

**Committee on Standards and Privileges**

# **Second Report on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee**

**Together with Evidence Considered by the Committee and Minutes of Proceedings  
of the Committee relating to the Report**

**Ordered by The Committee on Standards and Privileges to be printed 13th March 2013  
Report: NIA 103/11-15 Standards and Privileges Committee**



# Committee Powers and Membership

1. 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 Order Nos. 51 and 57.
  2. 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 arrangement for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest 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 or declaring of interests referred to it;
    - to consider any matter relating to the conduct of Members;
    - to recommend any modifications to any Assembly code of conduct as may from time to time appear to be necessary.
  3. 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.
  4. The membership of the Committee is as follows:
 

Mr Alastair Ross (Chairperson)  
 Mr Kieran McCarthy (Deputy Chairperson)  
 Mr Stephen Agnew  
 Mr Cathal Boylan  
 Mr Jonathan Craig  
 Mr Colum Eastwood<sup>2</sup>  
 Mr Fra McCann  
 Mr Ian McCrea<sup>5</sup>  
 Mr David McIlveen  
 Mr Francie Molloy<sup>3,4</sup>  
 Mrs Sandra Overend<sup>1</sup>
  5. The Report and evidence of the Committee are published by the Stationery Office by order of the Committee. All publications of the Committee are posted on the Assembly's website: ([www.niassembly.gov.uk](http://www.niassembly.gov.uk).)
  6. All correspondence should be addressed to the Clerk to the Committee on Standards and Privileges, Committee Office, Northern Ireland Assembly, Room 254, Parliament Buildings, Stormont, Belfast BT4 3XX. Tel: 02890 520333; e-mail: [committee.standards&privileges@niassembly.gov.uk](mailto:committee.standards&privileges@niassembly.gov.uk)
- 1 With effect from 26 September 2011 Mrs Sandra Overend replaced Mr Michael Copeland.
  - 2 With effect from 23 April 2012 Mr Colum Eastwood replaced Mr Patsy McGlone.
  - 3 With effect from 3 July 2012 Mr Alex Maskey replaced Mr Pat Doherty.
  - 4 With effect from 11th September 2012 Mr Francie Molloy replaced Mr Alex Maskey.
  - 5 With effect from 3rd December 2012 Mr Ian McCrea replaced Ms Paula Bradley.



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# Committee Report

## Introduction

1. On 20 June 2012 the Committee on Standards and Privileges agreed its report on the unauthorised disclosure of a draft report of the Public Accounts Committee (Report: NIA 60/11-15). A copy of this Report is appended in CD ROM format. Included within this report as an annex was a report from the then interim Assembly Commissioner for Standards (“the interim Commissioner”) on his investigation into the circumstances surrounding the disclosure.
2. The Committee set out in its report the key findings of the interim Commissioner’s report. The Committee noted that the interim Commissioner had identified during his investigation a number of gaps in the processes, working methods and systems of the Assembly. These had led the interim Commissioner to make a number of recommendations designed to reduce the risk of future unauthorised disclosures of restricted documents.
3. The Committee noted that responsibility for implementing the interim Commissioner’s recommendations lay with a number of bodies. The Committee wrote to these bodies inviting them to comment. Having now received their responses and having given further consideration to the findings of the interim Commissioner, the Committee has agreed the following report.

## Background

4. During plenary session on 21 March 2011 the Chairperson of the Public Accounts Committee (PAC) moved that a specific matter affecting the privilege of the Assembly should be referred to the Committee on Standards and Privileges. The Chairperson explained that on 18 January 2011, a draft report on the PAC's Inquiry into Performance and Governance in NI Water was leaked to the media. The PAC had subsequently commissioned an inquiry into the leak, but this had not been conclusive. The PAC therefore agreed at its meeting on 15 March 2011 that this was a matter affecting the privilege of the Assembly and that it should seek to have the matter referred under Standing Order 70.
5. The Speaker confirmed that in his opinion the requirements of Standing Order 70 had been met and that the matter would be referred to the Committee on Standards and Privileges. Correspondence to the then Chairperson from the Speaker setting out this opinion is attached at Appendix 1.
6. The Committee met on 23 March 2011 to consider the referral. The Committee agreed to refer the matter, under Standing Order 69A, to the interim Commissioner for investigation and provided the following terms of reference:
  - To establish the circumstances surrounding the unauthorised disclosure of the draft PAC report on its Inquiry into the Performance and Governance of NI Water on 18 January 2011;
  - To establish the source of the unauthorised disclosure;
  - To comment on the efficacy of referring such matters as breaches of privilege for investigation by the Commissioner;
  - To report the findings of the investigation to the Committee on Standards and Privileges;
7. The Committee recognised that this was the first referral of its kind to the interim Commissioner and that, as such, the opportunity should be taken to review the procedure once the investigation was completed.
8. At a subsequent meeting on 23 November 2011 the Committee considered correspondence from the office of the interim Commissioner which requested that the Committee agree to extend the terms of reference of the investigation to enable him to include recommendations of a systemic nature in relation to the protection of information and documents more generally. The Committee agreed to this request. Correspondence from the Deputy NI Ombudsman setting out this request is attached at Appendix 1.
9. The interim Commissioner completed his investigation and submitted his report to the Committee. A copy of the interim Commissioner's report is included at Appendix 1.

## Key Findings

### **The circumstances surrounding the unauthorised disclosure of the report**

10. Paragraphs 9 to 20 of the interim Commissioner's report set out at length the circumstances in which different versions of the draft PAC report were created and made available to individuals within the Assembly secretariat, the Northern Ireland Audit Office (NIAO) and members of the PAC. The interim Commissioner established that between Friday 14 January 2011 and Tuesday 18 January 2011 six versions of the draft report were created and that at different times during this period a number of people had access to one or more of these versions.
11. The most widely available version was draft 6. Draft 6, which was created at some time between 4.56 pm and 6.00pm on Monday 17 January 2011, was the only version of the draft report to be distributed to members of the PAC. It was also either sent or accessible to a number of



members of staff within the Assembly secretariat and the NIAO. A distinctive feature of draft 6 was a header which read 'Draft PAC report – Procurement Governance of NI Water'.

12. The interim Commissioner's report sets out how news of the draft PAC report broke. The first mention was broadcast shortly after 5.00pm in a news bulletin on Radio Ulster's Evening Extra programme on Tuesday 18 January 2011. There was more substantial discussion about the content at 5.24pm on the same programme. Shortly afterwards UTV broadcast details on its UTV Live at Six programme. This was followed by a feature on BBC Northern Ireland's Newsline programme. Transcripts of each of these three broadcasts are included at appendices 4, 6 and 7 of the interim Commissioner's report.
13. The interim Commissioner believed it was reasonable to conclude that it was draft 6 of the report which was leaked to UTV and that it was probable that it was leaked to them at some time on Tuesday 18 January 2011.
14. It was not possible for the interim Commissioner to determine definitively which version of the draft report was leaked to the BBC. He considered it possible that the BBC did not have a full copy at the time of the broadcasts on Tuesday 18 January 2011 but may have been given an opportunity to view the draft report or was provided with details of its content. The interim Commissioner was of the view that it was probable that it was draft 6 of the report (or detail of its content) that was leaked to the BBC and that the leak took place on Tuesday 18 January 2011.
15. The interim Commissioner concluded that there were a number of weaknesses in the working processes and systems that were in operation during the creation, distribution and storing of the draft report. It was his view that while these weaknesses did not lead directly to the unauthorised disclosure of the draft report, they did increase the risk to the PAC of its draft report on NI Water coming into the public domain prematurely and without proper authority, and they also afforded an individual (or individuals) who had access to the draft report an enhanced opportunity to leak its contents to the media, if so minded.
16. The weaknesses identified by the interim Commissioner are included in paragraph 74 of his report. His recommendations to address these weaknesses (and other issues) are considered in further detail at paragraphs 27 to 43.

#### **The source of the unauthorised disclosure**

17. The interim Commissioner went to great lengths to establish the source (or sources) of the leak. As well as written enquiries interviews were carried out with all eleven (January 2011) members of the PAC, as well as staff from the Assembly secretariat, staff from the NIAO and two others (see appendix 3 of the interim Commissioner's report). Every person who was questioned stated categorically that he/she was not the source of the leak and had no knowledge of who was. Some members of the PAC commented that they had their suspicions about the source but had no evidence to substantiate them.
18. The BBC confirmed to the interim Commissioner that details of the draft PAC report were provided to its political correspondent, Ms Martina Purdy. UTV confirmed that its correspondent, Mr Jamie Delargy, had obtained the leaked report. However, neither organisation identified their respective source or sources and neither provided any information as to which draft they had either seen or been provided with.
19. The interim Commissioner was therefore unable to identify with any certainty the source of the unauthorised disclosure of the draft PAC report.

#### **Impact of the unauthorised disclosure**

20. The interim Commissioner considered the detrimental impact of the unauthorised disclosure, particularly on trust between committee members as well as between members and staff. The interim Commissioner has set out in paragraph 40 of his report the depth of members'

feelings on the affair. It is clear that the leak damaged essential working relationships within the Committee.

21. The interim Commissioner also considered the threat that this leak (and others) pose to the effective work of the Assembly. The leaked draft committee report had not been agreed or even considered by the PAC, and the interim Commissioner has pointed out that in these circumstances the leak had implications for natural justice and fairness for the individuals and organisations who were mentioned in the report.
22. The Interim Commissioner addressed the competing public interests at stake in a case of this nature. He has, of course, acknowledged the public interest in defending a free press. However, the public also has a strong interest in maintaining the integrity of any live investigation, so that the privacy of those individuals named in draft reports is protected and a full and frank exchange of views among the participants is encouraged.
23. In the interim Commissioner's view, it was not in the public interest to release the PAC's draft report prematurely, before it had been considered or tested by the PAC. In his view, to do so had significant potential to undermine the work of the PAC and the integrity of the Assembly as a whole, as well as to damage the reputation of the named individuals criticised in the report.
24. The interim Commissioner has also pointed out that the leaking of the report cannot be described as whistle-blowing, since the PAC's findings on NI Water were due to be published once the scrutiny process had ended.
25. The Committee agrees that the public interest can be damaged by publishing leaked draft reports. Before a committee agrees a report, officials prepare a draft version for its consideration. It is wrong to either suggest or assume that this draft version embodies the views of the committee. On the contrary, a draft report is, by definition, a preliminary document and as such may contain contested personal information, factual inaccuracies, irrelevant comment and opinions not held by the committee. Successive draft reports may be written and rejected before a committee approves its final version, and it is this version alone that represents the committee's views.
26. However, the primary responsibility for upholding the public interest in these circumstances lies with those who are entrusted with confidential information in the first place. Any person who leaks such information is failing in his or her public duty and acting in a manner incompatible with the Seven Principles of Public Life. That leaks often occur for transparently self-serving reasons only emphasises how dishonourable this action is.

## The Interim Commissioner's recommendations

27. The interim Commissioner identified a number of deficiencies in the processes, working methods and systems that were in operation at the Assembly during the creation, distribution and storing of the draft report. These also made the task of identifying the culprit much more difficult, as the number of potential suspects was increased.
28. The interim Commissioner went on to make a number of recommendations (17) which were intended to minimise the risk of unauthorised disclosure by providing additional "levels of assurance". These recommendations, which were set out in appendix 8 of the interim Commissioner's report, are as follows:
  1. *The Assembly's protective marking policy and procedures should be reviewed to ensure that it is appropriate for the use, storage and transfer of the nature of confidential/sensitive information that may be contained in draft committee reports and other Assembly documents.*
  2. *NIAO staff, Assembly Secretariat Staff and Members should be reminded of the need to apply the protective marking policy consistently, and appropriate training and/or guidance should be provided, if necessary.*
  3. *Confidential/sensitive documents, such as draft committee reports, should be encrypted or password protected when being transmitted electronically, including those transmitted via the Government Secure Intranet.*
  4. *Confidential/sensitive documents should not be emailed to personal email accounts – should staff be required to work at home, remote access to the Assembly's IT network should be arranged.*
  5. *All draft committee reports should include a declaration of the relevant committee's proprietorial interest.*
  6. *All draft committee reports should include a statement to the effect that the document remains confidential until it is published by the relevant committee or the Assembly.*
  7. *All hard copies of draft committee reports, and other confidential/sensitive documents prepared for inclusion in committee packs should be individually numbered or watermarked with the recipient's name before distribution.*
  8. *Draft committee reports and other confidential information should not be made available to those who do not have a business need to access them.*
  9. *Access rights to shared folders in IT networks should be reviewed immediately following staff moves and internal reorganisations and, where necessary, revised.*
  10. *The practice of leaving committee packs unattended in unlocked Members' offices at the time of their distribution) should cease.*
  11. *Members should be required to acknowledge formally the receipt of their committee pack.*
  12. *Members should be reminded of the need to maintain the confidentiality of Assembly information and to ensure that such information is stored securely at all times. Appropriate training and/or guidance should be provided, if necessary.*
  13. *The facility to audit access to specific electronic documents and/or folders that are considered to contain particularly sensitive information should be used.*
  14. *Email tracking logs should include details of email attachments, or as a minimum, indicate whether an email included an attachment.*

15. *The Code of Practice for the Use of Assembly Computer Resources, which currently exists in draft form only, should be finalised and made operational in order that the monitoring of the use of Assembly email services by all users, including Members, as referred to in paragraph 5.4 of that draft document, may be undertaken.*
  16. *Steps should be taken to ensure that email tracking/monitoring logs are maintained beyond the standard 99-day retention period in instances where an unauthorised disclosure of information has occurred until such time as all related inquiries/investigations have been completed.*
  17. *The Committee on Standards and Privileges should consider the need to review the Code of Conduct for Members to reflect more specifically that the unauthorised disclosure of Assembly information constitutes a breach of the provisions of that Code.*
29. The Committee noted in its first report on this matter that responsibility for implementing these recommendations lay with a range of bodies. The Committee agreed that the issues raised by the interim Commissioner should be addressed as a matter of priority and wrote to the relevant bodies (the NIAO, the Assembly Commission, Chairpersons' Liaison Group and PAC) inviting their comments (see Appendix 1). Their responses are summarised below.

#### **The NIAO**

30. The Comptroller and Auditor General responded on behalf of the NIAO on 22 August 2012 (see Appendix 1). He accepted those recommendations which were applicable to the NIAO (recommendations 2, 3, 5, 6 and 8) and advised the Committee that he had reviewed his procedures and, where necessary, updated guidance to ensure that the recommendations were implemented in full. His correspondence provided further detail on how the NIAO had implemented these recommendations.
31. The Committee welcomes the C&AG's prompt and decisive response to the recommendations.

#### **The Assembly Commission**

32. The Speaker replied on behalf of the Assembly Commission on 7 February 2013 (see Appendix 1). The Speaker wrote that a working group made up of secretariat staff had been established to review the Assembly's Information Assurance policy in the light of the interim Commissioner's recommendations. Further to the outcome of this review, the Assembly Commission had approved the majority of the Interim Commissioner's recommendations.
33. The Committee noted that the Assembly's Information Assurance policy had been reviewed and that it will incorporate guidance which takes account of the recommendations. The Committee welcomes these developments and encourages the Assembly Commission to implement the revised policy and issue the new guidance without delay.
34. The Committee noted that the Assembly Commission had only partially accepted recommendations 10 and 11. The interim Commissioner had recommended that the practice of leaving committee packs unattended in unlocked Members' offices at the time of distribution should cease and that Members should be required to acknowledge receipt formally. The Assembly Commission has proposed that only those packs which contain confidential information should be treated in this way.
35. The Committee agrees that it is sensible to make this distinction between routine committee packs and those which contain confidential information.
36. The interim Commissioner recommended that the facility to audit access to specific electronic documents and/or folders considered to contain particularly sensitive information should be used. The Committee understands from the Assembly Commission that the IS Office is considering the benefits of replacing shared drives with Sharepoint document sites. This would ensure that access to documents would be restricted to those with a genuine need to use them and recorded in an electronic log. A pilot project has begun involving a small group

of staff. Regardless of the outcome of this pilot project, the Assembly stands in need of such a facility.

37. The interim Commissioner recommended that 'The Code of Practice for the Use of Assembly Computer Resources', which exists in draft form only, should be finalised and made operational. This Code of Practice provides for the monitoring of the use of the Assembly email services by all users, including Members. The Committee notes that additional information on this issue is being sought from other legislatures before the Assembly Commission gives this recommendation further consideration.
38. The interim Commissioner advised that email tracking logs should include details of attachments or, as a minimum, record their existence. The Committee understands that the Assembly Commission has not accepted this recommendation on the grounds of cost and practicality.

#### **Chairpersons' Liaison Group**

39. Mr Alex Maskey MLA responded on behalf of the Chairpersons' Liaison Group (CLG) on 6 November 2012 (see Appendix 1). The CLG had discussed the interim Commissioner's recommendations at its meeting on 16 October 2012 along with the outcome of the review undertaken by the working group. Mr Maskey endorsed the view, expressed by the Assembly Commission and supported by the Committee on Standards and Privileges, that a distinction should be made between standard committee packs and those classified as restricted or confidential.
40. The CLG also acknowledged the need for sanctions to be imposed upon members who leaked confidential information and stressed that it was for committees to assume collective responsibility for the confidentiality of their documents and any subsequent leak.

#### **Public Accounts Committee**

41. Ms Michaela Boyle MLA responded on behalf of the PAC on 4 March 2013 (see Appendix 1). Ms Boyle referred to the Assembly Commission's letter of 7 February 2013 and advised the Committee that the PAC had since moved to the arrangements described therein, which include watermarking and embargo systems and a requirement for members to sign for packs containing sensitive or restricted material. The PAC had responded to a previous unauthorised disclosure of a committee report by limiting members to monitored access to papers. However, Ms Boyle has indicated that the PAC will discontinue this practice as it reduced excessively the time available to members for meeting preparation.
42. The Committee notes that, in advance of the Assembly Commission issuing its new guidance, the PAC has already taken a number of steps to reduce the risk of an unauthorised disclosure of confidential information. This reflects the Committee's own approach and is to be welcomed.
43. The Committee also notes that the PAC had taken additional measures which it has reviewed and withdrawn. The Committee agrees that, while all reasonable steps should be taken to enhance information security, these steps should be proportionate and should not risk impeding a committee's effectiveness.

