



Northern Ireland
Assembly

Commissioner for Standards

Annual Report 2023-24

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

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1 Introduction

- 1.1 This is my fourth report since taking up the role of Northern Ireland Assembly Commissioner for Standards on 7th September 2020.
- 1.2 This report provides information on overall complaints received from 1 April 2023 to 30 March 2024, including a breakdown of MLA and Ministerial complaints, highlights from investigation reports and recommendations, resources associated with the Office, other work carried out during this year and a look at the year ahead.
- 1.3 With the restoration of a fully functioning Assembly, this report contains information on outcomes of referrals and reports from complaints carried forward from 2022-23 and 2021-22.

2 Functions of the Commissioner

- 2.1 The functions of the Commissioner are set out in section 17(1) of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 ("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') or the Ministerial Code, or both, may have 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, including Ministers
- 2.2 The Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 came into force on 22 March 2021. This legislation extended the role of the Commissioner to consider complaints of alleged breaches of the Ministerial Code of Conduct.
- 2.3 All investigations are carried out in accordance with the "Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures) Direction 2021 ("the General Procedures Direction").

3 Complaints Overview

Complaints in 2023-24

- 3.1 There was a total of 65 complaints for the 2023-24 reporting period up to 31 March 2024, a marked decrease compared with the last reporting year. Of the 65 complaints received, 56 were inadmissible and 9 were admissible and proceeded to investigation.
- 3.2 A total of 8 decisions on admissibility were referred to the Committee.¹ The Committee considered the referrals, and all were upheld.

Table 1. Complaints overview 2023-2024

	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Complaints received*	9	6	123	164	162	65
Complaints by member of public	8	4	74	147	161	63
Complaints by an MLA	1	2	49	16	1	2
Complaints by a Minister	0	0	0	1	0	0
Inadmissible	4	1	110	144	160	56
Admissible	0	2	11	19	2	9
Discontinued	5	3	2	1	0	2
Ongoing	0	0	0	9	23	3

*Each act or omission of alleged misconduct is counted as a separate complaint and numerous complaints can relate to a single alleged breach/incident.

- 3.3 I successfully carried out preliminary and full investigations through in-person and remote interviewing. In line with good practice, I continued to enlist the services of a second interviewer where necessary to assist with complaints that proceed to full investigation. I obtained external/independent legal advice when necessary.

Complaints carried forward from 2022-23

- 3.4 There were 9 investigated complaints leading to 2 reports from the 2022-23 reporting year presented to the Committee on Standards and Privileges ("the Committee") for its consideration in February and March 2024.
- 3.5 There were 9 referrals considered by the Committee from previous reporting years; all were upheld.

¹ A referral to the Committee is an appeal of the Commissioner's decision that the complaint is inadmissible

4 Complaints Against MLAs

4.1 There were 54 complaints received against MLAs. A total of 43 were deemed inadmissible; 9 were admissible and led to 2 investigation reports.

Table 2. Complaints against MLAs

	2020-21	2021-22	2022-23	2023-24
Complaints received against MLAs	123	42	26	54
Inadmissible	110	31	24	43
Admissible	11	10	2	9
Discontinued	2	1	0	2
Ongoing	0	0	0	0
Referrals to be considered by Committee	0	0	5	7
Reports awaiting Committee consideration/adjudication	0	2	0	1

