with the Dignity at Work Policy and procedures and are trained to offer confidential advice, guidance and support to any staff member who considers that he/she has been subjected to, or accused of, unwanted, unreasonable and offensive behaviour. To view contact details for Harassment Contact Officers click [here](#).

23. Other sources of help and assistance are the Equal Opportunities Officer or Trade Union Side (TUS) representative. Full details of the informal and formal procedures that can be used to resolve complaints can be found in the 'Internal Complaints Procedures' section of this chapter of the handbook.

What can you do if you are advised that your conduct is offensive?

24. If you are advised that your behaviour is considered to be offensive, you will probably find this accusation very stressful and upsetting. You can speak to a Harassment Contact Officer for advice and/or guidance. You should treat this as a serious matter and do all you can to resolve the situation at an early stage. If you are approached in this context there are a number of things to consider, including:
1. Remember that if a person feels offended by your behaviour, the feelings are very real to them, therefore try to remain calm and objective, be open and receptive to the comments being made;
 2. Do not try to convince the complainant that the complaint is invalid or to withdraw it as this may amount to victimisation;
 3. Look at your behaviour to see how it might have given rise to the complaint and how it might be modified;
 4. An informal meeting often presents an opportunity to clarify actions or behaviour and an apology, for example, if your behaviour has been misinterpreted, often remedies the situation;
 5. You may wish to keep a record of any discussions or meetings that take place subsequent to being approached.

What can you do if you witness offensive conduct?

25. All staff have a role in creating and sustaining a working environment in which individuals are treated with dignity and respect. If you witness inappropriate behaviour it is therefore important that you should try to discourage it by:
1. making it clear that you find the behaviour unacceptable;
 2. showing support to colleagues who suffer such treatment;
 3. reporting the incident to your line manager/supervisor or another officer in the management chain; and
 4. Making a personal note of what happened. This will be useful if you are later asked to provide information as part of an investigation into a formal complaint.

Complaints Involving Individuals outside the Secretariat

a. MLAs, MLAs' Staff or Party Staff

26. A Secretariat Staff / Member Protocol has been developed which provides guidance on the process for raising your concern if you consider that you have been discriminated against, harassed, victimised or bullied by an MLA or by a person employed or engaged by Members or Parties.

b. Staff from NICS Departments

27. Where a complaint involves staff from a Civil Service Department or an Agency of a Civil Service Department, it will be handled by the Equal Opportunities Officer who will liaise closely with the relevant Departmental Equal Opportunities Officer in the alleged offender's department to keep them informed of progress. As with all complaints, it is important that staff involved receive whatever assistance is required.

28. When the investigation is completed, the Equal Opportunities Officer will discuss the outcome of the investigation, and whether or not the complaint should be upheld, with the alleged offender's Departmental Equal Opportunities Officer. Both the Secretariat and Departmental Equal Opportunities Officers will ensure that the decision is quickly communicated to all parties. Where a complaint is upheld, the report will be passed to the alleged offender's department who will decide if disciplinary action is appropriate in accordance with normal procedures.

c. Harassment or bullying of staff by members of the Public

29. If you are subjected to offensive conduct by a member of the public, you should report the incident as soon as possible to your line manager. It is your manager's responsibility to satisfy themselves that the complaint is well founded and take steps to ensure that the behaviour is stopped. Your manager should make the member of the public aware (if possible in writing) that his/her behaviour is unacceptable and must stop. It should be made clear that if the behaviour is not stopped, the member of the public may be excluded from the building/event. Your manager should keep a record of the incident and the action they took to ensure the offensive behaviour was stopped. A copy of this should be sent to the Equal Opportunities Officer.

d. Complaints involving contractors

30. Complaints made by or about employees of contractors working on Assembly premises will normally be handled by the Head of Business with ownership of the contract. If attempts to resolve a complaint through discussion between the Head of Business and the contractor are unsuccessful, the matter can be raised with the Equal Opportunities Officer. If necessary, complaints can be dealt with under the provisions of this Policy.

e. Staff on secondment

31. In all secondments both inward, when staff from other organisations come to work in the Assembly, and outward, when Assembly Commission staff go to work in outside bodies, the secondment agreement should specifically state the arrangements that will apply in the event of a complaint involving the secondee. It is expected that in such cases both organisations will jointly agree on who will take the lead in carrying out the investigation.

Procedures that apply to complaints outside the scope of this Policy

32. Complaints about a protected disclosure under the Public Interest Disclosure Order ("Whistleblowing") can be raised under the procedures set out in the Standards of Conduct Policy, chapter 6.01 in the Staff Handbook.

33. Complaints relating to a matter of conscience under the Assembly Code of Conduct can be raised under the procedures set out in the Whistleblowing Policy, chapter 6.08 of the Staff Handbook.

34. Separate procedures apply if you wish to appeal against the outcome of action taken under the formal Disciplinary or Inefficiency procedures and are set out in the policies 6.03 Discipline; 3.01 Managing Attendance Policy and 6.06 Capability Policy in the Staff Handbook. A complaint about informal disciplinary or inefficiency action will be treated as a grievance and dealt with under the Grievance procedure, set out in Policy 6.04 Grievance.