## The efficacy of referring such matters as breaches of privilege for investigation by the Commissioner

44. When setting the terms of reference for this inquiry the Committee agreed that the interim Commissioner should comment on the efficacy of referring such matters (i.e. the unauthorised disclosure of confidential information) as breaches of privilege for investigation by the Commissioner. In doing so, the Committee had recognised that this was the first such referral to the interim Commissioner and that the appropriateness of the procedure was open to challenge.
45. The Interim Commissioner has addressed this issue in paragraphs 92 to 97 of his report. Paragraph 96 is particularly instructive. The interim Commissioner says:
- “.... an institution cannot afford to tolerate or ignore a leak or the integrity of work processes and ultimately the standing of the institution itself will be undermined. It is important that leaks are investigated and treated with the utmost seriousness because of their implications...”*
46. The Interim Commissioner also says, however, that inquiries are often time-consuming and resource intensive (as this one was) and that it is notoriously difficult to identify the source of a leak of confidential information. In the Committee’s view a question of proportionality therefore arises.
47. The Interim Commissioner has noted the difference between an investigation into an unauthorised disclosure carried out as a result of a complaint under the Assembly’s Code of Conduct and one arising from a referral of an alleged breach of privilege.
48. In the former case, the complaint would have to meet the usual admissibility criteria. These include a requirement to name the Member who is the subject of the complaint and that the complaint is substantiated (i.e. that it includes enough supporting evidence to establish a prima facie case that a breach of the Code of Conduct has occurred).
49. In the latter case, the requirements of Standing Order 70 apply and the Speaker would have to be satisfied that a breach of privilege had been made out.
50. The Committee is satisfied that, where there is a prima facie case that a Member has disclosed a confidential document without authorisation, it is the Commissioner’s role to investigate and determine whether a breach of the Code of Conduct has occurred. The Committee would expect an admissible complaint to have been made in such an instance. However, where no complaint has been made, the Commissioner may choose to undertake an investigation at his own initiative.
51. The Committee is clear that leaks of confidential documents by Members are intolerable and amount to a serious breach of the Assembly’s Code of Conduct. The Code requires Members to at all times observe and comply with any guidance or instructions of any kind approved by the Assembly, or issued by the Assembly Directorates on its behalf or with its authority. The Committee is clear that this includes an instruction to treat information in confidence. The Committee would not hesitate to recommend a sanction where a Member was found to have leaked a confidential document.
52. The interim Commissioner has suggested that the Committee should consider the need to review the Code of Conduct for Members to reflect more specifically that the unauthorised disclosure of Assembly information constitutes a breach of the provisions of that Code. The Committee accepts this recommendation. The Committee is about to embark upon a review of the Code and will consider how this issue is addressed elsewhere before strengthening the relevant provisions. However, Members should be clear that an unauthorised disclosure of confidential information would still be regarded by the Committee as a breach of the Code in its current version.

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53. Of course it will not always be the case that when a leak has occurred there is a prima facie case that a particular Member is responsible (not least because no Member may have been responsible). The absence of such evidence would preclude the Commissioner from accepting a complaint or undertaking an investigation on his own initiative into whether a breach of the Assembly's Code of Conduct had occurred.
54. The Committee notes that before the then Chairperson of the PAC raised the unauthorised disclosure of the leaked PAC report as an alleged breach of privilege, PAC commissioned its own internal investigation into the leak. On that occasion the internal investigation, which was conducted by a senior Assembly secretariat official, was not conclusive. Nonetheless, the Committee is satisfied that an internal investigation is the appropriate response to such leaks in the first instance. Internal investigations can be carried out speedily and are less resource intensive.
55. It is reasonable to question whether it is always necessary or proportionate to undertake further investigation into a leak of confidential committee papers where the committee's own inquiry has failed to identify the source. Before seeking to raise a leaked document as a matter of privilege under Standing Order 70, committees should have regard to the considerable resources, time and effort that an investigation by the Commissioner will demand.
56. Where such matters are raised under Standing Order 70 it is for the Speaker to take a view on whether a prima facie case of breach of privilege has been made out. In doing so the Speaker may wish to consider the extent to which the leak has caused a substantial interference to the work of the Assembly. In any event where such a matter is referred under Standing Order 70 by the Speaker to the Committee on Standards and Privileges, the Committee will give careful consideration to all relevant issues, including the seriousness of the leak and the resource implications of undertaking an investigation, before referring it to the Commissioner.
57. The Committee takes this position without prejudice to the outcome of any future review of Assembly privilege, and with the intention of undertaking such a review later in this mandate. The Committee is aware that the UK Government has published a green paper on the constitutional privileges of Parliament and that a Joint Committee on Parliamentary Privilege is due to report back in April 2013. Their conclusions will inform any review of Assembly privilege, notwithstanding the very distinct differences between parliamentary privilege and Assembly privilege.

## Conclusion

58. The unauthorised disclosure of the draft PAC report, which probably took place on Tuesday 18 January 2011, inflicted damage on the Assembly without serving any public interest. The leak undermined trust within the PAC and obstructed its important work. The subsequent investigation was resource intensive and time consuming. While it is disappointing that the person or persons responsible have not been identified and subjected to disciplinary proceedings, the interim Commissioner's investigation was a valuable exercise, having uncovered systemic shortcomings and making recommendations to address them. The Committee has noted the progress that has been made by those with responsibility for implementing the recommendations and looks forward to the swift adoption of the remaining accepted recommendations.
59. Of course, as the interim Commissioner has recognised, no matter what additional steps are taken it will never be possible or practicable to eliminate all risk of confidential or sensitive Assembly information being disclosed prematurely or without proper authority. The ultimate safeguard is the commitment of all those entrusted with confidential information to act in accordance with the Seven Principles of Public Life. Holders of public office must act with integrity and be truthful, something which the source of the leak conspicuously failed to do.
60. The Committee hopes that this report and that of the interim Commissioner underline the seriousness of leaking confidential information. The Committee is optimistic that with updated measures in place and with a renewed commitment by everyone to act in accordance with the principles of public life there will not be similar occurrences in future.





Northern Ireland  
Assembly

#### Appendix 1

# Evidence Considered by the Committee



# Report from the interim Assembly Commissioner for Standards

PROTECT - INVESTIGATION

**S1/11**

## **Report by the Interim Commissioner for Standards to the Northern Ireland Assembly Committee on Standards and Privileges on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee**

**This report is privileged and is the property of the Interim Assembly  
Commissioner for Standards.  
It has been prepared for presentation to the Committee on Standards and  
Privileges (the Committee). Neither the report nor its contents should be  
disclosed to any person unless such disclosure is authorised by the Interim  
Commissioner or the Committee.  
The report remains confidential until such time as it is published by the  
Committee.**

**PROTECT - INVESTIGATION**

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**PROTECT – INVESTIGATION**

## **Appendices**

**Appendix 1: Letter dated 24 March 2011 from the Clerk of Standards**

**Appendix 2: Documentation examined during investigation**

**Appendix 3: Interviews conducted during investigation**

**Appendix 4: Transcript of BBC Radio Ulster ‘Evening Extra’ broadcast on  
18 January 2012**

**Appendix 5: Statement dated 18 January 2011 from the Chairperson to the PAC**

**Appendix 6: Transcript of ‘UTV Live at Six’ programme on 18 January 2012**

**Appendix 7: Transcript of BBC NI ‘Newsline’ programme on 18 January 2012**

**Appendix 8: Summary of Recommendations**

**Appendix 9: Principles of Public Life**

## PROTECT – INVESTIGATION

### PREAMBLE

This is the first occasion on which I have been asked as Interim Commissioner to investigate a breach of Assembly privilege. It is also the first occasion that I have investigated the leak of a confidential document, that is, a leak of the PAC draft report on performance and governance in NI Water. This report, I hope, will provide a means of ensuring that all parties involved in the Committees of the Assembly, which are an essential part of the work of the legislature, respect and maintain the integrity of the scrutiny process.

In embarking on this complex investigation, I was reminded of the comment of Sir Alistair Graham, the then Chairman of the Committee on Standards in Public Life, who remarked to the House of Commons Public Administration Select Committee in his evidence to their Report on Ethics and Standards: Regulation of Conduct in Public Life (HC121-1):

*‘A lack of trust, a lack of confidence, leads to cynicism, which leads to disengagement’.*

Maintaining confidentiality, therefore, is a central matter of trust, particularly when it relates to the work of a Committee of the Assembly. With that in mind, I have approached this investigation with the view that the person or persons who leaked this draft PAC report breached the public’s trust with significant implications for the **public interest**.

In addition, the draft PAC report contained personal information relating to senior officials, which when disclosed without authority, had the potential to cause those persons distress and damage to their professional reputation. In addition, I note that it is a criminal offence for any person to obtain, disclose or procure the disclosure of personal data without the consent of the data controller<sup>1</sup>. As Interim Commissioner for Standards, it is not my role to assess whether any of the data protection principles have been breached or a criminal offence has been committed. That is a matter for the Information Commissioner. However, I do consider that there are serious issues of breach of privacy of the individuals whose personal information was disclosed in circumstances where they had been denied a right of reply.

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<sup>1</sup> Section 55, Data Protection Act 1998

**PROTECT – INVESTIGATION**

I feel strongly that by highlighting these issues to the Committee, the implications of the leak can best be considered and steps considered that might reduce the possibility of recurrence in the future.

## **PROTECT - INVESTIGATION**

### **INTRODUCTION**

#### **Role of the Interim Commissioner for Standards**

1. I have prepared this report in my role as the Interim Commissioner for Standards of the Northern Ireland Assembly. In this role, I consider any matter falling within paragraph (2) of Standing Order 69A that is referred to me by the Clerk to the Committee on Standards and Privileges (the Clerk of Standards). The matters referred to in Standing Order 69A(2) include “matters relating to members and Assembly privilege, including alleged breach of privilege”. My purpose is to undertake an independent investigation of the matter referred to me and to present my findings to the Committee on Standards and Privileges (the Committee). Any decision or action beyond my investigation is then a matter for the Committee.

#### **Background to the Investigation**

2. On or around 18 January 2011, a draft report on an inquiry by the Public Accounts Committee (PAC) into performance and governance in Northern Ireland Water, which was to be discussed at a meeting of the PAC scheduled for 20 January 2011, was leaked to the media. The draft report was featured on 18 January 2011 in BBC Radio Ulster’s ‘Evening Extra’ broadcast, and in UTV’s ‘UTV Live at Six’ and BBC NI’s ‘Newsline’ programmes.
3. On 20 January 2011, the PAC agreed to initiate an investigation into the leak. When that investigation proved to be inconclusive, the PAC agreed that the unauthorised disclosure of the draft report should be raised as a matter affecting the privilege of the Assembly, as provided for under Standing Order 70. The Chairperson of the PAC wrote to the Speaker on 15 March 2011 to give notice of his intention in this regard. On 21 March 2011, during a sitting of the Assembly, the Chairperson of the PAC moved that a specific matter affecting privilege, that is, the leaking to the media of the draft PAC report, should be referred to the Committee on Standards and Privileges. On 22 March 2011, the Speaker, being satisfied that the leaking of the draft report before it could be considered by the PAC was a matter that affected the privilege of the Assembly,

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and that the requirements of Standing Order 70 had therefore been complied with, referred the matter to the Committee.

4. Subsequently, on 23 March 2011, the Committee agreed that the matter should be referred to me, as Interim Commissioner for Standards, in order that I could undertake an investigation and report back to it on the completion of my investigation. The Clerk of Standards wrote to me on 24 March 2011 to inform me of the Committee's decision. A copy of the Clerk's letter is at Appendix 1. Since the Assembly was then dissolved on 25 March 2011, I wrote to the Clerk of Standards on 7 April 2011 to advise that the commencement of my investigation would be deferred until the new Assembly had been elected and a new Committee had been established.

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#### **Investigation Terms of Reference**

5. The terms of reference for the investigation, as agreed by the Committee, were notified to me by the Clerk of Standards on 24 March 2011. Those terms of reference are:
  - To establish the circumstances surrounding the unauthorised disclosure, on 18 January 2011, of the draft PAC report on its inquiry into the performance and governance of NI Water;
  - To seek to establish the source of the unauthorised disclosure;
  - To comment on the efficacy of referring such matters as breaches of privilege for investigation by the Commissioner; and
  - To report the findings of the investigation to the Committee on Standards and Privileges.
6. During the course of my investigation, I asked the Committee to consider extending these terms of reference in order that I might also make recommendations in relation to the protection of information and documents more generally. The Committee agreed to this request on 23 November 2011.

#### **Investigation Methodology**

7. In accordance with the first two terms of reference agreed by the Committee, my investigation of this matter has sought to establish the circumstances by which the leaked version of the draft PAC report was created and made available to individuals within the Assembly Secretariat and the Northern Ireland Audit Office (NIAO), and to members of the PAC, and the circumstances by which that report, and/or details of it, then came to be in the possession of the BBC and UTV. I have undertaken the investigation by making written enquiries and conducting meetings and interviews with numerous individuals, as detailed below. In addition, I have examined documentation relevant to circumstances surrounding the leaking of the draft report, details of which are provided in

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Appendix 2 to this report. I have reviewed video and audio recordings of news reports on BBC Radio Ulster, BBC NI and UTV on 18 January 2011, and have also examined the evidence that was obtained during the investigation into the leak that was commissioned by the PAC on 20 January 2011.

- Written enquiries were made to and written responses were received from:
  - The Director, BBC Northern Ireland
  - The Head of News, UTV (at the time of the unauthorised disclosure)
  - The Executive Editor News, UTV
  - The Clerk to the Northern Ireland Assembly/Director General
  - The Director of Clerking and Reporting, Northern Ireland Assembly
  - The Head of Communications, Northern Ireland Assembly
  - The Comptroller and Auditor General
  - The acting Permanent Secretary of the Department for Regional Development (DRD) (at the time of the unauthorised disclosure)
  - The Head of DRD Press Office
  - The Head of DRD Press Office (at the time of the unauthorised disclosure)
  - The DRD Senior Information Officer (at the time of the unauthorised disclosure)
- Interviews were conducted with and, where necessary, follow-up enquiries were made to:
  - Members of the PAC (at the time of the unauthorised disclosure)
  - The Comptroller and Auditor General and all other NIAO staff<sup>2</sup> who were understood to have had access to the version of the draft PAC report that was leaked
  - The NIAO's IT Manager

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<sup>2</sup> It was not possible to make enquiries to one member of NIAO staff who was unavailable due to long term sick absence, and it was necessary to make written enquiries to another who was on a career break at the time of the investigation.

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- The NI Assembly Director of Clerking and Reporting and all other NI Assembly Secretariat staff who were understood to have had access to the version of the draft PAC report that was leaked
- The NI Assembly's acting Head of Information Systems and the NI Assembly's Information Systems Infrastructure Manager
- The NI Assembly's acting Head of Information Systems (at the time of the unauthorised disclosure)
- A personal friend of the Clerk to the PAC

Each interviewee agreed the factual accuracy of the notes that were made of those interviews. A list of those with whom individual interviews were conducted is provided in Appendix 3 to this report.

- I met with the Director and the Head of News of BBC Northern Ireland. I also asked representatives of UTV to meet with me, however that request was declined;
- A site visit to the PAC Office in Parliament Buildings, which included a meeting with the four members of the PAC clerking team, was undertaken.

I would like to acknowledge the co-operation afforded to me by all of the individuals to whom enquiries were made and, in particular, the leadership of the Assembly Commission and NIAO.

## **Evidence Obtained**

8. Not all the information that was provided to me during the course of my investigation is set out in the following paragraphs. However, all the evidence obtained, which I consider relevant to the terms of reference of this investigation, is presented below.
9. My enquiries have established that at 4.52pm<sup>3</sup> on Friday 14 January 2011, the NIAO Assembly Liaison Officer emailed an initial draft of the report on the

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<sup>3</sup>This and subsequent timings referred to in this report have been taken from the NIAO IT system

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PAC's inquiry into performance and governance in NI Water (hereafter referred to as 'Draft 1') to the Clerk to the PAC. Draft 1 was watermarked "DRAFT" but had no protective marking. It was not encrypted or password protected when emailed to the Clerk. The Clerk printed a copy of Draft 1 and also emailed it to her personal email account in order that she could work on it at home during the weekend. The Clerk also emailed Draft 1 to what she believed was the email account of her line manager, the Clerk Assistant. However, due to the use of predictive text when entering the email address of the Clerk Assistant, the Clerk mistakenly sent Draft 1 to a friend. At the time, the Clerk remained unaware of the error.

10. NIAO made further changes to the draft report on the morning of Monday 17 January 2011, and the revised draft ('Draft 2') was emailed to the Clerk to the PAC by the NIAO Assembly Liaison Officer at 11.40am. Draft 2 was watermarked "DRAFT" but had no protective marking. It was not encrypted or password protected when emailed to the Clerk. During the course of the day, the Clerk made further changes to Draft 2, which she notified (in two tranches) to the NIAO Assembly Liaison Officer by emailing the draft report to him at 3.54pm ('Draft 3') and at 4.56pm ('Draft 4'). Draft 3 and Draft 4 were watermarked "DRAFT" but had no protective marking. Neither was encrypted or password protected when emailed to the NIAO Assembly Liaison Officer. Following discussion of the Clerk's amendments by the NIAO Assembly Liaison Officer and the NIAO drafting team, and between the NIAO Assembly Liaison Officer and the Clerk, the Clerk finalised her amendments. The most recent version of the draft report ('Draft 5') was saved to the PAC folder in the committee shared drive on the Assembly's IT network.
11. Subsequently, at an unknown time before 6.00pm the PAC Clerical Supervisor added a heading, '*Draft PAC report – Procurement Governance of NI Water*' to the draft report ('Draft 6'). This was the first occasion on which that particular heading had appeared on the draft report. Draft 6, which was saved in the PAC folder in the committee shared drive, had no protective marking. At that time 13 staff members of the Assembly's Clerking and Reporting Directorate had access to the PAC folder in the shared drive, and consequently also access to Draft 6.

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PAC Members did not at any time have access to the PAC folder in the committee shared drive.

12. One copy of Draft 6 (watermarked '*DRAFT*' and including the heading, '*Draft PAC report – Procurement Governance of NI Water*') was printed in the PAC Office (Room 371, Parliament Buildings). Sixteen further copies of Draft 6 were made, from that one printed copy, on two photocopiers in Parliament Buildings by the PAC Clerical Supervisor and the PAC Clerical Officer. There were no individual markings or watermarks on the copies of Draft 6 that were made at that time.
13. The Clerical Supervisor and Clerical Officer incorporated the copies of Draft 6 into 17 committee packs in preparation for the PAC meeting scheduled for 20 January 2011. Eleven of the 17 packs were placed in envelopes for distribution to the Members of the PAC. The envelopes were sealed and stamped '*Restricted*' and '*Addressee only*', and a typed label bearing the name of a PAC Member was placed on each envelope. Four of the 17 packs that had been prepared were intended for distribution to the four members of the PAC clerking team, who were all due to attend the PAC meeting on 20 January 2011. The remaining two packs were 'spares' for use by other individuals at the meeting, if required.
14. At approximately 6.00pm on 17 January 2011, the Clerical Supervisor and the Clerical Officer delivered eight of the 11 Members' committee packs to the rooms of the eight PAC members (Roy Beggs MLA, Gregory Campbell MLA, William Irwin MLA, Mitchel McLaughlin MLA, Adrian McQuillan MLA, Paul Maskey MLA, Stephen Moutray MLA and Dawn Purvis) who had indicated a preference for their pack to be delivered to their personal office within Parliament Buildings, rather than to their party office. None of those eight Members, or any other individuals, were present to take receipt of the packs at the time of their delivery. The packs were left on Members' desks in their rooms, which were unlocked.

