



**Committee on Standards and Privileges**

# **Report on a complaint against then First Minister Givan, Ministers Lyons, McIlveen, Poots & Junior Minister Middleton**

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Report: NIA 43/22-27 Committee on Standards and Privileges

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# **Powers and Membership**

## **Powers**

The Committee on Standards and Privileges is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Orders Nos. 51 and 57. Further provisions on the Committee's functions are also included in Standing Orders 69, 69A, 69B, 69C and 70.

The Committee has power:

- To consider specific matters relating to privilege referred to it by the Assembly;
- To oversee the work of the Assembly Clerk of Standards;
- To examine the arrangements for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interests established by the Assembly, and to review from time to time the form and content of those registers;
- To consider any specific complaints made in relation to the registering of declaring of interests referred to it;
- To consider any matter relating to the conduct of Members; and
- To recommend any modifications to any Assembly code of conduct as may from time to time appear to be necessary.

The Committee is appointed at the start of every Assembly, and has power to send for persons, papers and records that are relevant to its enquiries.

## **Membership**

The Committee has nine members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Ms Carál Ní Chuilín MLA (Chairperson)

- Mr Stewart Dickson MLA (Deputy Chairperson)
- Miss Jemma Dolan MLA
- Ms Connie Egan MLA
- Mr Paul Frew MLA
- Mr Harry Harvey MLA
- Mr Brian Kingston MLA<sup>1</sup>
- Mrs Cathy Mason MLA
- Mr Colin McGrath MLA

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<sup>1</sup> From 8 April 2024 Mr Brian Kingston replaced Mr Stephen Dunne as a member of the Committee.

# List of Abbreviations and Acronyms used in this Report

DUP	Democratic Unionist Party
FM	First Minister
MLA	Member of the Legislative Assembly
NSMC	North South Ministerial Council
The Assembly:	Northern Ireland Assembly
The Code:	Ministerial Code of Conduct
The Commissioner:	Assembly Commissioner for Standards
The Committee:	Committee on Standards and Privileges
The 1998 Act	Northern Ireland Act 1998

# Introduction

1. The Committee on Standards and Privileges (“the Committee”) has considered a report from the Assembly Commissioner for Standards (“the Commissioner”) on her investigation into a complaint against the then First Minister, Paul Givan MLA, Minister Gordon Lyons MLA, Minister Michelle McIlveen MLA, Minister Edwin Poots MLA and Junior Minister Gary Middleton MLA (“the respondents”) of alleged breaches of the Ministerial Code of Conduct (“the Code”). A link to the Commissioner’s investigation report, which includes a copy of the complaint correspondence, together with the evidence gathered during the investigation, is included at **Appendix 1** (a limited amount of information has been redacted from the Commissioner’s report to accord with legal obligations).
2. A link to the applicable minutes of proceedings of the Committee is included at **Appendix 2**.

## Role of the Committee

3. The arrangements for regulating the standards of conduct of Ministers include: the role of the independent Commissioner in investigating complaints of alleged breaches of the Code; the role of the Committee in considering and publishing the Commissioner’s investigation reports; and the role of the Assembly in plenary in deciding whether any sanction/s should be imposed, if the Assembly, in considering the findings of the Commissioner’s report, believes there has been a breach of the Code.
4. These arrangements have come about, in part, due to section 5 of the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021, which extended the powers of the Commissioner to include the investigation and reporting on complaints against Ministers of alleged breaches of the Code. The Commissioner’s new functions came into effect on 22 March 2021.

5. In light of the Commissioner's new powers, the Committee sought legal advice on its role in relation to the consideration of investigation reports from the Commissioner on complaints against Ministers. The Committee sought this advice not only prior to receiving the attached report from the Commissioner but prior to being made aware that the matters addressed in that report were being investigated. In that regard, the Committee noted that, unlike the position regarding complaints against MLAs of alleged breaches of the Assembly Code of Conduct, it does not have an adjudication role in complaints against Ministers of alleged breaches of the Ministerial Code of Conduct. However, the Committee has a duty, under Standing Order 69A, to consider *any* investigation report by the Commissioner, including reports on ministerial complaints, and to publish such reports (on behalf of the Assembly).

## Background

6. The Commissioner received a complaint from Mr Conor Quinn on 10 September 2021 alleging that the respondents breached the Code (paragraph 1.5) when they failed to attend North South Ministerial Council ("NSMC") meetings, in line with a statement made by their then party leader, Sir Jeffrey Donaldson MP, on 9 September 2021 that the Democratic Unionist Party ("DUP") should withdraw from North South bodies
7. The complainant contended that the then Ministers were in breach of the Code as follows:
  - a. Paragraph (v): 'Ministers must at all times *comply with this Code and the rules relating to the use of public funds*' by their failure to attend NSMC meetings'.
  - b. Paragraph 1.5 (v) 'comply with this code' engages paragraph 1.5 (iv) which states the Ministers must at all times follow the Seven Principles of Public Life set out by the Committee on Standards in Public Life'.