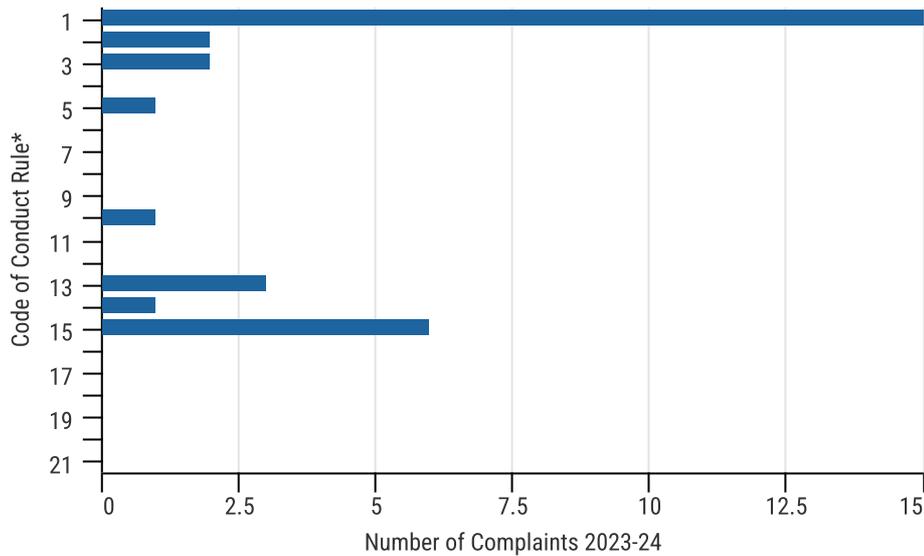
*Each act or omission of alleged misconduct is counted as a separate complaint and numerous complaints can relate to a single alleged breach/incident.

4.2 Of the two investigation reports, one is currently under consideration by the Committee and will be included for discussion in next year's report. The other investigation was discontinued due to the unfortunate passing of the MLA who was the subject of the complaint.

4.3 Complaints were most frequently related to breaches of Rule 1, followed by Rule 15. Rule 1 relates to acting in the public interest at all times: "You shall base your conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest". Rule 15 relates to "excessive and unreasonable personal attack" which includes complaints in relation to things said by MLAs through any medium, including social media.

4.4 Figure 1 below shows a breakdown of complaints made against MLAs by the alleged rule breached for the year 2023-24. The MLA Code of Conduct can be found on the Commissioner's website.²

Figure 1. Complaints by alleged rule breached for 2023-24



*

1. You shall base your conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

2. You shall uphold the criminal law. You fail to uphold the law only if you are convicted of, or admit formally, an offence committed when acting in your capacity as a Member.

3. You shall uphold the law in relation to equality. You fail to uphold the law in relation to equality only if a court or tribunal makes a finding against you, or you accept formally that you have breached the law, when acting in your capacity as a Member.

5. You shall declare, whether in Assembly proceedings or in any approach to a Minister, public representative, public body or public official, any relevant interest which might reasonably be thought to influence your approach to the matter under consideration.

10. You shall observe and comply with the Rules on All-Party Groups and any policy, guidance or instructions of any kind approved by the Assembly, or issued by the Assembly Commission or Assembly secretariat staff on its behalf or with its authority.

13. You shall not act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member, officer or staff of the Assembly of their duties.

14. You shall not use, or attempt to use, your position as a Member to improperly confer an advantage or preferential treatment for either yourself or any other person; or to avoid disadvantage or create disadvantage for someone else.

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

16. You shall co-operate at all times with any investigation by or under the authority of either the Northern Ireland Assembly Commissioner for Standards or the Assembly.

5 Reports on MLA Complaints

5.1 In the current reporting period 2023-24, 1 investigation report was presented to and considered by the Committee. This report is currently under consideration by the Committee and will be included in next year's report.

5.2 There was 1 investigation report from a complaint received in 2022-23 that the Committee considered in this reporting year:³

Report of the investigation into a complaint against Mr Tom Buchanan MLA

5.3 On 23 February 2023, I received a complaint from Mr Martin Tracey alleging that Mr Tom Buchanan MLA had disclosed confidential information to the Belfast Telegraph relating to a separate previous live complaint by Mr Tracey, thereby breaching Rule 17 of the Code.

5.4 Mr Tracey provided evidence of Mr Buchanan having been quoted in an article in the Belfast Telegraph on 22 February 2023 in which he spoke about the live complaint. Furthermore, Mr Tracey provided evidence in the form of a confidential letter to him from me, which he alleged, was disclosed by Mr Buchanan.