35. The Occupational Health Service (OHS) has a process for appealing against a medical retirement decision.

36. Separate internal procedures apply when dealing with disputes relating to pension matters.

37. Where the complaint relates to a promotion matter, the existing appeal mechanisms within the promotion process as set out in the Staff Handbook can be used to seek informal resolution. The Grievance procedures can be used to resolve formal complaints.

38. Complaints relating to any employment related matter outside the policies listed above will be dealt with under the Grievance procedures set out in the Staff Handbook.

Statutory rights

39. There are various legal remedies available to those who are subjected to unwanted, unreasonable and offensive conduct in the workplace and the procedures accompanying this Policy do not prevent staff from exercising those rights. Should the behaviour constitute a criminal offence (for example assault) then criminal law will apply otherwise there may be civil remedies in the legislation listed below, which will apply. In addition, the common law duty of care requires an employer to provide a safe environment.

a. Anti-Discrimination Legislation

40. Unwanted, unreasonable and offensive conduct that is based on social identity or protected characteristics, is covered by the following legislation:
1. Sex Discrimination (NI) Order 1976 as amended (sex, marital or civil partnership status);
 2. Fair Employment and Treatment (NI) Order 1998 as amended (religious belief, political opinion and discrimination on grounds of TUS Membership);
 3. Race Relations (NI) Order 1997 as amended (colour, race, nationality or ethnic or national origin, or being a member of the Traveller community);
 4. Disability Discrimination Act 1995 (protection for disabled persons against discrimination on the grounds of disability, and failure to make a reasonable adjustment for a person with a disability);
 5. Employment Equality (Sexual Orientation) Regulations (NI) 2003 (sexual orientation);
 6. Employment Rights (NI) Order 1996 (discrimination on grounds of TUS Membership);
 7. Employment Equality (Age) Regulations (NI) 2006 (age).

b. Other Legislation

41. Where the above legislation is not relevant (in other words, where the unwanted conduct is not related to social identity or protected characteristics) the following legislation may be cited:
1. Health & Safety at Work (NI) Order 1978
 2. Protection from Harassment (NI) Order 1997

c. Time Limits

42. There are time limits within which legal action must be taken and anyone considering this option should consult their legal advisers. Other sources of advice include TUS, Citizens Advice, the Equality Commission and the Labour Relations Agency.

Personal Liability

43. If legal proceedings are invoked then the alleged offender (the respondent) may be held personally liable for acts of unwanted, unreasonable and offensive conduct. If a staff member is considered to have been acting outside the scope of his/her duty or in contravention of this Policy, the Assembly Commission is unlikely to accept legal responsibility, and the officer will have to arrange his/her own representation. In such circumstances the Assembly Commission will not accept responsibility for compensation or damages.

Rights, roles & responsibilities

a. All Staff

44. Every staff member has the right to work in an environment free from unwanted, unreasonable and offensive conduct that may violate his/her dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. The Secretariat fully recognises the right of staff to raise a complaint about such behaviour if it occurs and all complaints will be dealt with seriously and as quickly as possible.
45. Every employee has a responsibility to familiarise themselves with the Dignity at Work Policy and to comply with it. In addition, there is a legal requirement to comply with the relevant legislation, in other words the Fair Employment and Treatment (NI) Order 1998, the Sex Discrimination (NI) Order 1976, the Employment Equality (Sexual Orientation) Regulations (NI) 2003, the Disability Discrimination Act 1995, the Employment Equality (Age) Regulations (NI) 2006, the Race Relations (NI) Order 1997 and the Employment (Northern Ireland) Order 2003.
46. All employees also have a role to play in helping to create and sustain a working environment in which individuals are treated with dignity and respect. They can contribute to preventing inappropriate behaviour by ensuring that their own standards of conduct do not cause offence and should discourage inappropriate behaviour by others by making it clear that they find such actions unacceptable and by supporting colleagues who suffer such treatment.

47. All staff involved in an investigation are required to fully participate in and co-operate with any investigations being conducted by an Investigating Officer. This includes making themselves available for interview and providing detailed responses when answering questions. Staff do not have the right to decline participation and any person who fails to co-operate with an investigation may be subject to disciplinary procedures. Should an alleged offender refuse or fail to participate then the investigation will proceed on the evidence available.

b. Managers/Supervisors

48. Managers and supervisors have a duty to implement this Policy and to make every effort to ensure that unwanted, unreasonable and offensive behaviour does not occur. They should set a good example by treating all staff and stakeholders with dignity and respect. They must act on alleged incidents of unwanted, unreasonable and offensive behaviour, which comes to their attention from whatever source, by taking prompt and appropriate action to end the behaviour. Persistent or serious failure on the part of managers or supervisors in this respect can, in certain circumstances, give rise to disciplinary proceedings
49. Managers and supervisors should be fully conversant with this Policy and procedures for dealing with complaints and should ensure that their staff are also aware of them. Managers and supervisors should be aware of the services offered by the Harassment Contact Officer network for both complainants and alleged offenders. This network can also provide advice for managers.
50. Staff affected by bullying, harassment, discrimination or victimisation may be reluctant or nervous about complaining. They may be worried about not being taken seriously, about reprisal, about damaging their career prospects and about creating a bad atmosphere in the workplace. Managers and supervisors must therefore take steps to quickly resolve any problems in a sensitive manner supporting and reassuring staff as necessary.
51. Following the resolution of a complaint, managers and supervisors will be expected to monitor the situation to ensure that further problems or victimisation of anyone involved does not occur.