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15. At 6.11pm, the PAC Clerical Supervisor emailed what she understood to have been the version of the draft PAC report that had been included in the committee packs to the NIAO Assembly Liaison Officer. (She did in fact mistakenly email an earlier version of the draft report.) The draft emailed to the NIAO Assembly Liaison Officer at that time had no protective marking and was not encrypted or password protected.
16. The committee packs that had been prepared for the remaining three PAC Members (John Dallat MLA, Trevor Lunn MLA and Patsy McGlone MLA) who had each expressed a preference for packs to be delivered to their respective party offices, were retained in the PAC Office and secured in a locked cupboard overnight (since party offices were by that time locked). The remaining six packs (the four prepared for the members of the PAC clerking team and the two spares) were also locked away overnight in the same cupboard in the PAC Office. The key to the cupboard was held in a key safe within the PAC Office. Access to the key safe was restricted to the four members of PAC clerking team. The PAC Office was locked overnight.
17. On Tuesday 18 January 2011, the PAC Clerical Officer was the first member of staff to arrive at the PAC Office. The key safe, in which the key to the cupboard in which the Committee packs had been secured overnight, was still locked. One PAC Member, John Dallat MLA, collected his pack from the PAC Office at 8.40am. Only the PAC Clerical Officer was present at the time. Mr Dallat asked for an electronic copy of the draft PAC report to be emailed to his constituency office email account. (Mr Dallat was planning to return home due to personal circumstances and he had asked for the draft PAC report to be emailed to his constituency office in order that a member of his staff could review it on his behalf.) Although the Assembly's Committee Staff Guide does provide, at paragraph 7.3, for committee papers to be "*circulated ... electronically in line with the requirement of individual committee members...*", an electronic copy of a draft PAC report had not been provided to, or requested by, a Member previously, and Mr Dallat was therefore informed that further consideration would be given to his request. The PAC clerking team established subsequently that there was no means of securing an electronic copy of the

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draft report once it had been sent to a private email address. Mr Dallat was therefore informed that it would not be possible to meet his request.

18. The remaining two Members' committee packs were delivered by the PAC Clerical Officer to the party offices of the Members (Trevor Lunn MLA and Patsy McGlone MLA) at approximately 9.00am on 18 January 2011. Neither Member, nor any other individual, was present to take receipt of the packs at the time of their delivery.
19. At 9.03am on 18 January 2011, the NIAO Assembly Liaison Officer received an emailed copy of Draft 6 from the Assistant Clerk to the PAC (that is, the version of the draft report that had been included in the Committee packs). Draft 6 was watermarked "DRAFT" but had no protective marking. It was not encrypted or password protected when emailed to the NIAO Assembly Liaison Officer. At 9.09am, the NIAO Assembly Liaison Officer emailed Draft 6 to two members of the NIAO drafting team (the Divisional Director and the Audit Manager) and saved a copy of Draft 6 to a shared folder within the NIAO IT system. Access to the shared folder was restricted to the NIAO Assembly Liaison Officer, the NIAO Divisional Director and the NIAO Audit Manager to whom the Assembly Liaison Officer had emailed the draft report at 9.09am, and to another NIAO Audit Manager who had also worked on the NI Water inquiry. The NIAO Assembly Liaison Officer printed two hard copies of Draft 6, one of which he retained for his own use and one of which he passed to the Comptroller and Auditor General "at lunchtime" that day.
20. On receipt of the emailed Draft 6 from the NIAO Assembly Liaison Officer, the NIAO Divisional Director printed a copy for his own use, which he kept in a locked cupboard in his room. He also emailed a copy of Draft 6 to the NIAO team (of seven NIAO officers) who had worked on the NI Water inquiry.
21. During the afternoon of 18 January 2011, the (then) acting Permanent Secretary of the Department for Regional Development (DRD) was made aware by the (then) Head of DRD Press Office that the draft PAC report on NI Water had been leaked. Neither the (then) acting Permanent Secretary nor the (then)

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Head of DRD Press Office can recall the precise time at which the (then) acting Permanent Secretary was made aware of the leak. While it is the understanding of the (then) Head of DRD Press Office that the Press Office had learned of the leak through its usual monitoring of media and news bulletins, she was unable to recall any further specific details of how news of the leak had become known. Similarly, the (then) DRD Senior Information Officer had no recollection of how and when the DRD Press Office became aware that the draft PAC report had been leaked. In addition, the DRD Press Office was unable to provide me with any media monitoring records for 18 January 2011 that related to the draft PAC report.

22. Having learned that the draft PAC report had been leaked to the media, the (then) acting Permanent Secretary of DRD telephoned the Clerk to the PAC to establish if she was aware of the leak and how it had occurred. The Clerk's recollection is that the (then) acting Permanent Secretary telephoned her "just after 5" and informed her that DRD Press Office staff had heard the draft report being mentioned in BBC Radio Ulster headlines and had also advised him that the draft report was to be featured on UTV at 6.00pm. The Clerk to the PAC then contacted the Assembly's Communications Office, and asked the PAC Clerical supervisor to alert the Clerk Assistant about the leak. The Clerk to the PAC also telephoned the PAC Chairperson to inform him about the leak and to advise him that he should issue a statement prior to the expectation that the draft report would feature on the news media.
23. Although it has not been possible to establish the precise timing of the events described in paragraphs 21 and 22 above, it is likely that they were triggered by a reference, shortly after 5.00pm, to the draft PAC report in a news bulletin at the beginning of BBC Radio Ulster's 'Evening Extra'. My investigation has established that this was the first reference in any media to the draft report; there were no earlier references to the draft in any other radio or television broadcasts; on social networking sites such as Facebook or Twitter; or in media websites or blogs.

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24. The draft PAC report was featured in greater detail at 5.24pm in the same ‘Evening Extra’ broadcast. On that occasion, the ‘Evening Extra’ presenter, Seamus McKee, stated, *“More now on our latest exclusive on Northern Ireland Water ....”*. He went on to introduce BBC Northern Ireland’s political correspondent, Martina Purdy, with, *“You’ve got details of the draft report Martina ...”*. A transcript of the broadcast interview between Seamus McKee and Martina Purdy is included at Appendix 4.
25. At 5.56pm, the PAC Clerical Supervisor sent an email to all PAC Members, advising that it appeared that a copy of the draft PAC report on NI Water had been leaked to local media. Members were also informed at that time of the content of a statement that was to issue from the PAC Chairperson.
26. The statement from the PAC Chairperson about the leaking of the draft PAC report was issued by the Assembly’s Communications Office at 6.08pm. A copy of the Chairperson’s statement is at Appendix 5. By that time, the contents of the draft report had been featured in UTV’s ‘UTV Live at Six’ programme, which went to air at 6.00pm. The programme presenter, Paul Clark, introduced this news item, stating, *“UTV has had exclusive access to a draft report, from the Audit Office, into the handling of a crucial investigation by Mr Murphy’s department”*. There followed a pre-recorded report by UTV correspondent, Jamie Delargy. A copy of the draft PAC report is shown in Mr Delargy’s report. The heading *‘Draft PAC report – Procurement Governance of NI Water’* is clearly visible on the document. A transcript of Mr Delargy’s report and the subsequent discussion (with programme presenter, Rose Neill) of the PAC’s draft findings is at Appendix 6.
27. The content of the draft PAC report on NI Water was then featured in BBC NI’s ‘Newsline’ programme, which went to air at 6.29pm. The programme presenter, Noel Thompson, introduced BBC NI correspondent, Martina Purdy, commenting that she had *“seen the report”*. A transcript of Noel Thompson’s interview with Martina Purdy is at Appendix 7.

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28. At an early stage of my investigation, I made written enquiries to UTV and BBC Northern Ireland about the circumstances by which each had come to be in possession of details of the content of the draft PAC report on NI Water.
29. In response to my enquiries, the Director of BBC Northern Ireland, Peter Johnston, stated that *“The draft report raised issues of genuine public concern”*, and that *“There was a strong public interest in our audiences being informed of these concerns...”*. He informed me that *“in light of the strong public interest in the story and the duties that journalists owe to their confidential sources in these situations (which are recognised in law) [he was] not able to provide any information that would tend to identify the BBC’s source”*. Mr Johnston did, however, state that *“the BBC was provided with details of the draft PAC report”* and that *“these were provided to Martina Purdy (BBC Northern Ireland’s Political Correspondent)”*. Mr Johnston declined to provide me with a copy of the material that had been provided to the BBC, or to confirm whether it had been provided in hard copy format or electronically. At a later stage in my investigation, Mr Johnston confirmed that the first reference made by the BBC to the draft PAC report was in a new bulletin at the beginning of the BBC Radio Ulster ‘Evening Extra’ broadcast on Tuesday 18 January 2011. In addition, he informed me that he had no knowledge of any reference by the BBC to the draft PAC report on social media sites in January 2011, and that BBC correspondents had not been using Twitter and Facebook at that time.
30. The (former) UTV Head of News and Current Affairs, Rob Morrison, responded to my initial enquiries to UTV by stating, *“The PAC report into performance and governance issues at NIW was a matter of considerable public interest and therefore the broadcast of the leaked report was entirely warranted”*. He informed me that he was not *“in a position to supply any details in response to [my] enquiries”* because of *“the obligation to protect sources”*, although he did confirm that it had been UTV correspondent, Jamie Delargy, who had *“obtained the leaked report”*. Mr Morrison highlighted that *“the UTV correspondent, Jamie Delargy, who broadcast the leaked report ... would be more aware than most that the protection of confidential sources is one of the core tenets of journalism”*. Mr Morrison declined to provide me with a copy of draft report that

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had been obtained by UTV, or to disclose whether the draft report had been obtained in hard copy format or electronically. Subsequently, during the course of my investigation, UTV's Executive Editor News, Darwin Templeton, informed me that he was unaware of any references to the leaked draft report having been made on social media outlets by UTV staff.

31. In addition to making written enquiries to the BBC and UTV, I also requested meetings with both organisations. The UTV Executive Editor News, Darwin Templeton, did not accept my invitation to a meeting, stating that *"with due respect to [me] and the committee [UTV would] not be divulging any details that would or could lead to the identification of the source of the information that was contained in the January 2011 report by Mr Delargy"*.
32. I did, however, meet with the BBC Northern Ireland Director, Peter Johnston, and with the Head of News, Kathleen Carragher. At the meeting, Mr Johnston restated the BBC's position of protecting the identity of a journalistic source and Ms Carragher emphasised that the BBC was not prepared to disclose any information that might identify the source of the disclosure of the draft PAC report. Notably, Ms Carragher also commented that the BBC had *"wanted to be the first with the story"*.
33. Having established that neither the BBC or UTV was prepared to disclose the identity of the source(s) of the leak, or to provide any other information that might assist me in establishing the source(s), I then made enquiries to all individuals who had access to the draft PAC report.
34. I commenced my enquiries by meeting with those who had been members of the PAC in January 2011 (Roy Beggs MLA, Gregory Campbell MLA, John Dallat MLA, William Irwin MLA, Trevor Lunn MLA, Patsy McGlone MLA, Mitchel McLaughlin MLA, Adrian McQuillan MLA, Paul Maskey MLA, Stephen Moutray MLA and Dawn Purvis) and who had therefore been provided with a copy of the draft PAC report on NI Water in advance of the PAC meeting scheduled for 20 January 2011.

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35. All of the eleven (January 2011) PAC Members I spoke to told me that they had not leaked the draft report. All of them informed me they did not know who had leaked the draft report, although five also said that they had a suspicion, or could make an assumption, about the source of the leak but had no evidence to substantiate their view.
36. Nine PAC Members were able to confirm to me that the envelope, in which their committee pack containing the draft PAC report on NI Water had been delivered, had still been sealed when they had received it. The other two PAC Members, Mr Lunn and Mr McGlone were unable to recall if the envelope has been unopened at the time of receipt. Most PAC Members informed me that after opening the envelope, they had either taken the draft report with them on leaving Parliament Buildings or had locked it in a cabinet in their room. Two Members, Mr Irwin and Mr Dallat, told me that they had left the draft report in their respective offices, which had remained unlocked, and one Member, Mr McGlone, said he was unable to recall with certainty what he had done with the committee pack (and therefore also the draft report on NI Water) after he had removed it from the sealed envelope.
37. All eleven PAC Members informed me that they had not made a copy of the draft report, nor had any member of their staff made a copy. Three PAC Members, Mr Dallat, Mr Lunn and Mr McGlone, indicated that they could not be certain that no one else had accessed the draft report - Mr Dallat said he was “pretty certain that the draft report had not been interfered with”; Mr McGlone stated no-one else had access to the draft report “unless someone opened the envelope and took it out”; and Mr Lunn said that he believed it possible that someone may have seen the report in his office.
38. Seven of the PAC Members told me that they had had no contact at all with journalists or other representatives from the BBC or UTV on 17 or 18 January 2011. Three Members, Mr Beggs, Mr Campbell and Mr Lunn, told me that they had had no contact with BBC or UTV journalists specifically in relation to NI Water, while Mr McGlone said that he had been with a BBC journalist in Parliament Buildings on the afternoon of 18 January 2011 but that the journalist

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had been working on an unrelated news item at the time. Ms Purvis, one of the Members who confirmed to me that she had had no contact with journalists on 17 or 18 January 2011, informed me that she did speak subsequently to the BBC about the PAC's inquiry into NI Water, in relation to its 'Spotlight' programme on NI Water<sup>4</sup>, in which she had been asked to participate. Ms Purvis also informed me that at a related meeting with the producer of 'Spotlight', she had seen a photocopied copy of the draft PAC report on NI Water lying on a desk.

39. I asked the PAC Members how and when they had become aware that the draft PAC report on NI Water had been leaked to the media. Eight Members either recalled having learned of the leak through a media report or surmised that it was most likely that they had become aware of the leak in this manner. Mr McGlone told me that he had learned of the leak when he had gone into the PAC Office just after the Clerk to the PAC had been informed by the (then) acting DRD Permanent Secretary that the draft report had been disclosed to the media (as referred to in paragraph 22 above). Mr McLaughlin told me that he had remained unaware of the leak until it had been discussed at the PAC meeting on 20 January 2011. Mr Dallat informed me he had been in the Great Hall in Parliament Buildings some time between 12.30pm and 2.00pm on Tuesday 18 January 2012 and had heard journalists chatting about UTV "promoting" the draft PAC report on NI Water. He also informed me that at the time he was unclear as to the meaning of this reference to "promoting" but had later come to learn that it related to journalists 'tweeting' about the draft report.
40. I asked the PAC Members for their views on the impact of the leaking of a draft committee report with regard to its implications for the essential trust and confidence between Members of the Committee, between Members and staff, and between Members and the public, and importantly to the perceived integrity of individual members and the integrity of the Assembly itself. I received a range of comments in response, as follows:

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<sup>4</sup> BBC Spotlight, 'Caught Cold', broadcast 8 February 2011

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- the leaking of a draft report was “disgusting” as such reports had not yet been agreed by the committee;
- there should be sanctions against anyone, particularly a Member, who leaked a draft committee report;
- the leaking of draft reports raised issues of trust in relation to Members and other individuals who had access to Members’ offices;
- the leaking of committee reports caused committee staff to feel that they were being blamed for the leak;
- the leaking of a draft report causes suspicion and undermines trust between Members and so, adversely affects working relationships;
- the leaking of draft reports undermines the accountability of the Assembly and the Executive;
- the leaking of documents impacts upon the effectiveness of scrutiny by a committee;
- the leaking of draft reports jeopardised the work of any committee but particularly so in relation to sensitive cases such as the NI Water inquiry;
- the leaking of a draft PAC report in particular had had an adverse effect on the non-partisan position of the PAC and that this had the potential to affect trust amongst Members;
- the leaking of the draft PAC report on NI Water had undermined the PAC’s scrutiny role as it had led to draft reports now being made available for only a short period in advance of a meeting;
- the leaking of the draft PAC report on NI Water had been particularly damaging as it had not yet been agreed by the PAC;
- it had been “disgraceful” that following the PAC’s extensive work on the NI Water enquiry, the draft report had been leaked before the PAC had had an opportunity to conclude the inquiry process by considering and agreeing the report.

41. I also asked PAC Members for their views on what measures could be implemented to help protect draft reports to ensure their integrity and confidentiality was protected ahead of discussion by a committee and their legitimate publication at the appropriate time. PAC Members suggested a

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number of possible approaches that could be adopted, but also recognised that these measures would have some limitations and were likely to have an impact on the effectiveness and efficiency of the scrutiny role undertaken by a committee. Members suggested the following:

- limiting access to reports on sensitive issues, although this impacts on Members' ability to prepare for meetings;
- providing access to marked documents on the day of a committee meeting, although this would not allow for thorough consideration of a detailed document;
- watermarking documents with the recipient's name, although this would not prevent a report from being viewed inappropriately;
- personalising documents (to identify the recipient) in an inconspicuous manner;
- requiring recipients to sign for documents on receipt;
- storing documents in a secure manner;
- providing guidance to MLAs on upholding the principles of public life.

42. Some Members also referred specifically to the measures that had already been implemented by the PAC (on an interim basis pending the outcome of this investigation) to help ensure the confidentiality of sensitive papers. In particular, they mentioned the current practice whereby PAC members were not given access to sensitive papers until the day of a committee meeting. Mr McGlone, Mr McLaughlin, Mr McQuillan and Mr Maskey all said that this approach did not allow sufficient opportunity for proper scrutiny of reports and other important papers, although Mr McLaughlin and Mr McQuillan acknowledged that it was the only means of guaranteeing the confidentiality of papers. Mr Dallat commented that there was no difficulty with a more limited distribution of reports.

43. Some PAC Members (Mr Campbell, Mr Lunn and Mr Moutray) also commented that it was extremely difficult to ensure the integrity of papers prior to their proper publication. In addition, Mr Moutray observed that it was not easy to prevent an individual from leaking a document, if that individual was determined

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to do so, while Mr Lunn suggested that some Members needed to adopt a “different set of values”.