5.5 I considered the complaint was admissible and commenced my investigation on 27 February 2023. On 4 April 2023, I forwarded my report on the investigation to the Committee for consideration. The current Committee was appointed in February 2024.

5.6 The relevant rule of conduct cited in the complaint against Mr Buchanan is Rule 17: "You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority". In addition to Rule 17, I decided that the complaint engaged Rule 12: "You shall disclose confidential or protectively marked information only when you are authorised to do so".

5.7 Following my oral briefing to the Committee on 13 March 2024, the Committee decided that it agreed with my conclusion that there had been a breach of Rule 17 and of Rule 12 of the Code. The Committee agreed that, rather than recommending to the Assembly that a sanction be imposed, it would seek to resolve the matter by requesting that Mr Buchanan make a formal apology in writing to the Committee to enable it to report to the Assembly that the complaint has been resolved. Mr Buchanan subsequently provided the necessary formal letter of apology.

5.8 The Committee noted the point highlighted in my investigation report regarding the vital importance of confidentiality, and reminded all MLAs of the importance of maintaining confidentiality during the complaints process "In order to safeguard the fairness and integrity of the process and avoid any unnecessary reputational damage to any of the parties involved, it is imperative that the confidentiality of complaints is upheld until the consideration and, where applicable, the investigation and adjudication of complaints has concluded."

3 <https://www.niassembly.gov.uk/assembly-business/committees/2022-2027/standards-and-privileges/reports/report-on-a-complaint-against-tom-buchanan-mla/>

Sanction against Steve Aiken MLA

- 5.9** In my 2021-22 annual report, I outlined a complaint made by Mr Maolíosá McHugh MLA against Steve Aiken MLA, which was adjudicated and reported on by the Committee on 23 March 2022, at the end of the 2017-22 mandate.
- 5.10** The facts of the case were that at a meeting of the Finance Committee on 4 November 2020, Dr Aiken, as Chair of that Committee, disclosed publicly that he had submitted a complaint to the Commissioner relating to a member of that Committee, Mr McHugh. The disclosure included both the fact and detail of his complaint against Mr McHugh – which was the allegation that Mr McHugh had failed to declare an interest while that Committee was receiving evidence on mispayments by Land and Property Services of Covid-19 Business Support grants.
- 5.11** The public discussion of Dr Aiken’s complaint in the Finance Committee – which Dr Aiken initiated, facilitated and participated in – lasted 27 minutes. It was also reported in the media on the 5th of November 2020. Following investigation and adjudication, Dr Aiken’s complaint was not upheld and Mr McHugh was found not to have breached the Code.
- 5.12** On the back of Dr Aiken’s disclosure, Mr McHugh submitted a complaint against Dr Aiken. Following investigation and adjudication, Dr Aiken was found to have breached two Rules of Conduct - namely Rule 12 and Rule 16 and the Committee further agreed with my findings that Dr Aiken’s conduct was inconsistent with both the Respect and Leadership principles.
- 5.13** The Committee considered that Dr Aiken's conduct was an egregious breach of the Code given that, as a member of the Committee on Standards and Privileges, Dr Aiken should have been leading by example in maintaining the confidentiality of complaints [Rule 12] and in co-operating at all times with the Commissioner’s investigation [Rule 16]. The full report can be found at the link below.⁴
- 5.14** Given that there would be insufficient time remaining in the then current mandate [2017-22] for any recommended sanction to be debated in the Assembly, the Committee proposed that its successor committee identify an appropriate sanction for recommending to the next Assembly and tables the necessary plenary motion early in the next mandate as applicable.
- 5.15** The newly formed Committee considered the issue of a sanction at its meeting on 10 April 2024. The Committee agreed a motion to impose the sanction of exclusion from proceedings of the Assembly for a period of two sitting days, a sanction it believed was appropriate and proportionate.