c. Staff Welfare and Employee Assistance Programme

52. The Welfare Support Service and/or the Employee Assistance Programme (EAP) provider can provide emotional support for anyone involved in a complaint or who may be contemplating this action.

d. Harassment Contact Officers

53. The Secretariat has appointed a network of Harassment Contact Officers who are fully conversant with the Dignity at Work Policy to provide confidential advice, guidance and support to those who feel they have been subjected to, or accused of, offensive behaviour. The same Harassment Contact Officer cannot act for both parties.
54. The role of the Harassment Contact Officer is to:
1. Offer a private and confidential environment to encourage discussion of the alleged incident(s);
 2. Give the individual the opportunity to think matters over;
 3. Discuss the options and courses of action available to the individual;
 4. Provide support to the individual as they reach their own conclusions and undertake their chosen course of action;
 5. Approach the alleged offender on behalf of the complainant if requested.

e. Investigating Officer

55. Investigating Officers, who may be external to the Assembly, are appointed under stage 2 of the formal procedures to carry out formal investigations. They are trained in investigation techniques and upon appointment will receive detailed terms of reference setting out what is expected from them in the investigation. This document will make it clear that the Investigating Officer's role does not extend to recommending disciplinary action, nor suggesting or recommending any penalty which might be imposed. They will interview the parties to a complaint and any relevant witnesses and, following completion of their enquiries, prepare a written report setting out the facts and their conclusion as to whether or not the complaint should be upheld. Reports are submitted to the Secretariat Equal Opportunities Officer and the information remains the property of the Secretariat.

f. Equal Opportunities Officer

56. The Head of Human Resources and Equal Opportunities Officer will act to ensure that this Policy and procedures are properly implemented and operated, and in particular that:
1. Details of the Policy and procedures are communicated to all staff;
 2. Appropriate training is provided to make each employee aware of his/her responsibilities;
 3. Complaints are processed appropriately through informal and formal channels;
 4. Adequate resources are made available to implement the Policy, achieve its objectives and operate the procedures;
 5. Designated staff are given appropriate training to enable them to perform their roles sensitively and effectively.
57. The Equal Opportunities Officer or a nominated officer at the same grade as the Equal Opportunities Officer (or a higher grade) will carry out preliminary enquiry meetings as part of the formal procedures and on receipt of the investigation report, the Equal Opportunities Officer or nominated officer will decide whether or not to uphold the complaint. They will monitor and review complaints and how they have been resolved on a regular basis in order to ensure that proper standards are being maintained and that the procedures are working effectively. They will also prepare statistical returns in an anonymous format on the incidence of various types of cases to senior management in the Secretariat and the TUS on an annual basis.

Confidentiality

58. Confidentiality must be maintained at all times by those involved in the process – the alleged offender, complainant, witnesses and those managing the investigations or appeals. Failure to do so will be considered a breach of conduct and may result in disciplinary action.

Internal Complaints Procedures

Introduction

59. There are two separate procedures for resolving complaints under this Policy:
- I. **Informal Procedure:** where the complainant, either directly or with assistance, seeks to have the offensive behaviour stopped; and
 - II. **Formal Procedure:** a two-stage process involving a preliminary meeting between the complainant and the Equal Opportunities Officer, and if appropriate the appointment of an Investigating Officer to carry out an investigation of the complaint.
60. Where at all possible, attempts should be made to resolve the matter using the informal procedure. However, the seriousness of the complaint may prevent this course of action, or the complainant may prefer to use the formal procedure immediately. The formal procedures may also be appropriate where a previous attempt at an informal resolution has failed.
61. If at any stage in either the informal or formal process it appears that a criminal offence may have been committed; the case will be dealt with under the disciplinary procedures. The matter should be brought to the immediate attention of the Head of Human Resources who will inform the police.
62. It is important that anyone who feels they have suffered unwanted, unreasonable and offensive behaviour should keep a record of each incident as set out below. This should be done as soon as possible after each incident, irrespective of whether the complaint is to be handled informally or formally.
- Date, time and place of incident;
 - Name of alleged offender;
 - What actually happened;
 - How the complainant felt at the time;
 - Name of anyone else present at the time;
 - Action taken, including whether the matter was reported to line management;

- Any correspondence relating to the incident(s).