44. Having made enquiries to all (January 2011) PAC Members, I then arranged for my Deputy, Mrs Marie Anderson, and one of my Investigating Officers, Mrs Gillian Coey, to meet on my behalf with the staff of the Assembly Secretariat who were understood, at that particular stage in my investigation, to have had access to the PAC folder through the committee’s shared drive on the Assembly’s IT system, into which Draft 5 and Draft 6 of the draft PAC report on NI Water had been saved (as referred to in paragraphs 10 and 11 above). Mrs Anderson and Mrs Coey met with the four members of the PAC clerking team and with 11 other staff members of the Assembly’s Clerking and Reporting Directorate (the names of whom are listed in Appendix 3).
45. Of the 15 staff interviewed, 11 confirmed that they had access to the PAC folder, and consequently also to the draft report (Draft 5 and Draft 6) at the time of the leak. Two staff said that although they did have access to the PAC folder at a later stage, they did not have access in January 2011 as their role within the Clerking and Reporting Directorate at that time did not require it. The remaining two staff said they were unsure if they had access to the PAC folder. For the purposes of this investigation, it was assumed, in the absence of any confirmation to the contrary, that these two staff members did have access to the PAC folder and therefore neither had they access to the draft PAC report.
46. Each of the 11 staff who acknowledged they had access to the PAC folder, and the two who were assumed to have had access to it, informed Mrs Anderson and Mrs Coey that they had not leaked the draft PAC report on NI Water and also that they had no knowledge of who had leaked it. In addition, all stated that they did not have any contact with journalists or other representatives of UTV or BBC on 17 or 18 January 2011.
47. With the exception of the four members of the PAC clerking team (whose responses I will address separately below), all those interviewed said they had not accessed the draft PAC report in the PAC folder, nor had they permitted

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anyone to access it through their IT user account. All stated that they had not printed a copy of the draft report<sup>5</sup>; obtained a copy of it in any other manner<sup>6</sup>; or provided a copy of it to anyone<sup>7, 8</sup> prior to the leak.

48. With regard to the PAC clerking team, three of the four members confirmed that they had accessed the draft report in the shared folder because their role in providing support to the PAC had required it. None of the four had allowed any one else to access the draft report through their IT user account. Only the Clerical Supervisor and Clerical Officer said that they had printed a copy of the draft report (Draft 6)<sup>9</sup> as this had been required to prepare the packs for the PAC meeting on 20 January 2011.
49. All members of the clerking team said that they did not provide any other copies of the draft report to anyone prior to the leak<sup>10</sup>, although the Clerk acknowledged that she had mistakenly emailed a copy of an earlier version of the draft report (Draft 1) to a friend on the afternoon of Friday 14 January 2011 (as referred to in paragraph 9 above). The Clerk advised that she had not become aware of the error until some time later, and she had immediately brought it to the attention of senior officers in the Assembly Secretariat and had informed the PAC.
50. The Assembly Secretariat staff were also asked for their views on ways to ensure that the confidentiality of sensitive documents might be enhanced. The following ideas were suggested:
  - providing Members with access to sensitive documents in a reading room only, rather than distributing copies of the documents;
  - providing access to sensitive documents for only a limited time prior to committee meetings or at the meeting itself;
  - retrieving sensitive documents from Members at the end of a committee meeting, also distributing documents electronically in order that an audit trail of access to a document would be available;

<sup>5</sup> The Clerk Assistant believed that it was likely that he printed a copy of Draft 5 after the leak had occurred.

<sup>6</sup> The Director of Clerking and Reporting received an emailed copy of Draft 5 from the Clerk Assistant after the leak had occurred.

<sup>7</sup> The Clerk Assistant provided an emailed copy of Draft 5 to the Director of Clerking and Reporting after the leak had occurred.

<sup>8</sup> The Director of Clerking and Reporting provided an emailed copy of Draft 5 to the Director General after the leak had occurred.

<sup>9</sup> The Clerk printed an earlier draft of the PAC Report (Draft 1) on 14 January 2011 – as referred to in para 8 above.

<sup>10</sup> The Clerical Supervisor provided an emailed copy of Draft 5 to the Clerk Assistant after the leak had occurred.

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- watermarking documents with the recipient's name;
- using protective markings on documents;
- password protecting sensitive/confidential reports.

Some staff indicated that these suggestions could potentially impact on the effectiveness of the scrutiny role to be undertaken by committee members and may also have resource implications for the Assembly Secretariat.

51. I arranged for enquiries to be made of the individuals within NIAO who had access to the draft PAC report on NI Water. Mrs Anderson and Mrs Coey met on my behalf with the Comptroller and Auditor General; the Director of NIAO's Financial Division; the Divisional Secretary; the Assembly Liaison Officer; and four other staff members who had worked on the NI Water inquiry. (The names of the NIAO staff who were interviewed by Mrs Anderson and Mrs Coey are listed in Appendix 2.). In addition, written enquiries were made to one NIAO officer who at the time of the investigation was on a career break and working in GB. It was not possible to interview or write to one other NIAO officer who had had access to the draft PAC report as that officer was on long-term sickness absence. However, I did take account of the response that the officer had provided to the enquiries made during the PAC's own investigation into the leak.
52. All NIAO staff, to whom enquires were made stated that they had not leaked the draft PAC report on NI Water to the media, and that they did not know who had leaked it. They all stated that they had had no contact with journalists or other representatives of UTV or BBC on 17 or 18 January 2011.
53. The enquiries did establish that the Divisional Director and the Assembly Liaison Officer had printed copies of Draft 6 (the 'final' version of the draft report, as described in paragraph 11 above, the copy which had appeared in the UTV news report). The Divisional Director informed Mrs Anderson and Mrs Coey that he had printed a copy (on 18 January 2011) for his own use, which he had retained in a locked cupboard in his room. The Assembly Liaison Officer said he had printed two copies of Draft 6; he had kept one for his own reference and he had passed the other to the Comptroller and Auditor General. In addition, it was established that only the Divisional Director and the Assembly

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Liaison Officer had forwarded Draft 6 by email. The Assembly Liaison Officer, on receipt of Draft 6 from the Assistant Clerk to the PAC (paragraph 19 above refers), had emailed the draft report to the Divisional Director and to the Audit Manager who had both worked on the drafting of the report. The Divisional Director had forwarded the Assembly Liaison Officer's email with Draft 6 attached to the NIAO team of seven (including the Assembly Liaison Officer and the Audit Manager) all had worked on the NI Water inquiry and/or the related draft PAC report. The Divisional Director explained that he had done this in order that the team could see the output of their work on the inquiry. All other NIAO staff to whom enquiries were made confirmed that they did not provide a copy of Draft 6 to anyone, or forward an electronic copy of it to anyone. Everyone of whom enquiries were made were confident that there had been no access to their IT accounts by other individuals.

54. The NIAO staff were also asked for their views on ways to help safeguard the confidentiality of sensitive documents. The following ideas were suggested:
- encrypting draft reports when they were being transmitted between NIAO and the Assembly;
  - including confidentiality and proprietorial statements in draft reports and using embargos, similar to those already in operation within NIAO in relation to its own reports;
  - distributing draft reports on a "need to know" basis only ;
  - including individual markings/numbering on documents to help trace a document in the event that it leaked;
  - limiting access to draft reports prior to discussion at committee meetings.
55. In view of the fact that an electronic version of the draft PAC report had been accessible to a number of individuals within the Assembly and the NIAO, I considered it necessary to establish what information might be available from those organisations' IT systems and to then establish whether it was possible to trace if there had been any inappropriate access to, or transmission of, the draft report around the time of the leak. I also sought to establish which IT audit controls were in place within each organisation that might help minimise the risk of leaks in the future or, should a leak occur, might assist in identifying the

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source of that leak. I therefore arranged for enquiries to be made to the NIAO IT Manager and to the Assembly's acting Head of Information Systems (IS) and also its Information Systems Infrastructure Manager.

56. The NIAO IT Manager, who is also the NIAO IT Security Manager, informed Mrs Anderson and Mrs Coey that NIAO is accredited to carry information up to 'Restricted' level and that its IT network is configured accordingly. The IT Manager explained that NIAO operates a number of security policies, including policies on the securing of electronic data<sup>11</sup> and on the use of email and internet facilities<sup>12</sup>. Mrs Anderson and Mrs Coey were advised that NIAO does not operate home working but that staff do have secure remote access to its IT network in order that they may work in locations outside of the NIAO offices.
57. The NIAO IT Manager highlighted that NIAO operates a 'clear desk' policy and that keys for filing cabinets are stored in a key safe overnight. Regular checks are undertaken to ensure the 'clear desk' policy is being complied with. The IT Manager also explained that all emails sent and received by NIAO staff are logged. These records, which include details of the sender/recipient of the email, the date and time of sending/receipt, and attachment details, are retained for three years. With regard to access to shared folders on the NIAO IT network, it was explained that staff are given the minimum access needed, and that while all staff members in a particular branch may have access to certain folders, access to others, where sensitive reports were stored, is more restricted.
58. The NIAO IT Manager advised that following the leak of the draft PAC report in relation to NI Water, a check of NIAO email logs had been undertaken. This had confirmed that the only outgoing emails, which had included the draft PAC report as an attachment, had been those sent by the Assembly Liaison Officer to the Clerk to the PAC on 14 and 17 January 2011 (as referred to in paragraphs 8 and 9 above). The logs were still available at the time of my enquiries and the IT Manager was able to provide these to me. I found that the logs confirmed

<sup>11</sup> 'NIAO Internet & E-Mail Policy', V2.2, January 2011

<sup>12</sup> Securing Electronic Data V10 January 2011

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that the only emails referring to the NI Water inquiry or the draft report that had been sent by NIAO staff were those that had been identified to me previously.

59. The Assembly's acting Head of IS, who at the time of the leak of the draft PAC report, had been in his substantive post of Application Development Manager, informed Mrs Anderson and Mrs Coey that although there was a facility to audit access to files within the Assembly's IT network, this was not in use as analysis of the resulting audit data would be very labour intensive. It was clarified, however, that it would be feasible to use the audit facility in relation to specific folders and files, rather than the entire network.
60. Mrs Anderson and Mrs Coey were advised that following the leak of the draft PAC report, it had been recognised that not all Secretariat staff who had access to the committee shared drive required access to each of the individual committee folders. It had been decided therefore to restrict access rights to a particular committee folder to the relevant Clerk Assistant, Clerk and other members of the clerking team. Mrs Anderson and Mrs Coey were also advised that although MLAs have access to personal file storage areas in the Assembly's IT system, they do not have access to folders and files within the shared drives that are used by Assembly Secretariat staff.
61. In relation to the availability of email audit information, it was explained that the Assembly's tracking logs were retained for 99 days – the maximum number of days permitted by the system. These logs provided details of the names of senders and recipients, and details of the subject of the email, if any. However, the logs did not provide any information relating to whether or not emails sent and received included an attachment. It was confirmed that there was no mechanism in place to prevent documents saved on the Assembly's IT system from being emailed to a personal email account.
62. Mrs Anderson and Mrs Coey were informed that shortly following the leak (during the course of the PAC's own investigation), email tracking logs for some (but not all) Secretariat staff who had had access to the draft PAC report on NI Water had been checked. These checks, details of which were provided to me,

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had established that there had been no ‘inappropriate’ sending or receiving of emails relating to the PAC NI Water inquiry or report.<sup>13</sup> Mrs Anderson and Mrs Coey were also informed that the Assembly’s tracking logs for emails sent and received in January 2011 (the period around the time of the unauthorised disclosure of the draft PAC report) were no longer available, having not been saved beyond the 99-day retention period.

63. The acting Head of IS explained that although remote access to the Assembly’s IT system was available, it was very limited and did not extend to access to shared folders and files. He advised that the Assembly had no formal home-working policy.
64. The acting Head of IS also commented on a proposal to issue committee packs electronically. He advised Mrs Anderson and Mrs Coey that it was proposed to create committee packs as a single electronic file that would be accessed via a tablet computer. It was also intended, he indicated, that sensitive documents would not be included in the electronic file but would continue to be made available in hard copy format only.
65. Mrs Anderson and Mrs Coey also met with the Assembly’s former acting Head of IS, who had been in that post at the time of the leak. The former acting Head of IS informed Mrs Anderson and Mrs Coey that approximately one year prior to the leak of the draft PAC report, there had been a leak of information relating to Members’ expenses. An investigation into that leak had not found the source but had concluded that it was most likely that the leaked information had been copied from the Assembly’s IT system to a CD or a USB device. The Assembly had therefore implemented a system whereby information cannot be copied to CD or USB device without permission and without it being tracked. A regular review process for access rights to folders within shared drives had also been implemented around the same time. The former acting Head of IS commented, however, that the Assembly did not have a business process in place to remove access rights when they were no longer required following staff moves.

<sup>13</sup> It was through these checks that it was realised that the Clerk to the PAC had mistakenly sent an email about the draft PAC report to a friend (‘Mr A’) instead of to the Clerk Assistant

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66. With regard to the leak of the draft PAC report, the former Acting Head of IS advised that investigations undertaken at the time had concluded that no information stored on the Assembly's IT network had been written to CD or USB device. He confirmed that email tracking logs for some Secretariat staff had been checked but that no action had been taken to ensure that all email logs for the dates around the time of the leak were kept beyond the normal retention period. The former acting Head of IS also advised that no checks of email tracking logs for Members had been undertaken as IS staff did not have the authority to undertake such monitoring.
67. Enquiries were also made to Mr A, to whom the Clerk to the PAC had mistakenly emailed a copy of an early draft of the PAC report on NI Water on 14 January 2011 (paragraph 48 refers). Those enquiries (made by Mrs Anderson and Mrs Coey on my behalf) established that in January 2011, Mr A worked, on a self-employed basis, for a private insurance company. Mr A confirmed that he did receive an email from the Clerk on the afternoon of Friday 14 January 2011. He explained that the email account to which the email had been sent was a personal email account (a Gmail account) that he used for business purposes. Mr A said that on reading the main body of the Clerk's email, he had realised straight away that it had been intended for another recipient. He also saw that the email had an attachment, which appeared to him, from a reference to 'NIW' in the attachment's title, to be related to NI Water. Mr A said he did not open the attachment at the time. He also said that although it had been his intention to inform the Clerk that he had received an email which appeared to have been sent to him in error, he never did so. He put this down to the fact that he had no contact with the Clerk in the period immediately following his receipt of the email and because he had not wanted "to embarrass her" by bringing her oversight to her attention. Mr A said that he later deleted the email and the attachment, although he could not recall when he had done so.
68. Mr A said that he did not print a copy of the draft report, nor did he forward it to anyone or save it elsewhere on his computer. He also said that he did not

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permit anyone to access his email account between the time of receipt of the Clerk's email and the time of its deletion from his email account. He considered that it would not have been possible for anyone to have accessed his email account without his knowledge as it was password protected and, in addition, since he was required to be "registered" (with the Information Commissioner) as a data controller (for the purposes of processing personal data in connection with work he undertook for the insurance company), his computer hard-drive had been encrypted.

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### ANALYSIS OF EVIDENCE AND FINDINGS

#### **Term of Reference 1: The circumstances of the unauthorised disclosure of the draft PAC report on NI Water**

69. The first term of reference for this investigation is to establish the circumstances surrounding the leaking of the draft PAC report on NI Water. It is evident that by 6.00pm on 18 January 2011, details of the content of the draft PAC report had been disclosed to both UTV and the BBC, and that these details had been broadcast by both organisations. It was not clear, however, at the outset of my investigation, when the leak had occurred and what specifically had been leaked.
70. Firstly, with regard to the unauthorised disclosure to UTV, the former UTV Head of News and Current Affairs has informed me that UTV correspondent, Jamie Delargy, *“obtained the leaked report”*. He (the former Head of News and Current Affairs) has declined, however, to provide to me *“any details in response to [my] enquiries”* about how UTV obtained the draft report or to provide me with a copy of the material Mr Delargy obtained. However, a copy of the draft report was shown in Jamie Delargy’s report in ‘UTV Live at Six’ on 18 January 2011, and it appears that this was the version that included the header, *‘Draft PAC report – Procurement Governance of NI Water’*. I believe therefore that it is reasonable to conclude that it was the version of the draft PAC report (Draft 6) to which that header had been added at an unknown time between 4.56pm and 6.00pm on Monday 17 January (as referred to in paragraph 11 above) that was leaked to UTV.
71. The first reference by UTV to the draft PAC report was made at 6.01pm on Tuesday 18 January 2011, when ‘UTV Live at Six’ presenter, Paul Clark, stated that *“UTV has had exclusive access to a draft report ...”*. It follows then that the leak to UTV must have occurred some time between the creation of Draft 6 (some time between 4.56pm to 6.00pm on Monday 17 January 2011) and the beginning of the ‘UTV Live at Six’ broadcast (6.01pm on Tuesday 18 January 2011). I have not found it possible from my enquiries to be more definitive about the precise time at which the leak to UTV occurred. However, since it

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would appear that UTV was not in a position to report on its “exclusive access” to the PAC’s draft findings any earlier than its ‘UTV Live at Six’ programme on 18 January 2011, I consider it unlikely that it was in possession of the draft report as early as the previous day (17 January 2011). It is my view therefore that it is probable that the draft PAC report (Draft 6) was leaked to UTV some time on Tuesday 18 January 2011.

72. With regard to the unauthorised disclosure of the draft PAC report to the BBC, although the Director of BBC Northern Ireland has confirmed that details of the draft report were provided to its correspondent Martina Purdy, he has declined to provide me with any details “*that would tend to identify the BBC’s source*” or to provide me with a copy of the material that was made available to the BBC. Consequently, it has not been possible for me to determine definitively which version of the draft report was leaked to the BBC. In addition, I cannot say definitely whether the BBC was in possession of a full copy of the draft report at the time of the ‘Evening Extra’ and ‘Newsline’ broadcasts on 18 January 2011, rather than having access to ‘only’ details of the draft report’s content. However, on the basis of the evidence gathered during this investigation, primarily the BBC NI Director’s written comments to me (that “*the BBC was provided with details of the draft PAC report*” [my underlining] – paragraph 28 refers); Martina Purdy’s comments in the Radio Ulster ‘Evening Extra’ broadcast on 18 January 2011 (“*my understanding is this is a wide-ranging draft ..*” and “*My understanding is that the draft report criticises the failure of Northern Ireland Water...*” [my underlining] – Appendix 4 refers); and Noel Thompson’s introductory comments in BBC ‘Newsline’ programme on the same date (“*it’s understood that the report says...*”; “*The report is also understood to be highly critical ...*”; and “*Martina Purdy has seen the report*” [again, my underlining] – Appendix 7 refers), I consider it possible that the BBC did not have a full copy of the draft report at the time of those particular broadcasts but rather, may have been given an opportunity to view the draft report or was provided with details of its content. (I am persuaded, however, on the basis of evidence provided to me by Ms Dawn Purvis (paragraph 38 above refers) that the BBC was in possession of a copy of the draft report at a later stage.)