- 5.16** The Committee's motion on the exclusion of Dr Aiken was debated on Tuesday 7 May 2024.
- 5.17** A number of important issues were raised during the debate including: the importance of ensuring that the Assembly's standards regime is robust and is seen to be robust, in order to maintain and enhance public confidence in the political system; the onus on all elected MLAs to be conscious of, and to abide by, the ethical standards reflected in the principles and rules contained in the Assembly Code of Conduct; the need to ensure there is accountability; and that breaches of the Code are taken very seriously.
- 5.18** Other factors were highlighted during the debate including Dr Aiken's unwarranted criticism of the investigatory process; his lack of contrition (rather than offering an apology, Dr Aiken sought an apology from the Commissioner); his conduct being inconsistent with two of the Seven Principles of Public Life; and that Dr Aiken was a member of the Standards and Privileges Committee at the time of the breaches and should have shown leadership in this regard.
- 5.19** The motion was approved and it marked the first occasion to date when the Assembly has decided to exclude a Member from proceedings. The Assembly's approval of the motion put down a marker that there is accountability and that such breaches of the Code are taken very seriously.
- 5.20** It is the Committee that recommends sanctions (the Commissioner does not have the power to recommend sanctions), and the sanction was one which the Committee felt was appropriate and proportionate. Whilst I fully respect the decision of the Committee, I am conscious that the agreed sanction, when compared with other jurisdictions relating to similar breaches, may have been of a higher magnitude.

6 Complaints Against Ministers

- 6.1 Complaints against Ministers made up 17% (n=11) of all complaints received (n=65). This represents a 91% decrease in complaints relating to Ministers compared with the 2022-23 reporting period.
- 6.2 Of the 11 complaints received, 1 was referred to the Committee for further consideration/appeal of my inadmissibility decision. The Committee upheld my decision.

Table 3. Complaints against Ministers 2023-24

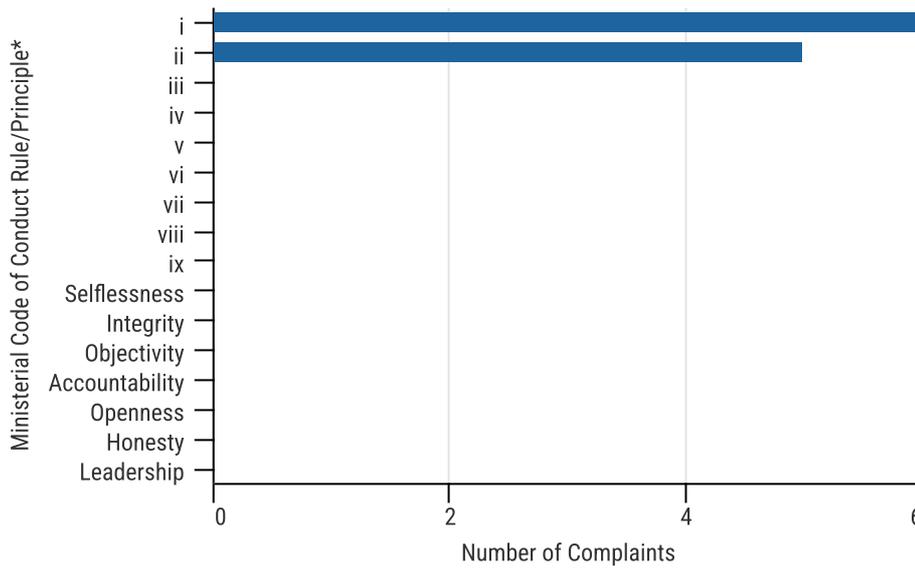
	2021-22	2022-23	2023-24
Complaints received against Ministers	122	136	11
Inadmissible	113	136	11
Admissible	9	0	0
Discontinued	0	0	0
Ongoing Investigations	9	0	0
Referrals to be considered by Committee	1	3	1
Reports awaiting Committee consideration	0	2	0

*Each act or omission of alleged misconduct is counted as a separate complaint and numerous complaints can relate to a single alleged breach/incident.