In certain situations, it may be necessary to make reasonable adjustments for a person with disabilities, due to the nature of their disability, to make a complaint. This may include, for example, assistance in writing a complaint. Such situations will be considered on a case by case basis. Similar adjustments might also be required for persons not fluent in English or sufficiently literate.

a. Time Limits

63. It is always preferable to attempt to resolve problems as soon as they arise. Formal complaints of bullying, harassment, discrimination or victimisation should be made in writing as soon as is reasonable after the incident which gave rise to the complaint as this will facilitate more effective investigation and the accuracy of statements etc.
64. In most cases a delay of more than 3 months in making a complaint may be regarded as unreasonable although account will be taken where there have been attempts to resolve the complaint informally. Where a complaint is made more than 3 months after the incident complained of, or after the most recent incident complained of, the Equal Opportunities Officer or nominated officer will consider fully the reasons for the delay before deciding if this was reasonable, taking into account all the circumstances. If it is concluded that it was not, the complaint may be rejected and the complainant will be advised of this decision and the reasons for same in writing. In such cases the complainant can appeal to the Head of Human Resources who will decide if the delay was reasonable.

b. Informal Complaints Procedure

65. Under the informal procedure you may seek to have the offensive behaviour ended either through a direct approach to the alleged offender (possibly with the assistance of or by a third party) or through mediation.
66. Using the informal procedure you inform the alleged offender, either verbally or in writing, that the behaviour in question is unwanted, unreasonable and offensive and should be stopped immediately. It should also be made clear that if the behaviour continues it may result in a formal complaint. This can be done in a number of ways including:
 1. Approaching the alleged offender directly or with the support of a Harassment Contact Officer, work colleague, TUS representative, or line manager (or someone in a more senior position if the line manager is the alleged offender);
 2. Asking a Harassment Contact Officer, TUS representative or line manager to approach the alleged offender on your behalf.
67. Throughout the process both parties are entitled to the same rights. They can approach any of the following to request advice or support:
 1. a Harassment Contact Officer;
 2. their line manager (or someone in a more senior position if the line manager is the alleged offender);
 3. a TUS representative.
68. It can be helpful to the successful resolution of a problem if your line manager and the alleged offender's line manager are made aware of the existence of a complaint. This may only be done with the agreement of you and the alleged offender respectively.
69. Where the alleged offender accepts that their conduct has been or could be construed as offensive, and undertakes to amend their behaviour in the future and provided that you are satisfied with the outcome, the matter will usually end there and no further action is required. Where this is not the case you have the option of pursuing the matter formally.
70. Irrespective of the outcome you are advised to retain a note of what has occurred in case the unacceptable behaviour resumes.
71. The Harassment Contact Officer will discuss the options available to you and will provide support as you reach your own decision on your chosen course of action. If you do not wish to take any action, this will be recorded by the Harassment Contact Officer and confirmed to you in writing. There may be instances where the nature of the complaint is too serious to be dealt with informally and the Secretariat will consider it necessary to undertake a formal investigation. Such decisions will be taken by a Senior Human Resources Manager (at AG5 or above).

72. It should be noted that the informal procedures do not normally involve formal disciplinary action.

c. Mediation

73. Mediation is also an option under the informal procedures and is a way of solving problems so that you can come to a workable agreement with someone else. The advantage of mediation is that you work out the solution to the problem; it is not imposed.
74. The Secretariat has a group of staff trained in mediation skills who will help you work through your concerns, will not take sides or make judgments, and will not tell you what to do. Their role is to help those involved come to an agreement.
75. The main aim of the mediation process is to look forward to a future settlement rather than be concerned with a retrospective apportionment of blame. Mediation is problem solving, it encourages accountability and achieves effective and workable outcomes. Mediation can be a helpful and effective approach where there is room for manoeuvre and accommodation.
76. The principles of mediation are as follows:
1. Both parties are committed to using mediation;
 2. Any agreements have to be acceptable to the parties concerned;
 3. The parties agree a resolution is needed;
 4. The content of the mediation is confidential;
 5. The mediator is neutral and impartial and has to be seen as such throughout the proceedings;
 6. Mediation is without prejudice;
 7. The parties have the authority to settle.

d. How can I use Mediation?

77. If you wish to use mediation to resolve issues arising from offensive behaviour in the workplace you should contact the Equal Opportunities Officer who will explain how the process works and establish if the other party(ies) involved are also prepared to consider this option. The use of mediation does not prevent you from getting advice from a Harassment Contact Officer, TUS representative, or a work colleague. You may still use the formal complaints procedure should mediation prove unsuccessful in resolving the issues.

e. Formal Complaints Procedure

78. In order to initiate the formal procedures your complaint should be made in writing to the Equal Opportunities Officer as soon as is reasonable after the incident which has given rise to the complaint. A proforma (Formal Complaints Form) which sets out the information that should be included in a formal complaint is available from the related policies, guidance and forms section at the end of this Policy. All complaints lodged will be dealt with as quickly as possible and ideally investigations will be completed within 28 days. In exceptional circumstances there may be a requirement to extend the timescale but this should be kept to a minimum.