8. The Code, including the Seven Principles of Public Life, can be accessed at the following link:

<https://www.northernireland.gov.uk/topics/your-executive/ministerial-code>

9. The Commissioner considered the complaint and decided it was admissible, before commencing her investigation in June 2021. On 19 January 2023, the Commissioner forwarded her report on the investigation to the Committee for consideration. The current Committee was appointed in February 2024.
10. Prior to the Committee commencing its consideration and in accordance with its established disclosure process, on 10 May 2024, the Committee Clerk sent the Commissioner's full investigation report to the respondents, for written comment in respect of any matter raised within the report (where applicable, any written comments received from the respondent in such complaint cases are provided to the Committee at the same time as it receives the Commissioner's investigation report).
11. The respondents all made submissions to the Committee in response, outlining a number of issues they had with the Commissioner's report. The submissions from the respondents can be found at **Appendix 3**. The Commissioner subsequently responded to the submissions received from the respondents, which can be found at **Appendix 4**. For completeness, the Committee also provided the respondents with a copy of the Commissioner's written response to their submissions.

## **The Commissioner's findings of fact and reasoned decision**

12. As a result of her investigation, the Commissioner made various findings of fact (at page 5 of her report) which are outlined below:



- i. “Mr Poots MLA did not attend the NSMC meetings on Agriculture on 29 September 2021, Environment on 15 October 2021, and Aquaculture and Marine on 15 October 2021 and asserts that he was not asked to attend. Mr Poots did not make attempts to nominate an alternative minister and did not submit the nomination forms.
- ii. Ms McIlveen MLA did not attend the NSMC Special EU Programmes Body meeting on 22 October 2021 and asserts that she had not been nominated by the First Minister to attend. Ms McIlveen did not make attempts to nominate an alternative minister and did not submit the nomination form.
- iii. Mr Middleton MLA did not attend the NSMC Language Body meeting on 1 October 2021 and asserts that he could not attend due to family commitments. Mr Middleton did not make attempts to nominate an alternative minister and did not submit the nomination form.
- iv. Mr Lyons MLA did not attend the Tourism NSMC meeting on 10 November 2021 and asserts that no meeting was agreed. Mr Lyons did not make attempts to nominate an alternative minister and did not submit the nomination form.
- v. Former FM Givan MLA did not nominate any replacement DUP Ministers for NSMC meetings on the following dates: Agriculture 29 September 2021, Language Body 1 October 2021, Environment 15 October 2021, Aquaculture and Marine 15 October 2021, and Tourism 10 November 2021. Mr Givan’s reason for not doing so was that the meetings were never scheduled.
- vi. The window of this complaint relates to NSMC meetings from 9 September 2021 to 7 November 2021.

- vii. Former deputy First Minister O'Neill MLA wrote to former First Minister Givan on every occasion requesting he nominate a Unionist Minister to attend NSMC meetings.
  - viii. Since the inaugural meeting of the NSMC, the custom and practice has been for Civil Service officials to make the practical arrangements for scheduling and arranging meetings.”
13. In the “Reasoned Decision” section of her report (at page 16), the Commissioner explains that “Having reviewed the evidence, including documents received under notice and interviews carried out under oath, it appears that 1) there was a clear and publicly stated intention by the DUP to disengage with the NSMC including non-attendance at NSMC meetings, 2) DUP Ministers obstructed the normal custom and practice of scheduling of NSMC meetings in breach of section 54A of the 1998 Act, and 3) in obstructing the scheduling process and continuing to act unlawfully through non-attendance they failed to ‘at all times’ adhere to the Seven Principles of Public Life.”
14. The Commissioner concludes her report (on page 21), with the following statements:
- i. “The unlawful withdrawal from Strand Two structures including nonattendance at NSMC meetings was in breach of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*.
  - ii. Failing to engage with the NSMC Secretariat in a timely way was in breach of Section 52A(4) of the 1998 Act and breached of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*.
  - iii. In acting unlawfully, and continuing to act unlawfully even after the High Court judgement, it is my view that Ministers set a disturbing example to their Assembly colleagues and the wider society that they are somehow above the law, which ultimately could serve to lower standards within and outside the Assembly and diminish public trust

and confidence in the Assembly. This is a further breach of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*.