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73. Since I have not been able to establish with certainty which version of the draft report (or detail of its content) was leaked to the BBC, it is more difficult to determine the timeframe within which the unauthorised disclosure to the BBC is likely to have been made. However, given that BBC did not report on the PAC's draft findings until its Radio Ulster 'Evening Extra' broadcast on 18 January 2011, I consider it probable (particularly in view of the comments of the BBC NI Head of News – that the BBC had "wanted to be first with the story" – paragraph 32 refers) that the unauthorised disclosure to the BBC was made on that particular day, rather than at an earlier time. For the same reason, I am also of the view that it is probable that it was the most recent draft of the report that existed at that time (or detail of its content), that is, Draft 6, rather than one of the earlier versions of the draft report, that was leaked to the BBC.
74. The sequence of events during the period 14 to 18 January 2011, by which Draft 6 came to be created; distributed to PAC Members; and made accessible to a number of other individuals, is set out in paragraphs 9 to 20 above. I consider that there were number of weaknesses in the working processes and systems that were in operation during that period. In my view, while these did not lead directly to the unauthorised disclosure of the draft report, they did increase the risk to the PAC of its draft findings on NI Water being made known prematurely and without proper authority, and they also afforded an individual (or individuals) who had access to the draft report an enhanced opportunity to leak its contents to the media, if so minded. I consider these weaknesses to have been:
- at no time in the creation and dissemination of the draft PAC report, from the transmission of the initial draft of the report (Draft 1) from NIAO to the PAC Clerk until the distribution of hard copies of the final draft (Draft 6) to PAC Members, did the draft carry a protective marking;
  - at no time, did the draft report carry a declaration of the PAC's proprietorial interest in it ;
  - at no time was there any statement to the effect that the draft report was confidential until such time as it was published by the PAC;

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- none of the versions of the draft report that were emailed between NIAO and the PAC clerking team were password protected or encrypted;
- the draft report was emailed to a personal email account, outside the Government Secure Intranet, which increased the risk of unlawful access to it;
- the draft report was made available to individuals within the Assembly Secretariat and NIAO who did not require access to it;
- there was no system within the Assembly Secretariat to update access rights to shared folders on the IT network to reflect staff moves, as they occurred;
- although 'spare' committee packs (which contained the draft PAC report) were secured in the PAC office overnight, the packs distributed to PAC Members were left unattended in unlocked offices;
- there was no requirement for PAC Members to acknowledge receipt of their committee packs;
- not all PAC Members took steps to ensure the secure storage of their copy of the draft report.

75. While it will never be possible or practicable to eliminate all risk of confidential/sensitive Assembly documents being disclosed prematurely and without proper authority, it is, in my view, essential that this risk is minimised. The weaknesses in working methods that I have identified must be addressed by the organisations involved in the drafting and dissemination of such documents, if this is to be achieved. I therefore recommend that those organisations consider the following:

- The Assembly's protective marking policy and procedures should be reviewed to ensure that it is appropriate for the use, storage and transfer of information of a confidential/sensitive nature that may be contained in draft committee reports and other Assembly documents;
- NIAO staff, Assembly Secretariat staff and Members should be reminded of the need to apply the protective marking policy consistently, and appropriate training and/or guidance should be provided, if necessary;

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- Confidential/sensitive documents, such as draft committee reports, should be encrypted or password protected when being transmitted electronically, including those transmitted via the Government Secure Intranet;
- Confidential/sensitive documents should not be emailed to personal email accounts – should staff be required to work at home, remote access to the Assembly's IT network should be arranged;
- All draft committee reports should include a declaration of the relevant committee's proprietorial interest;
- All draft committee reports should include a statement to the effect that the document remains confidential until it is published by the relevant committee or the Assembly;
- Draft committee reports and other confidential information should not be made available to those who do not have a business need to access them;
- Access rights to shared folders in IT networks should be reviewed immediately following staff moves and internal reorganisations and, where necessary, revised;
- The practice of leaving committee packs unattended in unlocked Members' offices (at the time of their distribution) should cease;
- Members should be required to acknowledge formally the receipt of their committee pack;
- Members should be reminded of the need to maintain the confidentiality of Assembly information and to ensure that such information is stored securely at all times. Appropriate training and/or guidance should be provided, if necessary.

### **Term of Reference 2: The source of the unauthorised disclosure of the draft PAC report**

76. The Committee has asked me to seek to establish the source of the unauthorised disclosure of the draft PAC report. Each of the individuals within

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the Assembly Secretariat and the NIAO and the (January 2011) Members of the PAC, to whom enquiries have been made regarding this specific matter, has stated categorically that he/she was not the source of the leak, and all have stated that they have no knowledge of who did disclose the draft report. Some Members of the PAC have commented that they have a suspicion about the source but have no evidence to substantiate their belief. No one to whom I directed enquiries (with the exception of the Clerk to the PAC who mistakenly emailed an early draft of the PAC report to Mr A) admitted to having provided a copy of the report to anyone other than colleagues within the Assembly Secretariat and/or NIAO.

77. All but one of the individuals to whom I made enquiries has stated that they remained unaware of the leak until after the draft PAC report was first referred to in the media (which, as I have established, was by BBC Radio Ulster, shortly after 5.00pm on 18 January 2011). One of the PAC Members, John Dallat MLA, has told me that he first became aware of the leak some time between 12.30pm and 2.00pm on 18 January 2011, when he heard journalists in the Great Hall in Parliament Buildings chatting about UTV “promoting” the draft report, and that he later came to learn that this reference to “promoting” the report meant that journalists were ‘tweeting’ about it (paragraph 39 above refers). However, the Executive Editor News of UTV has informed me that he was unaware of any references to the leaked draft report having been made on social media sites by UTV staff (paragraph 30 above refers), and this assessment is supported by the Director of BBC Northern Ireland who has told me that he has no knowledge of any reference by the BBC to the draft PAC report on social media sites in January 2011, and that BBC correspondents were not using Twitter and Facebook at that time (paragraph 29 above refers).
78. Mr A, to whom an electronic copy of the draft PAC report was forwarded, in error, by the Clerk of the PAC, has stated that he did not disclose the draft report to anyone and he has assured me that it would not have been possible for the draft report to be accessed from his computer or email account without his knowledge. In addition, I am mindful that the version of the draft PAC report that was sent to Mr A on 14 January 2011 was an early draft, that is, Draft 1,

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which I have concluded was not the draft that came to be in the possession of UTV (paragraph 70 refers), nor is it the particular version of the draft report that I consider was likely to have been the origin of the material that was made available to the BBC (paragraph 73 refers).

79. My examination of available audit information from the NIAO IT system has not disclosed any evidence of inappropriate access to, or transmission of, an electronic version of the draft report by that Office, which could have led to the unauthorised disclosure. With regard to available audit information from the Assembly's IT system, only the records of the limited checks of email logs that were undertaken in February 2011 still exist. My examination of these has not disclosed evidence of any activity that I consider led to the unauthorised disclosure.
80. The BBC and UTV have both refused to disclose the source of the leak or to provide me with any information that they consider might identify the source. Therefore, despite extensive enquiries, I have been unable to identify with any certainty the source of the unauthorised disclosure of the draft PAC report on NI Water.
81. Being mindful that this is a somewhat unsatisfactory outcome in the sense that it means a significant number of individuals remain under a cloud of suspicion of possibly having leaked the draft report, I have considered whether it is feasible, on the basis of the evidence I have gathered, to discount any of those individuals who had access to the report as a potential source of the leak. Following such a line of inquiry, since the draft report was not available in both electronic and hard copy format to all of those who had access to it, the format in which UTV and the BBC obtained the draft becomes an important consideration.
82. The BBC and UTV have both refused to provide me with a copy of the material they obtained and I am therefore unable to say definitively whether the report was leaked to them in hard copy format or in electronic format. None of the evidence I have obtained enables me to speculate to any extent on the format

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of the material that was obtained by the BBC. However, I note that the document that was obtained by UTV's Jamie Delargy (or a photocopy of it or representation) is seen in Mr Delargy's 'UTV Live at Six' report broadcast on 18 January 2011. Having examined the video recording of that report, I am of the view that the quality of the document shown is such that it is not a "first generation" print (that is, a copy of the draft report that has been printed directly from an electronic version of the document). Rather, it is, in my opinion, a photocopy of an existing printed copy of the draft report, or possibly even a further photocopy of an existing photocopy of an original print of the draft report. While this could indicate that Mr Delargy was provided with a photocopy of an existing hard copy of the report, a number of which were made during the period 17 to 18 January 2011 (paragraphs 12, 19 and 20 above refer), it could also be the case that Mr Delargy obtained an electronic version of the report, and that he or someone else at UTV printed a copy of it, before then photocopying (once or more than once) and exhibiting the document in the news report. In addition, I am mindful that any of the individuals who had access to an electronic version of the draft report could have printed a copy before passing the document, or a photocopy of it, to Mr Delargy. In the event, given that there are a number of possibilities as to the manner and format in which the disclosure was made to the media, it has not been possible for me to discount any of the individuals with access to the draft report from being a potential source of the leak.

83. As I have indicated above, the fact that each of the individuals who had access to the draft report has denied having disclosed it, along with the fact that UTV and the BBC have both refused to provide me with any information as to how they came to have the document (or details of it), has meant that I have been unable to establish definitively the source of the leak. In view of this, I consider that there are a number of additional issues relating to the Assembly's systems and business processes that have inhibited this investigation because had they been in place, they would at least have narrowed down the number of possible sources of the leak. These are:

- there was no audit trail of access to the draft report that was saved in the committee shared drive in the Assembly IT network;

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- checks of email tracking logs for all Assembly Secretariat staff were not undertaken immediately following the leak;
- checks of email tracking logs for Members were not undertaken immediately following the leak;
- Assembly email tracking logs for the relevant period were not kept beyond the standard 99-day retention period (which I have noted expired after this matter was referred to me for investigation);
- Assembly email tracking logs did not include any record of whether outgoing emails had included an attachment;
- hard copies of the draft report that were distributed in committee packs were not individually numbered or watermarked (although I acknowledge that if this had been the case, it would have been unlikely that UTV would have exhibited on their news programme a marked copy of the draft report).

84. It is important that these matters are addressed not only because they might assist in the identification of the sources of any further leaks that occur but also to enable the early vindication of those who are not responsible for any wrongdoing. I therefore recommend that the Standards Committee consider recommending to the Assembly Commission that they consider implementing the following measures:

- The facility to audit access to specific electronic documents and/or folders that are considered to contain particularly sensitive information should be introduced;
- Email tracking logs should include details of email attachments, or as a minimum, indicate whether an email included an attachment;
- A Code of Practice for the Use of Assembly Computer Resources, which currently exists only in draft form, should be finalised and made operational in order that the monitoring of the use of Assembly email services by all users, including Members, as referred to in paragraph 5.4 of that draft document, may be undertaken;

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- Steps should be taken to ensure that email tracking/monitoring logs are maintained beyond the standard 99-day retention period in instances where an unauthorised disclosure of information has occurred until such time as all related inquiries/investigations have been completed;
- All hard copies of draft committee reports, and other confidential/sensitive documents prepared for inclusion in committee packs should be individually numbered or watermarked with each recipient's name before they are distributed.

85. In addition, although this investigation has not specifically examined the motivation of the individual (or individuals) who disclosed the draft PAC report (since that was not one of the terms of reference given to me by the Committee), it appears to me that that individual (or those individuals), in leaking the draft report, had little concern about the potential that they could be subject to a sanction or disciplinary action should their breach of trust be discovered. I have therefore considered what recommendations, if any, are required to address this issue. To enable me to do so, I have in the first instance examined the different arrangements that are in place for the various groups of persons who could possibly have been the source of this leak, with regard to the Assembly's requirement that they maintain the confidentiality of information obtained by them in the course of their Assembly duties.
86. A duty of confidentiality is included in the Assembly Secretariat's schedule of principal terms and conditions of appointment. The schedule states, *"You are required to exercise care in the use of information, which you may acquire in the course of official duties and to protect all information, which is held in confidence. Any breach of these rules may result in disciplinary or criminal action"*. Secretariat staff are required, on taking up employment with the Assembly, to sign a duty of confidentiality declaration.
87. The NIAO Code of Conduct states, *"Staff must be extremely reticent about information obtained in the course of their official duties. They must not disclose beyond proper channels of reporting any information about audited bodies or the NIAO, which they have obtained as a result of their work"*. The

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Code of Conduct also states, *“failure to comply with the Code may lead to disciplinary action”*. All NIAO staff are required to submit a return stating that they have read and understood the provisions of the Code of Conduct.

88. MLAs are subject to the provisions of the Code of Conduct for Members of the Northern Ireland Assembly (the Code). The only specific reference in the Code to the confidentiality of information is, *“Members must bear in mind that information they receive in confidence in the course of their Assembly duties should be used only in connection with those duties ...”*. Assembly Standing Order 69B states, *“Where it appears to the Committee on Standards and Privileges that a member had failed to comply with any provision of the Code of Conduct ... the committee may make a report to the Assembly .... In consideration of such a report, the Assembly may impose a sanction upon a member who has failed to comply with any of those provisions”*.
89. It is evident therefore that all those who had access to the draft PAC report on NI Water, and who could potentially have been the source of the leak, were subject to a duty of confidentiality with regard to the handling of information they received, or had access to, in relation to their official/Assembly duties. The duty of confidentiality placed on staff of the Assembly Secretariat and staff of NIAO is explicit in that it requires them either *“to protect all information, which is held in confidence”*<sup>14</sup> or to *“not disclose beyond proper channels of reporting any information ... they have obtained as a result of their work”*<sup>15</sup>. In addition, it is made clear that any departure from this required standard of conduct may result in disciplinary action. However, I consider that the Code of Conduct for Members is less clear, in that it does not state unequivocally that the requirement that *“information [Members] receive in confidence in the course of their Assembly duties should be used only in connection with those duties”* also includes an obligation that such information is not to be disclosed to a third party without proper authority.

<sup>14</sup> Assembly Secretariat Principal Terms and Conditions of Appointment

<sup>15</sup> NIAO Code of Conduct

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90. In this regard, I am conscious that the Code of Conduct for Members of the Scottish Parliament places a specific confidentiality requirement on MSPs. That Code of Conduct states, *“It is the intention of the [Scottish] Parliament that its proceedings and printed material be open to the general public. This should be the basis on which members work, but there may be times when members will be required to treat discussions, documents or other information relating to the parliament in a confidential manner ... [including ] ... committee reports which ... have not yet been published .... This means that unless Parliament or the relevant committee has agreed otherwise, such documents should not be circulated, shown, or transmitted in any other way to members of the public ... media or to any organisation outwith the Parliament ...”*<sup>16</sup>
91. In my view, in order to help prevent further leaks of confidential information of the Northern Ireland Assembly, it is essential to ensure that all those entrusted with access to such information are fully aware of the requirement that their position, elected or otherwise, places upon them with regard to maintaining and safeguarding the confidentiality of that information, and also that they may be subject to sanction or other disciplinary action should they breach their position of trust. Consequently, I recommend that the Committee on Standards and Privileges considers the need to review the Code of Conduct for Members to reflect more specifically that the unauthorised disclosure of Assembly information or documents constitutes a breach of the provisions of that Code.

**Term of Reference 3: The efficacy of referring such matters as breach of privilege for investigation by the Commissioner for Standards**

92. The Committee has asked me to comment on the efficacy of referring such matters as breaches of privilege for investigation by the Commissioner for Standards. I am aware, having sought further clarification from the Clerk of Standards, that it was the Committee’s intention, in setting this term of reference, that I should comment on the efficacy of referring such matters (that

<sup>16</sup> The Code of Conduct for Members of the Scottish Parliament, Volume 2, Section 7.4

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is, the unauthorised disclosure of confidential documents and information) to the Commissioner for Standards specifically as a breach of privilege.

93. The Standing Orders of the Assembly provide two mechanisms by which the unauthorised disclosure of confidential information may be addressed. The first of these will apply in circumstances where the nature of the disclosure is such that it is considered to constitute a breach of Assembly privilege. In this regard, Standing Order 57(1) states: *“There shall be a standing committee of the Assembly to be known as the Committee on Standards and Privileges ... to consider specific matters relating to privilege referred to it by the Assembly ...”*. Standing Order 70(3) states, *“If in the opinion of the Speaker a prima facie case of breach of privilege has been made out by a member ... the Speaker shall so inform the Assembly and refer the matter to the Committee on Standards and Privileges”*. Standing Order 69(A) states, *“[The Assembly Commissioner for Standards] shall upon referral ... from the Clerk of Standards in relation to ... matters relating to members and Assembly privilege, including alleged breach of privilege ... carry out an investigation and make a report thereon to the Committee on Standards and Privileges”*. It is clear that these Standing Orders provide for a matter considered by the Speaker to constitute a breach of privilege to be referred to the Committee on Standards and Privileges; that in considering such a matter, the Committee refers it, through the Clerk of Standards, to the Commissioner for Standards; and that the Commissioner for Standards then conducts an investigation and reports back to the Committee. In my view, therefore, once an unauthorised disclosure of Assembly information has been accepted by the Assembly as constituting an alleged breach of privilege, an investigation by the Commissioner for Standards will be initiated.
94. A second mechanism applies in circumstances where it is alleged that a Member is the source of the unauthorised disclosure. In this regard, Standing Order 69A states, *“[The Assembly Commissioner for Standards] shall upon referral ... from any person of a specific complaint, in relation to alleged contravention of the Code of Conduct ; and from the Clerk of Standards in relation to ... matters relating to the conduct of members, including specific complaints in relation to alleged contravention of the Code of Conduct ... ..”*

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*carry out an investigation and make a report thereon to the Committee on Standards and Privileges*". The procedure by which such complaints are to be handled is described in the Guide to the Rules Relating to the Conduct of Members (the Guide). The Guide states, "*Complaints against Members of the Assembly should be made to the Assembly Commissioner for Standards.... Upon receipt of a complaint ... the Commissioner will consider the complaint ... to determine whether it is admissible under the Code of Conduct (the Code) or the Guide to the Rules Relating to the Conduct of Members (the Guide). The following admissibility criteria will be applied [one of which is that] the Member complained of is clearly identified ...*". Consequently, while this mechanism also has the potential for an unauthorised disclosure to be investigated by the Commissioner for Standards, an investigation will result only when the identity of the Member who is alleged to be the source of the leak has been identified at the outset.

95. It is widely acknowledged that it is notoriously difficult to identify the source of a leak of confidential information, the main obstacle being that if an individual has betrayed the trust invested in him/her by failing to maintain the confidentiality required in their role by leaking information, they are unlikely to admit what they have done and more likely to conceal what they have done. They realise that if they are discovered it will impact on their relationships with colleagues and how they are perceived by others. Therefore, it is unlikely that an individual will identify him/herself as the source of the leak. However, there should be no doubt about the detrimental impact of the unauthorised disclosure of confidential information, particularly of a draft committee report before it has been agreed or even considered by the committee concerned, with the implications that has for natural justice and fairness for individuals or organisations that are referred to in that draft report. Many of the individuals who have participated in this investigation, in particular the (January 2011) Members of the PAC, have expressed strong views on this matter. They have commented that the leaking of a draft (committee) report is "disgusting", affects working relationships, causes suspicion and raises issues of trust; that the leaking of a draft report before it has been agreed is particularly damaging; that

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the leaking of a draft report jeopardises the work of a committee and undermines the accountability of the Assembly and the Executive; that the leaking of a draft committee report causes committee staff to feel under suspicion and exposed to criticism; and that therefore there should be severe sanctions against anyone, including a Member, who leaks a draft committee report. This is particularly so when it is clear that a draft report will be published once a Committee has had the opportunity to discuss and agree it.