i. Stage 1 - Preliminary Enquiry Meeting

79. On receipt of your written formal complaint the Equal Opportunities Officer or nominated officer (at the same grade or higher) will meet with you to carry out a preliminary enquiry. This will be carried out without delay and in all cases within 10 working days of the complaint being received. You may be accompanied by a Harassment Contact Officer, a TUS representative or work colleague. You are asked to choose someone to accompany you who has no involvement in the matter under consideration and who will not therefore need to be interviewed as a potential witness. You will be expected to make every effort to attend. However, where you or your TUS representative/work colleague are unable to attend, another meeting will be re-arranged within 5 working days of the original date. Notes will be taken during the meeting from which minutes will be prepared and copied to you usually within 5 working days of the meeting. You will be allowed a further 5 working days to agree the minutes or suggest any factual amendments. The minutes should be agreed as soon as possible following the meeting (usually within 10 days). If these cannot be agreed the two versions of the minutes will be kept as a record of the hearing. Staff involved in a preliminary enquiry meeting should appreciate it is conducted on a strictly confidential basis and therefore they must not discuss the matter with any other person.
80. The preliminary enquiry has several purposes:

- i. To ensure that the complaint has been outlined in full and that it involves either harassment, bullying, discrimination or victimisation. You will be required to set out clearly whom your complaint is against and the behaviours/conduct which you deem to be harassment, bullying, discrimination or victimisation;
- ii. To allow you to say how you think the complaint should be settled;
- iii. To allow the Equal Opportunities Officer or nominated officer to explore the use of the informal procedures or mediation with you where these have not already been attempted or have been declined. (The use of the informal procedures or mediation will not prejudice any future use of the formal procedure should this prove necessary);
- iv. Should the informal or mediation options be inappropriate (because they have already been unsuccessfully attempted or if the behaviour is too serious to be dealt with using informal procedures) or if you prefer to use the formal procedures, the Equal Opportunities Officer or nominated officer will then consider, on the basis of the complaint made and information from the preliminary enquiry meeting, if justification exists for a formal investigation to be carried out, i.e. that on the face of it there is a case for investigation. It should be noted that you do not have the automatic right to demand a formal investigation. However, in arriving at their decision, the Equal Opportunities Officer will take your wishes into account.

ii. Non-Investigation: Appeals

81. Should the Equal Opportunities Officer or nominated officer conclude that although the complaint falls under the Dignity at Work Policy, a formal investigation would not be appropriate; you will be informed in writing within 5 working days of the minutes of the preliminary enquiry meeting being finalised including an explanation of the basis of the decision. In this letter, you will be advised of your right to appeal this decision and the name of the officer who will consider the appeal (the Appeal Officer). The Appeal Officer will normally be a higher grade than the Equal Opportunities Officer and will have no previous involvement in the matter. Appeals must be submitted in writing to the Appeal Officer as soon as possible (usually within 5 working days) after the date of the letter from the Equal Opportunities Officer.
82. The Appeal Officer will meet with you to discuss your appeal. You may be accompanied by a TUS representative or work colleague. Notes will be taken during the hearing from which minutes will be prepared and copied to you within 5 working days of the hearing. You will be allowed a further 5 working days to agree the minutes or suggest any factual amendments. The minutes should be agreed as soon as possible (usually within a total of 10 working days from the date of the meeting). If these cannot be agreed the two versions of the minutes will be kept as a record of the hearing. The Appeal Officer will inform you of their decision in writing as soon as possible (usually within 5 working days of the minutes being finalised) and advise you of your right to a further appeal and to whom this should be submitted. The officer considering your second appeal (the Further Appeal Officer) will normally be at a higher grade than the Appeal Officer and will have no previous involvement in the matter.
83. If you are unhappy with the outcome of the first appeal, you should lodge your further appeal, in writing, as soon as possible (usually within 5 working days of the date of the first appeal decision letter). Your further appeal will be managed in accordance with the above paragraph.
84. In writing to you regarding the outcome of your further appeal, the Further Appeal Officer will confirm that their decision is final.

iii. Stage 2 Formal Investigation

85. Should the Equal Opportunities Officer or nominated officer conclude that a formal investigation is appropriate they will inform both you and the officer against whom the complaint is made within 5 working days of the minutes of the preliminary enquiry meeting being finalised. The officer against whom the complaint is made will be provided with full information on the allegation(s) made against them, including the identity of the person making the allegation(s). The minutes of the preliminary enquiry meeting between you and the Equal Opportunities Officer will normally be provided to the officer against whom the complaint is made at this stage, subject to the rules relating to disclosure of such documents shown at paragraph 8. Both parties will be advised to familiarise themselves with the procedures as set out in this document and will be advised not to approach the other party or any potential witnesses about the case as this could be construed as victimisation. The officer against whom the complaint is made will also be informed that they can submit a written response on the complaint to the Equal Opportunities Officer as soon as possible (and within 10 working days). This, together with the notes from your interview and the terms of reference, will be passed to the Investigating Officer and these will form the basis for the investigation. The Heads of Business will be informed that a complaint has been made and that an investigation is to be carried out. The aim of the investigation is to establish the facts of the complaint and it should be carried out as quickly

as possible (where possible within 28 days) and in such a way as to protect the rights of all parties to the complaint.