- iv. Providing the defence that meetings were not scheduled, while at the same time being responsible for obstructing the normal custom and practice involved in the scheduling process, is a further breach of the Seven Principles of Public Life which Ministers *must* adhere to *at all times*.
- v. I am satisfied on the basis of my analysis of the facts and evidence that, on the balance of probabilities, the then First Minister Paul Givan MLA, Junior Minister Gary Middleton MLA and Ministers Gordon Lyons MLA, Michelle McIlveen MLA, and Edwin Poots MLA, breached the Ministerial Code of Conduct paragraphs 1.5 (iv) “Follow the seven Principles of Public Life at all times” (set out at paragraph 1.6 of the Code of Conduct) including leadership, accountability, selflessness and openness.”

## **The Committee’s consideration and conclusions**

- 15. At its meeting on 29 May 2024, the Committee was briefed by the Commissioner on her investigation report and also considered the written submissions received from the respondents.
- 16. Following the briefing, the Committee discussed the current procedural arrangements for complaints against Ministers, which are different for those for complaints against Members. The Committee noted that it is required to consider the Commissioner’s reports under Standing Order 69A(3)(a). However, as alluded to above, under the current procedural arrangements, the Committee has no adjudication role in relation to such complaints – in terms of deciding on whether there has been a breach of the Code (consequently that

role rests with the Commissioner) – and the Committee cannot recommend the imposition of sanction/s on Ministers to the Assembly in cases, such as this, where the Commissioner’s report has concluded that the Code has been breached.

17. The Committee agreed, at its meeting on 29 May 2024, to publish a report to include: the Commissioner’s investigation report; the written responses from the respondents to the investigation report; the written response from the Commissioner to the issues raised in the responses from the respondents; and an explanation of how it is a matter for the Assembly to consider whether any sanction/s should be imposed on the respondents, if the Assembly, in considering the findings of the Commissioner’s report, believes there has been a breach of the Code.
18. In terms of the latter, from the legal advice it received, the Committee noted the range of sanctions which may be imposed on Ministers by the Assembly, should the Assembly believe that there has been a breach of the Code in line with the relevant provisions of the Northern Ireland Act 1998 (“the 1998 Act”) and Assembly convention. In terms of the 1998 Act, provision is made for the following sanctions for breaches of the Code to be imposed by resolution of the Assembly:
  - Section 30 – exclusion of a Minister/Junior Minister from office for 3 - 12 months;
  - Section 47A(1) – reduction in the salary of a Minister/Junior Minister; and
  - Section 51D – censure of a Minister/Junior Minister.
19. A motion for an Assembly resolution in relation to these statutory sanctions requires either to be moved by the First Minister and the deputy First Minister acting jointly or to be supported by at least 30 members of the Assembly.<sup>2</sup>

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<sup>2</sup> A motion in respect of these sanctions can also be moved by the Presiding Officer in pursuance of a notice from the Secretary of State that he is of the opinion that the Assembly ought to consider a resolution in this regard.

Also, such statutory motions cannot be passed without cross-community support.

20. The Committee further noted that other motions relating to the conduct of Ministers – for example, a motion to take note of a report by the Commissioner or a motion of no confidence based on such a report – are not subject to the abovementioned conditions which apply to statutory motions. Also, petitions of concern can no longer be presented in respect of motions dealing with sanctions relating to the conduct of a Minister (or other member of the Assembly), which must be dealt with by simple majority vote.<sup>3</sup>
21. To conclude, the Committee therefore notes the Commissioner's investigation report and publishes it by way of this report. This fulfils the Committee's function in relation to considering any investigation report by the Commissioner and publishing all investigation reports submitted by the Commissioner.

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<sup>3</sup> Following changes to the 1998 Act made by the Northern Ireland (Ministers, Elections and Petitions of Concern) Act 2022, petitions of concern are no longer available if a motion '*concerns a sanction in relation to the conduct of a Minister or other member of the Assembly*'. However, this does not affect the threshold for statutory motions, since these require cross-community support whether or not a petition of concern is presented.

# Links to Appendices

## **Appendix 1: The Commissioner for Standards Report on a complaint against the then Ministers Givan, Lyons, McIlveen, Poots & Junior Minister Middleton**

[View the Commissioner's Report.](#)

## **Appendix 2: Minutes of Proceedings**

[View Minutes of Proceedings of Committee meetings related to the report \(meetings on 29<sup>th</sup> May 2024 and 26<sup>th</sup> June 2024\).](#)

## **Appendix 3: Written submissions from the respondents in response to the Commissioner's investigation report**

[View written submissions from the respondents.](#)

## **Appendix 4: Written response from the Commissioner for Standards to the submissions received from the respondents**

[View the Commissioner's written response.](#)

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