96. Given this strength of negative feeling about the impact of the disclosure of confidential information, in particular, a draft committee report, and indeed the opprobrium that attaches to those that may be responsible for a leak, I am firmly of the view that an institution cannot afford to tolerate or ignore a leak or the integrity of work processes and ultimately the standing of the institution itself will be undermined. It is important that leaks are investigated and treated with the utmost seriousness because of their implications for the efficacy and standing in the public mind of the Assembly. While such inquiries may prove to be time consuming and resource intensive (as has been the experience in this particular investigation), an investigation, and therefore the same investment of time and other resources, will be required regardless of which of the two mechanisms referred to above applies in the particular circumstances of a leak. It would be my expectation that in most leak investigations, the identity of the source will not be known. Therefore, it is likely that the majority of complaints about the leaking of information that are considered under the complaints procedure detailed in the Guide will not be investigated. Consequently, if the Committee accepts that unauthorised disclosures must be pursued, then, in my view, the complaints procedure operated by the Commissioner for Assembly Standards is not the optimum mechanism for dealing with such matters (unless it is used in circumstances where it has been alleged that the source of the leak is a Member and that the identity of the alleged source has been specified). In this regard, I should reiterate that referring an unauthorised disclosure to the Commissioner for Standards as a breach of privilege does, of course, require the Assembly to be satisfied in the first instance that the nature of the disclosure is such that it is a matter that affects the privilege of the Assembly. Since the

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question of what constitutes a breach of Assembly privilege is for the Assembly itself to address, it is not a matter on which it would be helpful for me to comment further.

97. Finally, I consider that whichever approach the Committee agrees is most effective in dealing with 'leaks', it is essential (in view of the level of resources that will be required to undertake a thorough investigation) that all practicable steps are taken to minimise the likelihood of leaks occurring by identifying on a proactive basis potential sources of leaks. In this respect, I would highlight the recommendations I have made in paragraphs 75 and 84. I would also draw attention to my comments in paragraph 89 and related recommendation in paragraph 91 regarding the need for greater clarity in Code of Conduct for Members with regard to breaches of confidentiality. In my view, by implementing these recommendations, the efficacy of investigations into the unauthorised disclosure of information and reports will be enhanced.

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### **RECOMMENDATIONS**

98. The recommendations I have made in this report are listed in Appendix 8. It is important to recognise that no single initiative will be sufficient to protect absolutely the confidentiality of the Assembly's proceedings, information and documents where that is appropriate. In my view, there will always be a risk of an unauthorised disclosure unless access to confidential information is restricted completely. Clearly, this is not a practicable or viable option if the scrutiny role undertaken by the Assembly and its committees is not to be undermined. The recommendations I have suggested are intended to provide additional "levels of assurance" that, if accepted, could be applied systematically in order that the risk of disclosure can be reduced as far as is practicable.
99. In addition to the measures I have suggested, the PAC, in particular, may wish to consider whether the revised procedures for the handling of committee papers that were introduced in January 2011 following the leaking of the draft PAC report on NI Water and in October 2011, following the subsequent leaking of the PAC's draft report on the Farm Nutrient Management Scheme, should be retained. I am aware that in January 2011, the PAC agreed to use individual watermarks and embargo dates on sensitive papers, such as draft reports, legal advice and suggested questions etc. Further, I note that in October 2011 it agreed that such sensitive documents should be distributed "in camera" only. Consequently, at present, sensitive documents relating to the work of the PAC are made available to Members in a reading room on the day of a meeting or may be examined in the PAC office during the week leading up to a meeting.
100. The watermarking of documents with the recipient's name is one of the recommendations that I have made in order to help reduce the risk of leaks and to assist in the identification of the source of a leak, and I would suggest therefore that this practice is retained on a permanent basis. With regard to restricting access to committee papers prior a meeting, I am mindful that a significant number of the (January 2011) PAC Members interviewed during this investigation, commented that this practice, while effective in reducing the risk of an unauthorised disclosure, does have a negative impact on the PAC's

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scrutiny role. Furthermore, this practice makes it difficult to consider thoroughly lengthy and complex documents in advance of meetings. The PAC may wish to consider therefore whether the additional information security that results from restricting Members' access to sensitive documents outweighs the detrimental impact this practice is having on the PAC's ability to fulfil its critical scrutiny role. In doing so, the PAC will wish to consider that the distribution of sensitive documents "in camera" does not in itself address all of the weaknesses in systems and processes surrounding the handling of confidential information and documents that this investigation has identified.

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### **CONCLUSION**

101. The enquiries I have conducted during this investigation have enabled me to establish a detailed chronology of the events that led up to the leak of the PAC's draft report on NI Water. However, I have not been able to establish definitively the source of the leak, in particular who leaked the draft report, the format in which it was leaked (hard copy or electronic version) or precisely when it was leaked. In addition, I have not been able to conclude with certainty whether a full copy of the draft report was leaked to the BBC, although I am satisfied that it was the 'final' version of the draft report, which was created on 17 January 2011 for inclusion in the committee packs prepared for the PAC's meeting on 20 January 2011 (that is, 'Draft 6'), that was obtained by UTV. However, I consider it is possible, on the basis of the evidence I have obtained, that it was that same version of the draft report (Draft 6), or at least details of it, that was obtained by the BBC, and that both leaks occurred on Tuesday 18 January 2011 (the day the content of the draft report was first reported in the media).
102. Although my investigation has not been able to identify the source of the leak, it has enabled an audit of the systems and working practices associated with the preparation, storage and dissemination of the draft report prior to the PAC meeting on 20 January 2011, and with the systems that were in place (within the Assembly) with regard to the audit of access to, and transmission of, electronic versions of the draft in the preceding days. I have recommended a number of measures to address these weaknesses, which, in my view, if applied systemically and holistically will reduce the risk of further unauthorised disclosures of confidential Assembly information, including draft committee reports. While it will be for the organisations involved in the handling of such information to consider the feasibility of implementing these measures, I consider it essential that the gaps I have identified are addressed urgently given the opinions that have been expressed to me during this investigation regarding the impact of this particular leak and of leaks in general. In this regard, I am mindful of a remark made by Professor Robert Hazell, University College

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London, at a Committee on Standards in Public Life seminar<sup>17</sup> on perceptions of standards and trust in public life. In commenting on the impact of the introduction of Freedom of Information (FOI) legislation, Professor Hazell stated that research commissioned by the Committee had found that the fear of leaks was a more important cause of a ‘chilling’ effect than FOI and that leaks had a much greater adverse impact on the conduct of public business.

103. My investigation has established the strength of feeling with regard to the detrimental impact of this particular leak and of leaks in general, and I hope that this report will convey to the Committee the deep sense of disquiet and concern expressed to me by the (January 2011) Members of the PAC, who recognised the damage that the leaking of this document had caused to relationships within the PAC itself and to the essential relationships between the Committee and Assembly staff. I believe these views will provide useful insight to the Committee when it decides how best to address any further leaks that may occur.
104. This investigation has found that there were three separate groups of individuals who were potential sources of the leak. These groups are the (January 2011) Members of the PAC; the staff of the Assembly Secretariat; and the staff of NIAO. No individual or individuals within those groups has admitted to having leaked the draft report. Nevertheless, one (or more than one) of those individuals was responsible for the leak. A breach of confidentiality is essentially a matter of conduct. As such, I consider that there is a need for clear parameters as to what constitutes acceptable behaviour for all of those in positions of trust with regard to the handling of sensitive and confidential information and documents, whether they are elected members of the Assembly or employees.
105. There are a number of ways in which the behaviour and conduct of individuals can be regulated. The law<sup>18</sup> imposes obligations of confidentiality and data protection, which apply to each of the groups identified. In addition, employees

<sup>17</sup> Committee on Standards in Public Life Open Seminar 19 January 2012

<sup>18</sup> Data Protection Act 1998

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of NIAO and the Assembly Commission are bound to uphold confidentiality and are subject to disciplinary action and ultimately dismissal for gross misconduct if they fail to do so. By contrast, I consider that the Code of Conduct for Members of the Assembly is not sufficiently robust to ensure that a Member who is found to have breached confidentiality by leaking information will be subject to a sanction by the Assembly. I have commented already that the staff of the Assembly Secretariat and NIAO have clear confidentiality obligations placed upon them and that they are made aware of the possible serious disciplinary consequences should they breach those obligations. I have also commented, however, that in my view, the same high standards of conduct with regard to the maintaining and safeguarding of confidentiality, which must also be expected of Members, are not made sufficiently clear in their Code of Conduct. The Committee may wish to consider the guidance offered in the Scottish Parliament's Code of Conduct for Members of that Parliament, which is detailed at paragraph 90 above.

106. This leak investigation offers a timely opportunity to remind all those involved in the work of the Assembly of the significance and relevance of the Principles of Public Life (the Nolan Principles). These seven principles, details of which are provided in Appendix 9, are:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

Whoever leaked the draft PAC report breached each of those principles. There is a real risk if holders of public office and those who support their work are not reminded routinely and consistently that the Seven Principles of Public Life must underpin the key values that should inform and shape their conduct. I believe it

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is therefore essential that all of those involved in the work of the Assembly are reminded regularly that adherence to these Principles is not optional, but essential, if they are to fulfil their public duty effectively. In addition, newly elected Members of the Assembly should be made aware by the Assembly Commission and by their respective party leadership of the significance of the Principles for how they fulfil their Assembly duties.

107. I also find it necessary to record my disappointment with the media's response to my enquiries during this investigation. While I acknowledge that UTV and the BBC considered their priority in addressing my enquires was to protect their journalistic source(s), I am concerned that both organisations highlighted that a significant factor in their decisions to broadcast details of the PAC's draft findings was that it was in the **public interest** to do so, given the (then) recent disruption to water supplies and previous reporting of governance issues in NI Water. I do not accept this view. My position on this is informed by the action of the then Home Secretary, Jack Straw, when he became aware that part of the Macpherson Inquiry would be leaked by a Sunday newspaper four days before the full report was to be published to Parliament. Mr Straw obtained an emergency injunction to stop the publication by the newspaper. He commented, in a piece in The Times on 4 January 2012, that *"There was a predictable, and entirely synthetic, furore that I had gagged the press. There was, however, no conceivable public interest in the partial and sensational reporting of just some of the findings when the full report was to be published to Parliament four days later"*. The PAC report on NI Water would have been subject to the same process. At the time it was leaked, the report was still in draft form and had not been tested for factual accuracy, nor had its contents (which were highly critical of individuals with the implications this had for their reputations) been debated by the PAC. It is the case that it would have been published once it had been considered and agreed by the PAC.
108. I consider that the **public interest** is that which serves the public good, which is not the same as that which interests the public. I recognise the public interest in maintaining a free press. However, there are competing public interests relevant to the issues raised in this case. These are the privacy of the

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individuals named in the draft PAC report until the scrutiny process had been concluded and the need to maintain the integrity of that process, while still ongoing, in order to allow the full and frank exchange of views and deliberations. It was not, in my view, in the **public interest** to report the PAC's draft findings prematurely, before the report had been considered or tested by the PAC; to do so had significant potential to undermine the work of the PAC and the integrity of the Assembly as a whole as well as potentially damaging the reputation of the named individuals criticised in the report. Furthermore, the leaking of the draft PAC report was not an instance of 'whistle blowing' since clearly the PAC's findings on NI Water were going to be made known to the public in due course, once the scrutiny process had been concluded. I am aware that UTV and the BBC do not share my views but I feel strongly that it is appropriate that I reflect my perspective on this aspect of my investigation.

109. As I conclude this report, I must highlight that the views expressed to me during my investigation have left me in no doubt that the leak of the draft PAC report has created an atmosphere of unease and suspicion between PAC staff and PAC Members, and indeed between PAC members themselves. There is a well founded need for trust between Members and staff of the Assembly and NIAO; between the investigators and those being investigated; and between the public at large and those whom they have placed in a position of trust. Significantly, a leak has the profound effect of undermining that trust. The devastating effect of a lack of trust is captured in the words of the Swiss theologian, Johann Kasper Lavater, who said:

*"Trust not him with your secrets, who, when left alone in the room, turns over your papers"*<sup>19</sup>

Thus the damage done by the leaking of the PAC draft report is, in my view, still affecting relationships and will continue to do so until trust is rebuilt. Hopefully this detailed report, if it leads to a more explicit commitment to the Principles of Public Life and support by the Standards Committee for the systematic

<sup>19</sup> The Oxford Dictionary of Quotations, 5<sup>th</sup> Edition



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introduction of the improvements suggested in it, a process may begin of rebuilding some of the trust that I believe has been lost.

**T FRAWLEY CBE**  
**Interim Commissioner for Standards**

**8 June 2012**

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Appendix 1



COMMITTEE ON STANDARDS AND PRIVILEGES

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Dr Tom Frawley  
Interim Assembly Commissioner for Standards  
The Ombudsman's Office  
Progressive House  
33 Wellington Place  
BELFAST  
BT1 6HN

24 March 2011

*Dear Dr Frawley,*

I am writing to refer to you a matter relating to Assembly privilege.

During plenary session on 21 March 2011 the Chairperson of the Public Accounts Committee (PAC) moved that a specific matter affecting the privilege of the Assembly should be referred to the Committee on Standards and Privileges. The Chairperson explained that on 18 January a draft report on the PAC's inquiry into performance and governance in NI Water was leaked to the media. The PAC had subsequently commissioned an inquiry into the leak, but this was not conclusive. The PAC had therefore agreed at its meeting on 15 March that this was a matter affecting the privilege of the Assembly and decided that it should seek to have the matter referred under Standing Order 70.

The Speaker responded by confirming that in his opinion the requirements of Standing Order 70 had been complied with and that the matter would be referred to the Committee on Standards and Privileges.

The Committee on Standards and Privileges met on 23 March and agreed that this matter should be referred to you so that you could carry out an investigation and make a report thereon back to the Committee.

The Committee agreed the following terms of reference for the investigation:

- To establish the circumstances surrounding the unauthorised disclosure of the draft PAC report on its inquiry into the performance and governance of NI Water on 18 January 2011;
- To seek to establish the source of the unauthorised disclosure;
- To comment on the efficacy of referring such matters as breaches of privilege for investigation by the Commissioner;
- To report the findings of the investigation to the Committee on Standards and Privileges.

The terms of reference recognise that this is the first referral such as this to you and that as such there may be lessons to be learned in terms of the effectiveness of this approach in handling such matters in the future. Your comments would therefore be appreciated.

I enclose for information a copy of the Speaker's correspondence to the Committee, together with a copy of the report on the inquiry into the leak, carried out at the behest of the PAC.

Please let me know if you require any further information.

Yours sincerely

**Paul Gill**  
Clerk to the Committee on Standards and Privileges

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**Appendix 2**

**DOCUMENTATION EXAMINED**

- The NI Assembly Committee Staff Guide
  - Section 3: Meetings of Committees and Ministerial Statements
  - Section 7: Committee Papers and Records
  - Appendix 4: A Guide for Members to the Role, and Functions of the Committee Office
  - Appendix 17: Guide to Protective Marking of Documents
- The NI Assembly Secretariat Information Assurance – Protective Marking Policy and Procedures
- Policy for the Use of IT Resources by Northern Ireland Assembly Secretariat Staff
- Code of Practice for the Use of Assembly Computer Resources<sup>20</sup>

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<sup>20</sup> This code of practice is currently operational in draft form

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## Appendix 3

## INTERVIEWS CONDUCTED

**Members of the PAC (in January 2011)**

Mr Roy Beggs MLA  
 Mr Gregory Campbell MLA  
 Mr John Dallat MLA  
 Mr William Irwin MLA  
 Mr Trevor Lunn MLA  
 Mr Paul Maskey MLA  
 Mr Patsy McGlone MLA  
 Mr Mitchel McLaughlin MLA  
 Mr Adrian McQuillan MLA  
 Mr Stephen Moutray MLA  
 Ms Dawn Purvis

**Northern Ireland Assembly Secretariat**

*Text Redacted*  
*Text Redacted*  
*Text Redacted*  
 Mr Brian Devlin  
 Mrs Nuala Dunwoody  
*Text Redacted*  
 Mr Hugh Farren  
 Mr Damien Martin  
 Ms Stella McArdle  
*Text Redacted*  
*Text Redacted*  
*Text Redacted*  
*Text Redacted*  
 Mr John Stewart  
 Ms Aoibhinn Treanor  
*Text Redacted*

**Northern Ireland Audit Office**

Mr Joe Campbell  
 Mr Kieran Donnelly  
*Text Redacted*  
*Text Redacted*  
 Mr Stephen McCormick  
 Ms Jacqueline O'Brien  
 Mr Richard Ross  
*Text Redacted*  
 Ms Janet Stephenson

**Other**

Mr Brendan O'Neill  
 'Mr A' (Friend of Clerk to the PAC)

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**Appendix 4**

**PARTIAL TRANSCRIPT OF BBC RADIO ULSTER'S 'EVENING EXTRA'  
BROADCAST ON WEDNESDAY 18 JANUARY 2011 (TIME 5.24PM)**

**Seamus McKee:**

“More now on our latest exclusive on Northern Ireland Water. The BBC has learned that Audit Committee’s draft report on the government owned company is sharply critical of the Department of (*sic*) Regional Development and its oversight of the government owned company. It also highlights a number of significant failures at NI Water in relation to contract tendering, and it’s now suspended Permanent Secretary, Paul Priestly, is criticised on a number of points, not least evidence to the Committee. So is former Chief Executive, Laurence MacKenzie who recently left in the wake of water shortages over the Christmas period. Let’s hear from our political correspondent Martina Purdy. You’ve got the details of the draft report, Martina, from the Assembly Public Accounts Committee. I understand this is a complex issue. What does the report say first of all about the department and its oversight role when it came to NI Water?”

**Martina Purdy:**

“Well Seamus, my understanding is this is a wide-ranging draft and to go back, the Public Accounts Committee decided to report on Northern Ireland Water because it was incensed over how millions of pounds in government contracts were being handed out without competition and this was in breach of public sector rules. And this failure to ensure competition set in place a chain of events which led to the Minister Conor Murphy sacking four directors of Northern Ireland Water. Now one of the key sections of this report deals with the relationship between the department and the government owned company, Northern Ireland Water, and it says that these governance arrangements set up to oversee NIW were designed for a commercial company, yet Northern Ireland Water remained in public ownership and its status as a government owned company, or go-co, left it halfway between operating in the private and public sector. And the Committee has stated that the arrangements established by the department in 2007, represented the worst of all possible worlds. It says the arrangements were looser than what would have applied to other arms length non-department public bodies. It says the government’s arrangements explicitly state that

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Northern Ireland Water didn't need to comply with key principles of handling public resources. But at devolution when it was decided to defer water charges these arrangements should have been revisited and the Committee is astonished that the department did not revisit these arrangements."