86. Before the investigation proceeds, consideration may be given to a precautionary suspension (on full pay) of the officer against whom the complaint is made where a case of serious or gross misconduct has been alleged. In other cases, if deemed necessary, appropriate action will be taken to avoid contact between you and the officer against whom the complaint is made. As far as reasonably practicable, your wishes will be taken into account, especially where you request to be removed from the situation.
87. The Equal Opportunities Officer will appoint an Investigating Officer and note-taker and will write to the complainant and alleged offender to advise of this action. Neither the Investigating Officer nor note-taker will be connected in any way with the allegations. The Equal Opportunities Officer will provide the Investigating Officer with clear written terms of reference for the investigation and the timeframe within which the investigation should be completed (28 days). This should include the authority and role of the Investigating Officer and set out where the role begins and ends. The Investigating Officer will have the authority to interview all persons and examine all documents considered by him/her to be relevant to the complaint.
88. The Investigating Officer will emphasise to all parties, including witnesses, that the investigation is confidential and must not be discussed outside the interview unless there is a legitimate reason for doing so. Failure to comply with this requirement may be treated as a disciplinary offence, depending on the circumstances.
89. All parties should be advised that information provided by them may have to be put to others being interviewed in connection with the investigation. To maintain the principle of confidentiality the source of the information will not normally be disclosed without the permission of the person who supplied it. If permission is not given, the Equal Opportunities Officer will consider if, in the interests of ensuring a fair investigation and to allow the officer against whom the complaint is made to respond fully to the allegations, the identity of a witness should be revealed. Where a witness requests anonymity due to concerns regarding the implications for them in the workplace, e.g. serious damage to work relationships, the Equal Opportunities Officer may decide not to reveal their identity. However, should the matter go to a Fair Employment or Industrial Tribunal all material including statements will most likely have to be made available to the relevant parties and/or their representatives.
90. The Investigating Officer will initially interview you and you may be accompanied at the interview by a Harassment Contact Officer, TUS representative or work colleague. This interview will be arranged without delay following referral of the matter from the Equal Opportunities Officer to the Investigating Officer. You will be notified at least 5 working days before the time and date of the interview. If the suggested time and date are unsuitable, the interview may be rescheduled by mutual consent.
91. The purpose of the interview is to allow you to explain your complaint. Where you are not able to attend the interview, a further date will be arranged within 5 days. If you fail to attend the second scheduled interview, depending on the reasons for your non-attendance, you will be advised that decisions on the way forward may be made without your input.
92. At the interview, your TUS representative or work colleague may explain your complaint, sum up your complaint, confer with you and respond on your behalf to any view expressed and confer with you during the interview. They may not answer questions on your behalf if you do not wish it, address the interview if you do not wish it, or act in a manner which would prevent either your employer from explaining their case or any other person at the meeting from making their contribution to it.
93. The Investigating Officer will then contact the officer against whom the complaint is made to arrange a formal interview and advise them that they may be accompanied by a Harassment Contact Officer, TUS representative or work colleague. If accompanied by a work colleague, the officer is asked to choose a colleague who has no involvement in the matter under consideration and who will not therefore need to be interviewed as a potential witness.
94. If during the interview the officer, against whom the complaint is made, admits the alleged actions then there will normally be no need to involve witnesses. The Investigating Officer will prepare a full report of their findings and submit it to the Equal Opportunities Officer.
95. If the officer against whom the complaint is made denies the alleged actions, the Investigating Officer will proceed to interview all relevant witnesses. Depending on the outcome of these interviews it may be necessary for the Investigating Officer to re-interview you, the officer against whom the complaint is made, or witnesses.
96. Interviews will be conducted in private and will normally be held in the workplace unless you request an alternative arrangement e.g. if you are suspended and prefer not to attend your work location. If you are on

sickness absence, arrangements may be agreed, if circumstances permit, to interview you at home or at a suitable neutral location. If for medical reasons you cannot be interviewed in the workplace or at another location, a submission may be provided in writing to the Investigating Officer.

97. During all interviews, notes will be taken by the note-taker and where possible should be agreed by the interviewee within 5 working days following the meeting. If they are not agreed, a note should be made of the areas in dispute and attached to the minutes when they are returned to the Investigating Officer for future reference.
98. Everyone involved in an investigation will be expected to co-operate fully with the Investigating Officer by making themselves available for interview and, where possible, by giving detailed responses when answering questions. A person who fails to co-operate with an investigation may be subject to disciplinary procedures. Should the officer against whom the complaint is made fail to co-operate, the investigation will proceed on the evidence available.
99. During the investigation process it is important that both parties to the complaint are treated equally and kept well informed of progress. The Equal Opportunities Officer will write to both you and the officer against whom the complaint is made (copied to your representatives) at least every two weeks to keep you updated on the status of the investigation and, if known, to provide an estimate of when it might be finalised.
100. On completion of the investigation the Investigating Officer will prepare a report setting out the facts of the case, summarising the evidence gathered and concluding whether or not the complaint should be upheld. It will NOT recommend disciplinary action, nor will any penalty be suggested or recommended. The report and all notes taken during the interviews will be presented to the Equal Opportunities Officer. Copies of documentation pertaining to the investigation may be requested from the Human Resources Office. Such requests will be managed in accordance with the provisions of Data Protection and/or Freedom of Information legislation.
101. The Equal Opportunities Officer or nominated officer will decide whether or not to uphold the complaint based on the facts as presented in the report, or on the balance of probability. This decision will be communicated in writing to both parties and to the Investigating Officer. You will also be advised of your right of appeal and of the name of the officer who will consider any appeal (the Appeal Officer).
102. If the complaint is upheld the report will be passed to the Head of Human Resources or nominated officer to consider if disciplinary action is appropriate. The Head of Business of the officer against whom the complaint is made will be made aware of the actions upheld by the Investigating Officer and will be expected to ensure that relationships are closely monitored so that the unwanted actions/conduct does not continue or that victimisation does not occur.
103. If the complaint is not upheld no further action will be taken. However, the Head of Business will be expected to ensure that relationships are monitored in the initial period after the investigation.
104. If you are not satisfied with the decision of the Equal Opportunities Officer or nominated officer, you may appeal as set out in the paragraphs below.