- 6.3 The main reasons for inadmissibility were the complaints being beyond the scope and spirit of paras 1.5 and 1.6 of the Ministerial Code. In the main, complaints were related to the exercise of legislative powers by Ministers, which is not an issue of conduct, but policy decisions for which Ministers are accountable to the Assembly. The complainants were advised that the exercise of legal powers by Ministers is subject to the supervisory jurisdiction of the High Court through the judicial review procedure and would be the appropriate course if (for example) it is said that a legal power has been improperly exercised. Complainants were also signposted, where applicable, to other agencies that may be more appropriate to consider their complaint.
- 6.4 Two investigations into ministerial complaints from 2021-22 were completed and submitted to the Committee in the last reporting year. The Committee is currently considering these reports and these will be included for discussion in my next annual report.

6.5 Figure 2 below shows a breakdown of complaints by the alleged rules breached for the year 2022-23 for all complaints against Ministers. Ministerial complaints were related to breaches of Rules 1 (i) and 2 (ii). The Ministerial Code of Conduct is available on the Commissioner's website.⁵

Figure 2. Complaints by alleged rule and/or principle breached for 2023-24



- * 1.5
- (i) observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds;
 - (ii) be accountable to users of services, the community and, through the Assembly, for the activities within their responsibilities, their stewardship of public funds and the extent to which key performance targets and objectives have been met;
 - (iii) ensure that all reasonable requests for information from the Assembly, users of services and individual citizens are complied with; and that departments and their staff conduct their dealings with the public in an open and responsible way;
 - (iv) follow the seven principles of public life set out by the Committee on Standards in Public Life;
 - (v) comply with this Code and with rules relating to the use of public funds;
 - (vi) operate in a way conducive to promoting good community relations and equality of treatment;
 - (vii) not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their private interests;
 - (viii) ensure they comply with any rules on the acceptance of gifts and hospitality that might be offered; and
 - (ix) declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or indirect pecuniary interests which members of the public might reasonably think could influence their judgement are listed in the Register of Interests.

1.6
The seven principles of public life referred to at (iv) above are as follows:

Selflessness: Holders of public office should take decisions 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 organisations that might 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 clearly 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.

7 Other Work

- 7.1 On 19 March 2024, I attended the launch of the The John & Pat Hume Foundation and Glencree pledge on ethical political discourse.
- 7.2 In addition to considering current in-year complaints, I also updated policies in accordance with GDPR, attended internal and external meetings, and contributed to external consultations.
- 7.3 Throughout the year, I complied with the Code governing my conduct and registered all relevant financial and other interests and all hospitality received.

8 Resources

- 8.1 Paragraph 3 of Schedule 4 to the 2011 Act 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 purposes of discharging the functions imposed on the Commissioner by this Act.'
- 8.2 Paragraph 8 of that Schedule 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.
- 8.3 Compared with the previous year, there was a 37% reduction in Commissioner's pay and expenses. This reduction reflects the decrease in complaints received, more than likely due to the Assembly not fully functioning until February 2024. The sums paid under paragraph 8(a) are set out in Table 4.

Table 4. Commissioner's pay and expenses 2023-24

	2023-24
Commissioner's pay	47,221
Employer's National Insurance Contribution	5,261
Travel and Subsistence	-79
TOTAL	52,403

- 8.4 I was provided with an office within Parliament Buildings and with IT and office equipment required to do my work.
- 8.5 Expenditure is shown at Table 5 below and represents a small decrease from the previous reporting year.

