

COMMISSIONER FOR STANDARDS
NORTHERN IRELAND ASSEMBLY

**REPORT OF
THE NORTHERN IRELAND ASSEMBLY
COMMISSIONER FOR STANDARDS
FOR 2016 - 2017**

Laid before the Northern Ireland Assembly pursuant to paragraph 7 of Schedule 4 to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011

1. INTRODUCTION

1.1 This is my fifth and final report on my work as the Northern Ireland Assembly Commissioner for Standards. My period of office expires on 16 September 2017 and, by virtue of section 19(3) of the Assembly Members (Independent Financial Review and Standards Act (Northern Ireland) 2011 (“the 2011 Act”), I am not eligible for re-appointment.

1.2 Paragraph 7 of Schedule 4 to the 2011 Act requires that, as soon as practicable after the end of each financial year, the Commissioner shall lay before the Assembly a report on his activities, including the use of resources, during that year.

1.3 Having set out the functions of the Commissioner, this report gives information on the complaints considered during the year, the other work undertaken and the resources used. It concludes with a number of recommendations and by outlining work that will be undertaken in my remaining six months in office.

2. FUNCTIONS OF THE COMMISSIONER

2.1 The functions of the Commissioner have not changed since the office was created. They are set out in section 17(1) of the 2011 Act and may be summarised as follows –

- To investigate complaints and referrals.
- To initiate a Commissioner investigation where the Commissioner decides that there is a prima facie case that a breach of the Code of Conduct (‘the Code’) has occurred.
- To report to the Assembly on the outcome of investigations.
- To give advice on any matter of general principle relating to standards of conduct of Members of the Assembly.

A new Code came into effect following the May 2016 election.

2.2 Although the Commissioner for Standards is independent he is required, by virtue of section 24(1) of the 2011 Act, to comply with directions given by the Assembly under that power. The two directions given under that provision were in force at the start of the year. The Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures) Direction 2012 which set out, inter alia, the admissibility criteria for complaints, the procedure to be followed by the Commissioner when considering complaints and the contents of reports by the Commissioner on investigations undertaken was replaced, following the May 2016 election, by the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures) Direction 2016 (“the General Procedures Direction”). That new direction took account of the new Code and simplified the procedures to be followed in the processing of complaints. The second direction, the

Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (Code of Conduct and Requirement to Register Interests) Direction 2012 (“the Conduct Direction”), was not amended during the year.

2.3 I note that on 24 January 2017, the last sitting day before it was dissolved ahead of the March election, the Assembly, without the need for a division, passed a motion calling for urgent legislation to extend the role of the Commissioner to cover complaints of alleged contravention of the Ministerial Code of Conduct.¹ There is at present no process for the investigation of such complaints. The investigation of such complaints would have many similarities to work already undertaken by the Commissioner. It would be most unlikely to require any significant increase in resources. It would have the advantage that when considering a motion to exclude a Minister or junior Minister from office for an alleged breach of that Code the Assembly would have the benefit of a report of an independent investigation into the alleged conduct.

3. COMPLAINTS, REFERRALS AND COMMISSIONER INVESTIGATIONS

3.1 At the start of the year the only outstanding matter before me was one aspect of a complaint by John McCallister MLA against Basil McCrea MLA which could not be concluded because of a then ongoing PSNI investigation into Mr McCallister’s conduct. Consideration of that complaint ended when Mr McCallister intimated that he no longer insisted in it. In addition there were two complaints under consideration by the Acting Commissioner, Gerard Elias QC. I understand that it has not been possible to complete these because of an ongoing PSNI investigation.

3.2 During the year I received only nine new complaints. As shown in Table 1, which gives other comparative data, this represents a further significant reduction from previous years and is the lowest figure since the office of Commissioner for Standards was created. All but one of these nine was either inadmissible or was withdrawn and so did not result in a report by me to the Committee. The investigation into the remaining complaint has been suspended since September 2016 to avoid the risk of prejudicing an ongoing PSNI investigation. In my report for 2015-16 I opined that the reduction in the number of complaints that year was due, at least in part, to lack of public confidence in the complaints process. I made a number of recommendations for action that could be taken to help in restoring confidence. Given the further reduction in public confidence in the Assembly and the failure to implement any of my recommendations it is, in my view, unsurprising that 2016-17 saw a further significant reduction in the number of complaints received.

¹ Official Report (Hansard) Tuesday 24 January 2017 Volume123, No 4 page 77

Table 1 – Complaints received etc.

	2012-13 ²	2013-14	2014-15	2015-16	2016-17
Complaints received ³	5	36	53	14	9
% made by Members	60.0	30.6	15.1	21.4	11.1
% made by public	40.0	69.4	84.9	78.6	88.9
% not admissible or withdrawn	60.0	69.4	86.8	91.3	88.9

3.3 At the year-end, other than the complaint in which my investigation has been suspended since September 2016, there were no other complaints under consideration by me.

3.4 I did not consider any referrals or initiate any Commissioner investigations during the year.

3.5 I did not give any advice on any matter of general principle relating to the standards of conduct of Members of the Assembly.

4. OTHER WORK

4.1 During the year I attended a number of meetings of the Committee on Standards and Privileges. I met with a number of individual MLAs who asked to see me. I also met with the PSNI on a number of occasions.

4.2 I responded to consultations from the Parliamentary Standards Commissioner and the Committee on Standards of the National Assembly for Wales.