f. Appeals

i. Complainant

105. Appeals must be made in writing to the Appeal Officer within 5 working days of the date of the decision letter. The reason for appeal must be made explicit, e.g. more or new evidence has come to light, there was a fundamental flaw in the investigation process or on the grounds of reasonableness. An appeal form is available here. The Appeal Officer will conduct an appeal hearing and will inform the alleged offender that an appeal has been submitted. The appeal hearing will be arranged without unreasonable delay (and in all cases within 10 working days) and you will be advised in writing of the date and time of the hearing.

At the appeal hearing, you may be accompanied by a TUS representative or work colleague. Notes will be taken during the hearing from which minutes will be prepared and copied to you within 5 working days of the hearing. You will be allowed a further 5 working days to agree the minutes or suggest any factual amendments. If these cannot be agreed the two versions of the minutes will be kept as a record of the hearing. The Appeal Officer will inform you and the officer against whom the complaint is made of their decision in writing within 5 working days of the minutes being finalised. They will also advise you of your right to a further appeal and whom this should be made to (the Further Appeal Officer). The Further Appeal Officer will normally be of a higher grade than the Appeal Officer and will have no previous involvement in the matter.

106. If you are unhappy with the outcome of the first appeal, you should submit your further appeal in writing within 5 working days of the date of the first appeal outcome letter. Your further appeal will be managed in accordance with paragraph 105 above.
107. In writing to you regarding the outcome of your further appeal, the Further Appeal Officer will confirm that their decision is final.

ii. Officer against whom complaint is made

108. Officers against whom complaints are made who are unhappy with the decision of the Equal Opportunities Officer or nominated officer may lodge a Grievance through the normal grievance procedures. In such cases the Grievance will be progressed by the Human Resources Office.

Further Policies, Guidance & Forms

- [Recruitment and Career Management](#)
- [6.01 Standards of Conduct](#)
- [6.03 Discipline](#)
- [6.04 Grievance](#)
- [6.08 Whistleblowing Policy](#)
- [10.03 Capability Policy](#)
- [Northern Ireland Assembly Secretariat Staff / MLA Protocol](#)
- [Policy on the Use of IT Resources by Assembly Secretariat staff](#)
- [Social Media Policy](#)
- [Formal Complaints Form](#)
- [Application to Appeal Form](#)
- [Examples of Unacceptable Behaviours](#)
- [Further information about Harassment and Bullying in the Workplace](#)
- [Further information on Overview of the Key changes brought about by the Disability Discrimination \(NI\) Order 2006](#)
- [Further Information from the Labour Relations Agency](#)
- Harassment Contact Officer details

Document 12: Excerpt form CSP 2015 Report

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

This report is the property of the Committee on Standards and Privileges. Neither the report nor its contents should be disclosed to any person unless such disclosure is authorised by the Committee.

**THE REPORT REMAINS EMBARGOED
UNTIL COMMENCEMENT OF THE DEBATE IN PLENARY**

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/standards-and-privileges/reports/report-on-a-complaint-against-mr-pat-ramsey-mla-from-mr-bertie-faulkner-obe/>

19 Appendix 3 – Written Submissions

20 Appendix 3 – Written Submissions

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*

21 Appendix 2 – Oral Evidence

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/>

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:

Document 13: Email from Commissioner's Office to Steve Aiken MLA, 1 March 2021

McCullough, Melissa Dr

From: [REDACTED]
Sent: 01 March 2021 13:31
To: +StandardsCommissioner
Subject: RE: Follow up meeting with Dr Steve Aiken OBE MLA

[REDACTED]

I will get back to you as soon as I have confirmed a date with the Leader and his legal representative.

Best regards

[REDACTED]



[REDACTED]
PA to The Chief Whip
Ulster Unionist Party

work: 028 9052 1423
email:
[REDACTED]

217
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

From: [REDACTED] **On Behalf Of** +StandardsCommissioner
Sent: 01 March 2021 11:54
To: [REDACTED]
Cc: Aiken, Steve <steve.aiken@mla.niassembly.gov.uk>
Subject: Follow up meeting with Dr Steve Aiken OBE MLA

[REDACTED]

The Commissioner for Standards, Dr Melissa McCullough has asked I contact you to arrive a follow up meeting with Dr Steve Aiken OBE MLA. The Commissioner is free on the following dates, 5 March, 8 March, 10 March and 11 March. I would be grateful if you could confirm a date and time suitable.