**Seamus McKee:**

"Now the Public Accounts Committee was investigating procurement, that's how contracts were handed out and the fact that this was done without competition as required under public sector rules. What does the report say about that?"

**Martina Purdy:**

"My understanding is that the draft report criticises the failure of Northern Ireland Water to adhere to basic rules surrounding the awarding of government contracts, when there's only been one tender. And it says that the Committee found this inexcusable and to restore confidence it recommends a root and branch overhaul of the procurement function at Northern Ireland Water. It pointed to a deeply embedded culture at all levels of Northern Ireland Water that made it acceptable to bypass rules."

**Seamus McKee:**

"Now this problem around contracts led to a review, didn't it, by an independent team and ultimately the sacking of four directors by the Minister Conor Murphy. The PAC report is very critical of that process, isn't it?"

**Martina Purdy:**

"Yes it's not really surprising, if you had watched the summer hearings. The Committee spent a lot of time quizzing witnesses about this independent review team, and it said Paul Priestly, then Permanent Secretary, who was subsequently suspended on full pay, should have provided more time for the review team to complete its review. The Committee found that this review was conducted with undue haste and also found that there was potential conflict of interest with all those who were on this independent review team. And the report has made a number of recommendations to ensure this doesn't happen again and that all participants can be seen to be wholly independent and there aren't these potential conflicts of interest. The Committee has also said it wasn't convinced of the veracity of answers given to it by the then Northern Ireland Water Chief

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Executive, Lawrence MacKenzie, and it was also critical of evidence given to it by Mr Priestly and said that it was utterly disgraceful that he as a chief witness to this PAC drafted a letter of complaint to members of the Committee on behalf of a member of that review team. It also accused Northern Ireland Water of using confidentiality arrangements as a way of not giving evidence to the Committee and it's made a number of recommendations to ensure that government organisations cannot use these confidentiality arrangements to block the PAC or the Auditor General."

### **Seamus McKee:**

"Hard hitting report from the Public Accounts Committee on Northern Ireland Water. A draft report details revealed exclusively there by Martina Purdy."



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**Appendix 5**

**Public Accounts Committee**

**PRESS STATEMENT**

**18 January 2011**

**PAC 05/10/11**

**STATEMENT FROM THE CHAIR OF THE PUBLIC ACCOUNTS  
COMMITTEE**

The Chair of the Assembly's Public Accounts Committee (PAC) has reacted to the media account of a draft Committee report.

Chairperson Paul Maskey, MLA said: **"It appears that an early draft report into NI Water has been leaked.**

**"If this is the case I am concerned and disappointed. I will be trying to get to the bottom of this.**

**"As it stands, this document is not a PAC report. The Committee has not completed its inquiry and this is certainly not the Committee's agreed position. "**

ENDS

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**Appendix 6**

**PARTIAL TRANSCRIPT OF ‘UTV LIVE AT SIX’ PROGRAMME ON  
WEDNESDAY 18 JANUARY 2011 (TIME 6.01PM)**

**Paul Clark:**

“Conor Murphy is under renewed pressure tonight for his handling of Northern Ireland Water. UTV has had exclusive access to a draft report from the Audit Office into the handling of a crucial investigation by Mr Murphy’s department. The findings are scathing.”

**Rose Neill:**

“The so-called independent investigation led the Minister to sack four non-executive directors last March. The fairness of that probe was called into question by our UTV programme, ‘Stormy Water’. The whole affair has now been examined at length by the Audit Office and their draft conclusions are damning. Jamie Delargy reports.

**Jamie Delargy’s film report:**

“Comprehensive in its analysis and scathing in its judgement. That’s the report for the Public Accounts Committee on events surrounding the sackings of four non-executive directors at Northern Ireland Water. It was prepared by Audit Office staff over the past six months. The document, which exists in draft form, reviews contract failings at the company and the subsequent investigation set up by the Department for Regional Development. The report criticises the composition of the team which carried out the inquiry. It says the Department should not have appointed individuals to the independent review team who could be perceived as having a conflict of interest. The document appears to endorse an important point made in a special UTV programme last summer. We queried what we suggested was undue influence on the review by the Department’s Permanent Secretary Paul Priestly. The draft report says there are clear indications the Department inappropriately influenced a small number of key findings in what was supposed to be an independent review. Mr Priestly was subsequently suspended for his role in preparing a letter criticising the Public Accounts Committee. The report says the investigation by the independent review team was completed with undue haste. It claims the independent review team’s overall conclusion on the

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culpability of the board members, and in particular the non-executives, was far too general and was deficient. But the document does not shy away from criticising management at Northern Ireland Water, including its board. On the procurement deficiencies, it says that failure to adhere to basic rules was inexcusable. However it argues that while board directors are responsible for ensuring effective controls, they should be able to rely on accurate information from management. In this regard the board was badly let down by the management of Northern Ireland Water.”

**Rose Neill:**

“Well Jamie Delargy joins me now. Jamie, you’ve really led the way in this investigation.”

**Jamie Delargy:**

“Well we looked at, last summer, the whole question of this review into this situation at Northern Ireland Water and the events which led up to the sackings. And what we did was, we queried, if you like, the undue influence that some people may feel was exerted by the Permanent Secretary, Paul Priestly, on the review itself. And I suppose, up to this point, six months later, we had no indication of what officially people thought of that. And now this report, okay it’s a draft, is suggesting that our concerns seem to be borne out, to a certain degree.”

**Rose Neill:**

“Well a lot of people are saying the story’s quite involved. What are the key issues?”

**Jamie Delargy:**

“Well I think it is that one of, if you are setting up an independent review it should be independent, it should not be influenced, unduly, by the person who and the department which is commissioning it and the Minister, I suppose, should ensure that, again, that this does not happen. If it does happen, and it seems to have occurred in this case, then there are obviously consequences from that.”

**Rose Neill:**

“Well does it mean that people were sacked, off the hook?”

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**Jamie Delargy:**

“Well those people who were sacked, the report, it doesn’t quite let them off the hook, but it dilutes the blame that attaches to them. It says the inquiry was conducted, completed with undue haste, so there is obviously a suggestion that there was a rushed judgement on the future of those four non-executive directors, one of whom, Declan Gormley, has been pursuing this, his belief in his innocence doggedly, since last March when he was unceremoniously thrown off the board of Northern Ireland Water.”

**Rose Neill:**

“Well Conor Murphy obviously under an awful lot of pressure already at Northern Ireland Water. This is not good news for him?”

**Jamie Delargy:**

“Well really this is the first report we have seen, as I say it’s in draft form, it will be considered by the Public Accounts Committee, but it’s the first one that really targets the role of the Minister. It doesn’t even mention the Minister, but he’s in charge of that department. And if there are failings by the officials under his control, then at some point he is answerable for them. Now he’s been able to, quite successfully and adroitly avoid responsibility for these failings, but really it’s now the pressure is tightening on him.”

**Rose Neill:**

“And just, in brief, where does it leave Northern Ireland Water?”

**Jamie Delargy:**

“Well what a mess of a company. Unfortunately it’s got this huge difficulty of trying to repair all those broken pipes, it’s got to find a future for itself, but really this doesn’t help, does it?”

**Rose Neill:**

“Jamie Delargy, thanks very much.”

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## Appendix 7

**PARTIAL TRANSCRIPT OF BBC NI 'NEWSLINE' PROGRAMME ON WEDNESDAY 18 JANUARY 2011****Donna Traynor:**

"Northern Ireland Water and the Stormont department that's responsible for it are under pressure again tonight. A leaked draft report shows the Assembly's watchdog, the Public Accounts Committee, has reached damning conclusions about the Department of (*sic*) Regional Development's oversight of the government owned company."

**Noel Thompson:**

"It's understood the report says the arrangements represented the worst of all possible worlds. The report is also understood to be strongly critical of Paul Priestly, he is the most senior civil servant in the DRD and is currently suspended from his job. Our political correspondent Martina Purdy has seen the report, she's in our Stormont studio. Martina, what was the brief of the PAC and what has it found?"

**Martina Purdy:**

"Well the Public Accounts Committee stepped in to probe Northern Ireland Water and the Department of Regional Development, which oversees it, after it emerged that millions of pounds in government contracts were being handed out without competition, and this is in breach of public sector rules."

**Noel Thompson:**

"Okay, so they've been critical of how the tendering was done, but also of the investigation of the tendering?"

**Martina Purdy:**

"Well it found that the governance arrangements set up, whereby the Department of (*sic*) Regional Development would oversee Northern Ireland Water, that these arrangements were designed for a commercial company, yet Northern Ireland Water remained in government ownership, albeit while acting as a private sector company. And the committee's draft report found that this was the worst of all possible rules. It also found

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that when devolution took place in 2007 and no water charges were introduced, these arrangements, which were quite loose in terms of accounting and the way this company should spend government resources, that this should have been revisited and the committee was astonished the arrangements weren't revisited."

### **Noel Thompson:**

"Comments also about Lawrence MacKenzie, of course stepped down earlier this month from NI Water, and also Paul Priestly, the top man at DRD who is currently under suspension?"

### **Martina Purdy:**

"Well the draft is critical of evidence given to the committee by then Permanent Secretary Paul Priestly who, as you'll recall, was suspended for helping to draft a letter of complaint to the Public Accounts Committee on behalf of one of the review team members, Peter Dixon, who had objected to the line of questioning. It says that this was utterly disgraceful that a senior civil servant should have done this and it suggested that the committee wasn't convinced of the veracity of answers given to it by then Chief Executive of Northern Ireland Water, Lawrence MacKenzie."

### **Noel Thompson:**

"The PAC is regretting then leaking of this report and also saying that this is not a final report, so how different could the final report be?"

### **Martina Purdy:**

"Well these reports tend to be agreed and it's true, this is an early draft. Paul Maskey, the chairman of the committee, says that the early draft appears to have been leaked. If this is the case, I am concerned and disappointed, he says, and I'll be getting to the bottom of this. He also says that this document is not a PAC report, the committee has not completed its inquiry and this certainly is not the committee's agreed position. I'd also say that both the department and Northern Ireland Water are refusing to comment."

### **Noel Thompson:**

"Martina, thank you."

**PROTECT – INVESTIGATION****Appendix 8****RECOMMENDATIONS**

- 1) The Assembly's protective marking policy and procedures should be reviewed to ensure that it is appropriate for the use, storage and transfer of the nature of confidential/sensitive information that may be contained in draft committee reports and other Assembly documents.
- 2) NIAO staff, Assembly Secretariat Staff and Members should be reminded of the need to apply the protective marking policy consistently, and appropriate training and/or guidance should be provided, if necessary.
- 3) Confidential/sensitive documents, such as draft committee reports, should be encrypted or password protected when being transmitted electronically, including those transmitted via the Government Secure Intranet.
- 4) Confidential/sensitive documents should not be emailed to personal email accounts – should staff be required to work at home, remote access to the Assembly's IT network should be arranged.
- 5) All draft committee reports should include a declaration of the relevant committee's proprietary interest.
- 6) All draft committee reports should include a statement to the effect that the document remains confidential until it is published by the relevant committee or the Assembly.
- 7) All hard copies of draft committee reports, and other confidential/sensitive documents prepared for inclusion in committee packs should be individually numbered or watermarked with the recipient's name before distribution.
- 8) Draft committee reports and other confidential information should not be made available to those who do not have a business need to access them.
- 9) Access rights to shared folders in IT networks should be reviewed immediately following staff moves and internal reorganisations and, where necessary, revised.
- 10) The practice of leaving committee packs unattended in unlocked Members' offices (at the time of their distribution) should cease.

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- 11) Members should be required to acknowledge formally the receipt of their committee pack.
- 12) Members should be reminded of the need to maintain the confidentiality of Assembly information and to ensure that such information is stored securely at all times. Appropriate training and/or guidance should be provided, if necessary.
- 13) The facility to audit access to specific electronic documents and/or folders that are considered to contain particularly sensitive information should be used.
- 14) Email tracking logs should include details of email attachments, or as a minimum, indicate whether an email included an attachment.
- 15) The Code of Practice for the Use of Assembly Computer Resources, which currently exists in draft form only, should be finalised and made operational in order that the monitoring of the use of Assembly email services by all users, including Members, as referred to in paragraph 5.4 of that draft document, may be undertaken.
- 16) Steps should be taken to ensure that email tracking/monitoring logs are maintained beyond the standard 99-day retention period in instances where an unauthorised disclosure of information has occurred until such time as all related inquiries/investigations have been completed.
- 17) The Committee on Standards and Privileges should consider the need to review the Code of Conduct for Members to reflect more specifically that the unauthorised disclosure of Assembly information constitutes a breach of the provisions of that Code.

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**PROTECT – INVESTIGATION****Appendix 9****PRINCIPLES OF PUBLIC LIFE****Selflessness**

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

**Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisation that might seek to influence them in the performance of their official duties.

**Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

**Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

**Openness**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest demands.

**Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership**

Holders of public office should promote and support these principles by leadership and example.

**PROTECT – INVESTIGATION**

## Correspondence dated 22nd November 2011 from the office of the interim Assembly Commissioner for Standards to the Committee

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**From:**  
**Sent:** 22 November 2011 09:45  
**To:** Gill, Paul  
**Cc:** John MacQuarrie; Coey, Gillian; Frawley, Tom; Bogle, Hilary  
**Subject:** Leak of PAC Report

Paul

I refer to our discussions of last week regarding the Committee's terms of reference for the investigation of the leaked PAC report. I did indicate to you that the Interim Commissioner is mindful of recent statements in the Assembly regarding the damage which leaked documents/information cause to the workings of the Assembly. I refer in particular to the Assembly debate on 7 November 2011 in relation to the disclosure in the public domain of the Lissue Hospital issue. I am aware that similar concerns have been raised by OFMDPM with the Speaker more generally.

In light of this, the Commissioner would seek to extend the terms of reference in relation to the above investigation to include recommendations of a systemic nature in relation to the protection of information and documents more generally.

If the Chair and the Committee are content to extend the terms of reference to include such recommendations, please advise.

Marie Anderson

Marie Anderson, Deputy NI Ombudsman  
116 Place  
Progressive House  
33 Wellington Place  
BELFAST  
BT1 4HN

# Correspondence dated 24th November 2011 from the Committee to the interim Assembly Commissioner for Standards



## COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Tel: 028 9052 0333

Email: [paul.gill@niassembly.gov.uk](mailto:paul.gill@niassembly.gov.uk)

24<sup>th</sup> November 2011

Dr Tom Frawley CBE  
Interim Assembly Commissioner for Standards  
The Ombudsman's Office  
Progressive House  
33 Wellington Place  
BELFAST  
BT1 6HN

Dear Dr Frawley,

At its meeting on 23 November 2011 the Committee on Standards and Privileges noted correspondence from your office which requested that the Committee extend the terms of reference of your investigation into the unauthorised disclosure of a draft Public Accounts Committee report. The Committee considered this request and agreed to extend the terms of reference of the investigation to enable you to make recommendations of a systemic nature in relation to the protection of information and documents more generally.

The Committee also noted correspondence from the Chairperson of the Assembly's Chairpersons' Liaison Group (enclosed for information) which requested an update on this investigation, particularly around the timescale for your report. The Committee agreed that I should write to you to request an update on the likely timescale for submitting your report.

Yours sincerely,

**Paul Gill**  
Clerk of Standards

## Correspondence dated 27th June 2012 from the Committee to the NIAO



### COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Mr Kieran Donnelly  
Comptroller and Auditor General  
Northern Ireland Audit Office  
106 University Street  
Belfast  
BT7 1EU

27<sup>th</sup> June 2012

#### **The Committee on Standards and Privileges' Report on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee**

At its meeting on 20th June 2012 the Committee on Standards and Privileges considered a report from the interim Assembly Commissioner for Standards on his investigation into the unauthorised disclosure of a draft report of the Public Accounts Committee. The Committee also agreed to publish its own report on this matter which included, in an annex, a copy of the interim Commissioner's report. I enclose a copy of the Committee's report for your information.

The terms of reference agreed by the Committee on Standards and Privileges for this investigation were --

- To establish the circumstances surrounding the unauthorised disclosure of the draft PAC report on its inquiry into the performance and governance of NI Water on 18 January 2011;
- To seek to establish the source of the unauthorised disclosure;
- To comment on the efficacy of referring such matters as breaches of privilege for investigation by the Commissioner; and

- To report the findings of the investigation to the Committee on Standards and Privileges.

Following a request from the interim Commissioner, the Committee agreed to extend the terms of reference to include recommendations of a systemic nature in relation to the protection of information and documents more generally.

In his report the interim Commissioner has identified a number of gaps in the existing processes, working methods and systems at the Assembly. The Committee has agreed that the issues identified by the interim Commissioner should be addressed as a matter of priority and it is therefore writing to the relevant bodies to ask them how they might do this. Once it has received this information the Committee will then publish a further, more comprehensive report with its own commentary and views on each of the interim Commissioner's specific recommendations.

The Committee on Standards and Privileges would therefore welcome the views of the Northern Ireland Audit Office on the interim Commissioner's report. In particular the Committee would welcome the Northern Ireland Audit Office's views on those recommendations of the interim Commissioner which would fall to the Northern Ireland Audit Office to implement.

Yours sincerely

**Alastair Ross MLA**  
**Chairperson**  
**Committee on Standards and Privileges**

## Correspondence dated 27th June 2012 from the Committee to the Public Accounts Committee



### COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Mr Paul Maskey  
Chairperson  
Public Accounts Committee  
Room 371  
Parliament Buildings  
Ballymiscaw  
Stormont

27<sup>th</sup> June 2012

#### **The Committee on Standards and Privileges' Report on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee**

At its meeting on 20th June 2012 the Committee on Standards and Privileges considered a report from the interim Assembly Commissioner for Standards on his investigation into the unauthorised disclosure of a draft report of the Public Accounts Committee. The Committee also agreed to publish its own report on this matter which included, in an annex, a copy of the interim Commissioner's report. I enclose a copy of the Committee's report for your information.

The terms of reference agreed by the Committee on Standards and Privileges for this investigation were –

- To establish the circumstances surrounding the unauthorised disclosure of the draft PAC report on its inquiry into the performance and governance of NI Water on 18 January 2011;
- To seek to establish the source of the unauthorised disclosure;

- To comment on the efficacy of referring such matters as breaches of privilege for investigation by the Commissioner; and
- To report the findings of the investigation to the Committee on Standards and Privileges.

Following a request from the interim Commissioner, the Committee agreed to extend the terms of reference to include recommendations of a systemic nature in relation to the protection of information and documents more generally.