4.3 I established a new website which includes a guide to the complaints process and a form that may be used for making a complaint. It also has guidance for witnesses on the complaints process and anonymised data on complaints received. Links are provided to all my annual reports and to other useful documents.⁴

² Period covered 17 September 2012 – 31 March 2013

³ Prior to 2015-16 a complaint was a document containing one or more allegations of misconduct. Thereafter each act or omission of alleged misconduct was counted as a separate complaint

⁴ www.standardscommissionerniassembly.org

4.4 Throughout the year I complied with the provisions of the Conduct Direction. No hospitality was offered by me during the year.

5. USE OF RESOURCES

5.1 The Assembly Commission complied with its duties under paragraphs 3 and 9 of Schedule 4 to the 2011 Act.

5.2 Paragraph 3 requires the Commission to –

‘Provide the Commissioner with such administrative and other support, including staff, services and accommodation, as the Commissioner may reasonably require for the purpose of discharging the functions imposed on the Commissioner by this Act.’

I continued to be provided with an office within Parliament Buildings and the IT and other office equipment required for my work. I was again greatly assisted by the provision, on a part-time basis, of a Personal Secretary.

5.3 Paragraph 9 requires the Commission to –

‘(a) pay such sums as are payable in accordance with the Commissioner’s terms and conditions of appointment;

(b) pay or reimburse any expenses properly incurred by the Commissioner; and

(c) indemnify the Commissioner in respect of any payments agreed under section 28(5) or any other liabilities incurred by the Commissioner.

5.4 The sums paid under paragraph 9(a) and 9(b) since the creation of the office of Commissioner are set out in Tables 2 and 3. No payments have been made in respect of paragraph 9(c).

Table 2 – Sums paid under paragraph 9(a) – Commissioner’s pay etc.

	2012-13 ⁵	2013 -14	2014-15 ⁶	2015-16	2016-17
	£	£	£	£	£
Commissioner Pay	22,412	41,113	51,477	51,299 ⁷	23,504 ⁸
Employers ERNIC	2,662	3,680	6,258	5,970	2,307 ⁹
Travel, Subsistence	<u>1,053</u>	<u>1,576</u>	<u>2,166</u>	<u>1,777</u>	<u>1,105¹⁰</u>
TOTAL	£26,127	£ 46,369	£59,901	£59,046	£26,916

Table 3 – Sums paid under paragraph 9(b) – Commissioner’s expenses

	2012-2013 ¹¹	2013-2014	2014-2015	2015-2016	2016-2017
	£	£	£	£	£
General Business Expenditure ¹²	35	35	98	509	320
Hospitality	0	0	0	0	0
Legal Fees	<u>0</u>	<u>4650</u>	<u>6470</u>	<u>200</u>	<u>0</u>
TOTAL	£35	£4685	£6568	£7090	£320

6. RECOMMENDATIONS

6.1 In my report for 2015–16¹³ I recommended that in an attempt to build public confidence in the complaints process and in the Assembly itself consideration should be given to –

- publication of brief details of all admissible complaints received by the Commissioner
- an end to the current party political approach to conduct issues
- prohibiting the use of a Petition of Concern in relation to complaints
- the appointment of lay independent members to the Committee on Standards and Privileges.

⁵ Period covered 17 September 2012 – 31 March 2013

⁶ Includes payments for work undertaken by the Acting Commissioner in 2013-14 but not paid in-year

⁷ Includes arrears of £414 for 2013-14 and £848 for 2014-15

⁸ Includes fees of £3,644 paid to the Acting Commissioner

⁹ Includes £312 in respect of payments to the Acting Commissioner

¹⁰ Includes payments of £371 to the Acting Commissioner

¹¹ Period covered 17 September 2012 – 31 March 2013

¹² Includes Data Protection registration fee of £35

¹³ Annual Report of the Northern Ireland Assembly Commissioner for Standards 2015-16 section 6

It is disappointing, although not surprising to me, that little or no progress has been made in relation to any of these recommendations.

6.2 Over the past year, despite the fact that the process for making a complaint has been simplified, the number of complaints received has reduced further to the lowest number in a full year since the office of Commissioner was established in 2012. It is, I believe, very likely that the reduction is in large part due to a further decline in public confidence in the Assembly and in the complaints process. Accordingly, I again recommend that urgent consideration be given to implementing all of these outstanding recommendations.

6.4 I also recommend that a decision should be taken without further delay on whether or not there should be a process for complaining about the conduct of the Commissioner. In my last report I made clear my willingness to *'co-operate fully with any fair process the Committee establishes for dealing with complaints against the Commissioner.'*¹⁴ Although the Committee on Standards and Privileges has considered the matter on a number of occasions it has yet to come to any decision. As a result three complaints, made more than a year ago by witnesses to a single complaint whose evidence I did not accept as credible, remain unconsidered.

7. THE YEAR AHEAD

7.1 In the period 1 April to 16 September 2017, when my tenure ends, I shall, if possible, deal with the one complaint before me and any new complaints received.

8. ACKNOWLEDGEMENTS

8.1 I wish again to place on record my sincere appreciation to all those in the Assembly Secretariat who have assisted me during the reporting year. Sheila McCaughley my Personal Secretary, Shane McAteer the Clerk of Standards and Debra Savage an Information Officer undoubtedly deserve particular mention for all they have done to support me.

Douglas Bain CBE TD Advocate

Northern Ireland Assembly Commissioner for Standards

13 April 2017

¹⁴ Annual Report of the Northern Ireland assembly Commissioner for Standards 2015-16 paragraph 7.1