Kind Regards

[REDACTED]



[REDACTED]
PS TO THE COMMISSIONER FOR STANDARDS

W: 02890521220 MOB:
[REDACTED]

Document 14: Letter from Commissioner to Steve Aiken MLA, 8 March 2021



Commissioner for Standards
283 Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX
Tel: 028 9052 1220
Email: standardscommissioner@niassembly.gov.uk

PRIVATE AND CONFIDENTIAL

Dr Steve Aiken OBE MLA
Room 301
Parliament Buildings
Ballymiscaw, Stormont
Belfast, BT4 3XX

8 March 2021

Dear Dr Aiken

COMPLAINT AGAINST YOU BY MR BILL PAULEY

Following your interview on 24th February which had to be suspended, my personal secretary provided you with dates for continuation of the interview. Please be in touch with [REDACTED] as a matter of priority to confirm the date and time among the dates we have provided for this week. If you need a time slot within the next week that falls outside of working hours, I am happy to facilitate that.

Yours sincerely

[REDACTED]

Dr Melissa McCullough
Northern Ireland Assembly Commissioner for Standards

Document 15: Letter from Steve Aiken MLA to Commissioner 11 March

McCullough, Melissa Dr

From: Aiken, Steve <steve.aiken@mla.niassembly.gov.uk>
Sent: 11 March 2021 15:37
To: Commissioner@niassembly.gov.uk; Aiken, Steve
Subject: Re: Complaint of Mr Bill Pauley against Dr Steve Aiken OBE MLA

Dear Commissioner,

Re: Complaint of Mr Bill Pauley against Dr Steve Aiken OBE MLA

I refer to the above, the interview of 24th February 2021 and your letter of 8th March 2021.

At the above interview my legal representative requested the video recording of the interview in advance of any follow up interview. Please be advised that I require a copy of same and wish to take advice regarding a number of issues I perceived during the interview impacting on the fairness of the proceedings. I wish you to treat this request as a subject access request under the General Data Protection Regulations.

I further require clarity regarding the role of my representative. At the above interview you intimated that my representative was there in the role of an observer. Given that your role, and this process, are of a quasi-judicial nature I believe that to ensure the fairness of proceedings I should have access to legal advice during the interview and that my representative should have the right to comment upon and challenge the evidence being provided. I would welcome clarification from you on the role of my representative and what support you believe they are entitled to provide during the interview.

I believe these requests should be resolved in advance of the resumption of the interview and that I should be given sufficient time to consider the video footage and your response regarding the role of my representative.

Yours sincerely,

Dr Steve Aiken OBE MLA

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Document 16: Letter from Commissioner to Steve Aiken MLA 23 March 2021



Commissioner for Standards
283 Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX
Tel: 028 9052 1220
Email: standardscommissioner@niassembly.gov.uk

Dr Steve Aiken OBE MLA
Room 34
Parliament Buildings
Ballymiscaw, Stormont
Belfast
BT4 3XX

16 March 2021

Dear Dr Aiken

COMPLAINT AGAINST YOU BY BILL PAULEY

I refer to the above and your email correspondence of 11 March 2021. You mention a few items in your correspondence and I will take each in turn.

In relation to your request for the video recording of your interview on 24 February 2021, in accordance with the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 ('the 2011 Act'), and Direction by the Committee on Standards and Privileges on General Procedures at para 7.10 (b) and (c) it states:

- (b) I must provide you with a transcript of the recording and*
- (c) Allow you not less than 14 days to suggest any revisions to that transcript*

As you are aware, your interview was suspended and therefore it is incomplete to date. However, in the interest of transparency, I will be sending you today the transcript of your partial interview, in confidence and for your information only. In accordance with c) above, once you have completed the interview process, you will be given 14 days to review the entire transcript and suggest any revisions in accordance with 7.10 c) and d) and the Guidance. To be clear, the partial interview transcript I am providing you is not for the purposes of c) above, but rather in answer to your request to view it at this stage prior to resuming the interview and therefore the 14 day review process is not applicable at present but will be once the interview is complete. However, should you wish to revisit or discuss any items discussed on 24th February, we can certainly do that when we resume the interview.

In relation to your representative, Mr Redpath, and your request for further clarification of same, the 2011 Act makes no provision for the Commissioner to afford legal representation to Members. The Guidance document you received prior to interview provides:

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Commissioner for Standards
283 Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX
Tel: 028 9052 1220
Email: standardscommissioner@niassembly.gov.uk

**Dr Steve Aiken MLA
Room 34
Parliament Buildings
Ballymiscaw, Stormont
Belfast
BT4 3XX**

23 March 2021

Dear Dr Aiken

COMPLAINT AGAINST YOU BY BILL PAULEY

In my letter to you dated 16th March 2021, I requested that you contact my Personal Secretary, [REDACTED] as a matter of priority to confirm a date to resume your interview.

As you have not done so, this is now an urgent matter. As you may be aware, I have the legal power to compel you to attend interview. While I would prefer not to go down that route, I will by necessity do so if you do not contact [REDACTED] by close of business Thursday 25 March to arrange a time and date for the resumption of your interview.

Yours sincerely

[REDACTED]

**Dr Melissa McCullough
Northern Ireland Assembly Commissioner for Standards**

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