In his report the interim Commissioner has identified a number of gaps in the existing processes, working methods and systems at the Assembly. The Committee has agreed that the issues identified by the interim Commissioner should be addressed as a matter of priority and it is therefore writing to the relevant bodies to ask them how they might do this. Once it has received this information the Committee will then publish a further, more comprehensive report with its own commentary and views on each of the interim Commissioner's specific recommendations.

The Committee on Standards and Privileges would therefore welcome the views of the Public Accounts Committee on the interim Commissioner's report. In particular the Committee would welcome the Committee's views on those recommendations of the interim Commissioner which would fall to the Assembly committees and their teams to implement.

Yours sincerely

**Alastair Ross MLA**  
**Chairperson**  
**Committee on Standards and Privileges**

# Correspondence dated 27th June 2012 from the Committee to the Speaker



## COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Mr Speaker  
Room 40  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

27<sup>th</sup> June 2012

### **The Committee on Standards and Privileges' Report on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee**

At its meeting on 20th June 2012 the Committee on Standards and Privileges considered a report from the interim Assembly Commissioner for Standards on his investigation into the unauthorised disclosure of a draft report of the Public Accounts Committee. The Committee also agreed to publish its own report on this matter which included, in an annex, a copy of the interim Commissioner's report. I enclose a copy of the Committee's report for your information.

The terms of reference agreed by the Committee on Standards and Privileges for this investigation were –

- To establish the circumstances surrounding the unauthorised disclosure of the draft PAC report on its inquiry into the performance and governance of NI Water on 18 January 2011;
- To seek to establish the source of the unauthorised disclosure;



- To comment on the efficacy of referring such matters as breaches of privilege for investigation by the Commissioner; and
- To report the findings of the investigation to the Committee on Standards and Privileges.

Following a request from the interim Commissioner, the Committee agreed to extend the terms of reference to include recommendations of a systemic nature in relation to the protection of information and documents more generally.

In his report the interim Commissioner has identified a number of gaps in the existing processes, working methods and systems at the Assembly. The Committee has agreed that the issues identified by the interim Commissioner should be addressed as a matter of priority and it is therefore writing to the relevant bodies to ask them how they might do this. Once it has received this information the Committee will then publish a further, more comprehensive report with its own commentary and views on each of the interim Commissioner's specific recommendations.

The Committee on Standards and Privileges would therefore welcome the views of the Assembly Commission on the interim Commissioner's report. In particular the Committee would welcome the Commission's views on those recommendations of the interim Commissioner which would fall to the Assembly Commission to implement.

Yours sincerely

**Alastair Ross MLA**  
**Chairperson**  
**Committee on Standards and Privileges**

## Correspondence dated 27th June 2012 from the Committee to the Chairpersons' Liaison Group



### COMMITTEE ON STANDARDS AND PRIVILEGES

Room 254  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Mr Jimmy Spratt MLA  
Chairperson  
Chairpersons' Liaison Group  
Room 284a  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

27<sup>th</sup> June 2012



#### **The Committee on Standards and Privileges' Report on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee**

At its meeting on 20th June 2012 the Committee on Standards and Privileges considered a report from the interim Assembly Commissioner for Standards on his investigation into the unauthorised disclosure of a draft report of the Public Accounts Committee. The Committee also agreed to publish its own report on this matter which included, in an annex, a copy of the interim Commissioner's report. I enclose a copy of the Committee's report for your information.

The terms of reference agreed by the Committee on Standards and Privileges for this investigation were –

- To establish the circumstances surrounding the unauthorised disclosure of the draft PAC report on its inquiry into the performance and governance of NI Water on 18 January 2011;
- To seek to establish the source of the unauthorized disclosure;

- To comment on the efficacy of referring such matters as breaches of privilege for investigation by the Commissioner; and
- To report the findings of the investigation to the Committee on Standards and Privileges.

Following a request from the interim Commissioner, the Committee agreed to extend the terms of reference to include recommendations of a systemic nature in relation to the protection of information and documents more generally.

In his report the interim Commissioner has identified a number of gaps in the existing processes, working methods and systems at the Assembly. The Committee has agreed that the issues identified by the interim Commissioner should be addressed as a matter of priority and it is therefore writing to the relevant bodies to ask them how they might do this. Once it has received this information the Committee will then publish a further, more comprehensive report with its own commentary and views on each of the interim Commissioner's specific recommendations.

The Committee on Standards and Privileges would therefore welcome the views of the Chairpersons' Liaison Group on the interim Commissioner's report. In particular the Committee would welcome the Chairpersons' Liaison Group's views on those recommendations of the interim Commissioner which would fall to the Assembly committees and their teams to implement.

Yours sincerely

**Alastair Ross MLA**  
**Chairperson**  
**Committee on Standards and Privileges**

## Correspondence dated 22nd August 2012 from the NIAO



**Kieran Donnelly**  
Comptroller & Auditor General

### Northern Ireland Audit Office

106 University Street  
Belfast BT7 1EU

FAX : (028) 9025 1051

E-mail :

webaddress : [www.niauditoffice.gov.uk](http://www.niauditoffice.gov.uk)

**Mr Alastair Ross MLA**  
Chair of the Standards and Privileges Committee  
Room 254  
Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST  
BT4 3XX

STANDARDS &

28 AUG 2012

PRIVILEGES

22 August 2012

Dear Mr Ross

#### **The Committee on Standards and Privileges' Report on the Unauthorised Disclosure of a Draft Report of the Public Accounts Committee**

Thank you for your letter together with a copy of the Standards and Privileges Committee Report which you issued on 27<sup>th</sup> June 2012. This is a comprehensive and useful report

In your correspondence I have noted that the Committee has sought my views on the interim Commissioner's Report, in particular the recommendations which fall to my Office to implement – more specifically recommendations 2, 3, 5, 6, and 8. I accept these recommendations and have reviewed my Office's existing procedures and, where necessary, introduced new guidance to ensure these recommendations are met in full.

For ease of reference, I will deal with each of these recommendations in chronological order:

**Recommendation 2 - NIAO staff, Assembly Secretariat Staff and Members should be reminded of the need to apply the protective marking policy consistently, and appropriate training and/or guidance should be provided, if necessary.**

I have issued new guidance for all NIAO staff and instructed them to apply the protective marking, as required.

**Recommendation 3 - Confidential/sensitive documents, such as draft committee reports, should be encrypted or password protected when being transmitted electronically, including those transmitted via the Government Secure Intranet.**

Since the completion of the Committee report, all confidential/sensitive papers have been encrypted and password protected prior to transmission to the Committee Office. This will be our continued practice.

**Recommendation 5 - All draft committee reports should include a declaration of the relevant committee's proprietorial interest.**

For all future draft Committee reports, NIAO will append a statement, as set out in Annex A to this paper.

*Office of the Comptroller and Auditor General for Northern Ireland  
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**Recommendation 6 - All draft committee reports should include a statement to the effect that the document remains confidential until it is published by the relevant committee or the Assembly.**

For all future draft Committee reports, NIAO will append a statement, as set out in Annex A to this paper.

**Recommendation 8 - Draft committee reports and other confidential information should not be made available to those who do not have a business need to access them.**

Within my Office, access to draft PAC reports is limited only to those members of staff who have worked directly on the subject matter. I have issued new guidance reminding NIAO staff of the requirement to restrict circulation of such reports.

I trust that the information I have provided meets your needs. However, if you need any further clarification, please do not hesitate in contacting me.

Yours sincerely

**KIERAN DONNELLY**  
Comptroller and Auditor General

**Annex A**

**Report by the NI Assembly Public Accounts Committee**

**RESTRICTED**

**Report by the Public Accounts Committee on the**

**[TITLE of Report]**

This report is privileged and is the property of the NI Assembly Public Accounts Committee.

Neither the Report nor its contents should be disclosed to any person unless such disclosure is authorised by the Committee.

The report remains confidential until such time as it is published by the Committee

## Correspondence dated 7th February 2013 from the Speaker



Office of the Speaker  
Room 30, Parliament Buildings  
Belfast, Northern Ireland BT6 3XG  
Tel: +44 (0)28 9042 1000  
Email: [speaker@assembly.gov.uk](mailto:speaker@assembly.gov.uk)

Mr Alastair Ross MLA  
Chairperson  
Committee on Standards and Privileges  
Room 254  
Parliament Buildings

**07 February 2013**

Dear Alastair,

I am writing in response to your letter of 27 June 2012 regarding the unauthorised disclosure of a draft report of the Public Accounts Committee. I have considered your recommendations and have outlined the Secretariat response at Annex A.

A working group of Secretariat staff was set up to review our Information Assurance Policy and to consider the recommendations made by the Interim Commissioner for Standards as a result of his investigation into this issue.

The Assembly Commission has approved the majority of the Interim Commissioner's recommendations and Secretariat's implementation of same. Details are attached at Annex A.

The Assembly's current Information Assurance policy has been reviewed to incorporate new guidance in line with the recommendations below. Only one recommendation (recommendation 14) has not been accepted because of technical restrictions.

I trust this meets your approval.

Thank you for your time and assistance with this matter.

Yours sincerely,

**WILLIAM HAY MLA**

SP008\_11

## Appendix A

**This document outlines the Interim Commissioner's Recommendations and Secretariat's implementation of same.**

### **Recommendation 1 & 2**

The Assembly's current Information Assurance policy has been reviewed by a Secretariat working group. It will incorporate new guidance which recognises that there may be instances where documents (eg Reports on Committee Inquiries) should be marked as confidential and managed by way of protective marking for a time-bound period until the information is due for discussion or release. Training will be provided for staff on protective markings and their use.

### **Recommendation 3**

All documents containing confidential information (e.g. draft Committee reports), will be password protected when being transmitted electronically to non-approved Assembly email addresses. All confidential material emailed to Members must be password protected also. All passwords should be exchanged face-to-face or by telephone. It is proposed that an agreement is made with all outside agencies that may require exchange of confidential documents (e.g. NI Audit Office) to adhere to the policy. The Assembly's Information Assurance policy will incorporate this new guidance.

### **Recommendation 4**

Confidential/sensitive documents should not be emailed to personal email accounts. Should staff be required to work at home, the use of remote access to the Assembly's IT network will be arranged. This recommendation has been circulated to all staff.

### **Recommendation 5**

A form of wording will appear on the front cover of each Committee Report; informing the recipient that the content remains the ownership of the relevant Committee.

### **Recommendation 6**

A form of wording will appear on the front cover of each Committee Report; informing the recipient of any embargo or confidentiality restrictions.

### **Recommendation 7**

A watermark system will be used for confidential Committee documents which will make each document unique. The recipient of each document will be recorded by staff. It should be noted that this system has previously been used in the Standards and Privileges Committee and Public Accounts Committee.

### **Recommendation 8**

Draft Committee reports and other confidential information will not be made available to those who do not have a business need to access them.

### **Recommendation 9**

Procedures to review staff access to shared computer drives at regular intervals have been developed. This will be included as part of the Information Assurance Policy.



**Recommendation 10**

Routine Committee packs will continue to be left in Members' rooms or posted if requested; it is recommended that **only** packs containing confidential documents will have restriction placed on them as proposed in recommendations 8 and 11. The policy has been amended to reflect this.

**Recommendation 11**

Only Committee packs containing confidential information will require a signature on receipt.

**Recommendation 12**

Guidance for Committee Members will be revised, to include a reminder of the need to maintain the confidentiality of Assembly information, and to ensure that such information is stored securely at all times.

**Recommendation 13**

The Information Systems Office (IS) is considering the benefits of replacing shared drives with SharePoint based document sites. This would ensure that access to documents would only be given to those deemed necessary and that appropriate file auditing arrangements can be put in place. A pilot scheme has begun with a small group of staff.

**Recommendation 14**

The IS office cannot accept this recommendation because the current Microsoft email platform does not facilitate the tracking of attachments. Additional software would be required which would prove costly and impractical.

**Recommendation 15**

The IS office is liaising with other legislatures to research how to make operational the 'Code of Practice for the Use of Assembly Computer Resources', which currently exists in draft form only. This will enable the monitoring of the use of email services by all users, including Members, to be undertaken. Once collated, the information will be presented to the Assembly Commission for consideration.

**Recommendation 16**

Email tracking logs are currently retained for one year in line with the Assembly's Retention and Disposal Policy.

**Recommendation 17**

This recommends the Committee on Standards and Privileges should consider the need to review the Code of Conduct for Members to reflect more specifically that the unauthorised disclosure of Assembly information constitutes a breach of the provisions of that Code. An update of this matter will be provided to the Commission following the Standards and Privileges Committee consideration.

---

## Correspondence dated 6th November 2012 from the Chairpersons' Liaison Group to the Committee

Alex Maskey, MLA  
Chairperson, Chairpersons' Liaison Group

Central Committee Office  
Room 244, Parliament Buildings,  
Ballymiscaw, Stormont, Belfast, BT4 3XX  
E-mail: committee.office@niassembly.gov.uk

06 November 2012

**Alastair Ross, MLA**  
**Chairperson**  
**Committee on Standards and Privileges**

Dear Alastair,

I write in relation to the recommendations from the Interim Commissioner for Standards' investigation into the unauthorised disclosure of a Public Accounts Committee report, which was discussed at the Chairpersons' Liaison Group (CLG) meeting on 16 October 2012.

Chairpersons noted the issues being considered by the Assembly Commission and welcomed the proposed way forward suggest by the secretariat group, which was formed to consider how the Assembly might implement the recommendations arising from the interim Commissioner's report.

Chairpersons agreed that the distribution of standard committee packs should differentiate from those deemed restricted or confidential and welcomed the secretariat groups proposed mechanisms for handling these, as outlined below.

**Recommendation 8** – *Members are asked to note that draft committee reports and other confidential information should not be made available to those who do not have a business need to access them.*

**Recommendation 10** – *Members are asked to agree that routine Committee packs will continue to be left in their room or posted if requested; it is recommended that only packs containing confidential documents will have restriction placed on them as proposed in recommendations 8 and 11.*

**Recommendation 11** – *Members are asked to agree that only Committee packs containing confidential information will require a signature on receipt.*

During discussions, chairpersons recognised the need for sanctions on members leaking confidential documents, and agreed to suggest that this could be a matter for the Standards and Privileges Committee to consider.

Chairpersons also raised the issue of the current practice in password protecting restricted documents, when transmitted via email, in the context that passwords are often forgotten, and asked that an alternative is explored. This matter has been raised with the Information Systems Office.

In addition the Group agreed that Committees should take collective responsibility for the confidentiality of documents and any subsequent leak.

Yours sincerely,

Alex Maskey, MLA  
Chairperson

## Correspondence dated 4th March 2013 from the Public Accounts Committee to the Committee



Northern Ireland  
Assembly

### PUBLIC ACCOUNTS COMMITTEE

Alistair Ross  
Chairperson  
Standards and Privileges Committee

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04 March 2013

Dear Alistair,

#### **Recommendations for the treatment of Sensitive Documents**

Thank you for your letter of 27 June presenting to the Public Accounts Committee (PAC) the findings and recommendations of the investigation by the Interim Commissioner for Standards of the circumstances surrounding the leaking of a draft PAC report.

I would like to take this opportunity to register my appreciation to you and your Committee of the work you undertook on PAC's behalf. As you know, when my predecessor asked the Speaker to refer the leak to you as a matter of privilege, members were deeply concerned.

You will also be aware that PAC placed local restrictions such as embargos and watermarks on sensitive papers at the time of the leak, and tightened its procedures again (permitting monitored access to papers only) when subsequently another report was issued without authority to journalists early in a Committee inquiry.

Having received your letter the Committee decided to maintain these handling measures until the Secretariat and Commission had had a chance to respond to them. The Speaker copied to us his letter to you of 7 February, and PAC considered the Commission's response at its meeting on 20 February.

The Committee was content that the best practice processes it had taken, and indeed those that your Committee had also had occasion to use, were a good response to the circumstances which prompted them. The Committee was content to see some of those measures reflected in the recommendations accepted by the Commission, which I understand are in the process of

implementation. However, the Committee concluded that monitored access for general application risked limiting to too great a degree the time available to members for proper consideration of their papers.

Accordingly the Committee has agreed to move to the arrangements described in the Commission's letter, maintaining watermarking and embargo systems, asking that members sign for receipt of packs containing sensitive or restricted material, and restoring adequate time for full and extensive scrutiny of Committee papers.

I am confident that the new arrangements provide a firm foundation for increased information security and a useful range of handling options for sensitive papers. With monitoring, review and goodwill I hope this will make for a more "watertight" regime and give the Committee record the integrity it requires.

Yours sincerely,

**Michaela Boyle**  
**Chairperson**  
**Public Accounts Committee**



Northern Ireland  
Assembly

Appendix 2

# Minutes of Proceedings of the Committee Relating to the Report



## Wednesday, 13 February 2013

### Room 21, Parliament Buildings

**Present:** Mr Alastair Ross (Chairperson)  
Mr Kieran McCarthy (Deputy Chairperson)  
Mr Cathal Boylan  
Mr Fra McCann  
Mr Ian McCrea

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Assembly Clerk)  
Mr Jonathan Watson (Clerical Supervisor)

**Apologies:** Mr Steven Agnew  
Mr Jonathan Craig  
Mr David McIlveen  
Mr Francie Molloy  
Mrs Sandra Overend

**1.42pm** The meeting commenced in open session.

**Consideration of responses on the Interim Assembly Commissioner for Standards' recommendations in relation to preventing leaks**

The Committee noted the Clerk's Paper; correspondence from the Northern Ireland Audit Office; correspondence from the Chairpersons' Liaison Group; and correspondence from the Speaker.

The Clerk briefed the Committee on the background to this issue.

**Agreed:** The Committee agreed that the Clerk should prepare a draft Committee Report for consideration by Members at the next meeting of the Committee.

**2.22pm** The Chairperson adjourned the meeting.

**[EXTRACT]**

## Wednesday, 13 March 2013

### Room 21, Parliament Buildings

**Present:** Mr Alastair Ross (Chairperson)  
Mr Kieran McCarthy (Deputy Chairperson)  
Mr Steven Agnew  
Mr Cathal Boylan  
Mr Jonathan Craig  
Mr Fra McCann  
Mr David McIlveen

**In Attendance:** Mr Paul Gill (Assembly Clerk)  
Ms Hilary Bogle (Assistant Assembly Clerk)  
Mr Jonathan Watson (Clerical Supervisor)

**Apologies:** Mrs Sandra Overend  
Mr Colum Eastwood  
Mr Ian McCrea

**1.30pm** The meeting commenced in open session.

**1.35pm** The meeting moved into closed session.

**7. Draft Committee Report on the recommendations by the interim Assembly Commissioner for Standards on the leaked Public Accounts Committee Report**

Members noted the Clerk's Paper; Correspondence from the Public Accounts Committee; and the draft Committee Report.

The Clerk briefed the Committee on the background to this issue.

**Agreed:** Members discussed and agreed the draft Committee Report (as amended) and ordered that the report be printed today.

**[EXTRACT]**







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