Table 5. Expenditure 2023-24

	2023-24
Complaint processing software	5,709
Data Protection Registration	40
Specialist Support	2,352
Interview Transcription	410
Other	110
TOTAL	8,621

9 Promoting Standards

- 9.1 I receive numerous complaints about matters relating to what a Member has said, either online or in-person. The person complaining believes that what has been said by a Member was wrong or offensive or inappropriate etc. The most common response I make to complainants is that their complaint is inadmissible due to the case law relating to freedom of expression which says that in the political context, "a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive that would not be tolerated outside this context is tolerated." This reflects that fact that free speech is essential in a democratic society. However, complainants are often times more angered after receiving my decision, which risks further erosion of the trust in the Member and the ethical standards regime.
- 9.2 An in-year investigation which related to alleged inappropriate online posts by a Member was discontinued. Whilst the investigation was incomplete, it focussed on the threshold, in law, relating to freedom of expression in the political realm. The investigation has highlighted that whilst things said may be allowable under the law, they may be entirely incompatible with the Seven Principles of Public Life. There is a need to examine whether the jurisprudence on the high threshold for freedom of political expression has shifted and whether the Code of Conduct, when reviewed, can seek to reflect any shift.

- 9.3 Since taking up this role, I have consistently held "preliminary investigations" in relation to complaints regarding alleged offensive speech in order to 1) ascertain the context of what was said and 2) to remind Members that while the law dictates that, in the political context, they can say most things due to the enhanced protection afforded to political speech under the Human Rights Act, that doesn't always mean they should. This is the only means I have in trying to influence standards in relation to complaints of this nature.
- 9.4 The John & Pat Hume Foundation and Glenree have, in collaboration, launched a pledge on ethical political discourse. I met with both organisations in relation to this, and continue to be impressed by their very important work. I attended the launch of the #RespectfulPolitics and pledge in the Crescent Arts Centre on 19 March 2024, which included input from the Jo Cox Foundation. I would encourage all Members to consider taking the pledge which can be read and signed at this link: <https://form.jotform.com/240843842211046>.

10 Year Ahead

10.1 Ministerial Code of Conduct

The underpinning principle of the independent Commissioner for Standards investigating Ministerial complaints is unique to Northern Ireland among the UK jurisdictions and came into force on 22 March 2021 with the passing of the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021. There remains an urgent need for a review of the Ministerial Code of Conduct, and clarity not only on the scope of the Ministerial Code of Conduct but also on where responsibility for guidance and review of the Ministerial Code of Conduct falls. It is worth restating again in this year's report, that the Ministerial Code of Conduct in its current form is too imprecise and leads to varying interpretations, creates overlap with other bodies such as the Northern Ireland Public Services Ombudsman, the NI Audit Office, among others, and raises real issues for complainants, Ministers and for me as Commissioner. The Ministerial Code of Conduct needs to be updated to ensure its application when handling complaints is clear, proportionate and promotes the high standards of conduct expected from Ministers. Updating the Ministerial Code of Conduct could assist in reducing the number of inadmissible complaints received. This issue and its urgency has been highlighted by the Committee to the Secretary of State for Northern Ireland in 2022-23. Additionally, I wrote to and subsequently met with the Head of the Civil Service and additionally raised this issue with a number of Ministers informally at that same time. I have received no correspondence to date to confirm whether or when the Ministerial Code of Conduct will be updated.

10.2 **Committee's procedure for Ministerial Complaints**

A final decision is currently being made by the Committee on how it will consider investigation reports relating to Ministerial conduct investigations.

10.3 **Review of the MLA Code of Conduct**

There is a need to update the MLA Code of Conduct and it is my hope that I will be able to feed into this review. The review should include consideration of recommendations made in my reports to date and other changes as required and necessary to promote standards.

10.4 **Unacceptable Behaviours Policy**

Based on the new draft policy on unacceptable behaviours including bullying, harassment and sexual misconduct agreed by the joint working group made up of members from the Committee and the Assembly Commission, there is likely going to be a role for the Commissioner in terms of processing complaints and the investigation of complaints. I will continue to engage with the Committee in the coming year.

Recommendations

- 10.5 In its Legacy Report,⁶ the Committee recommended that the successor committee considers taking forward my recommendations regarding: amending the wording of rules of conduct 16 and 17 to underpin the confidentiality requirements attaching to complaints; improving the provisions in the 2011 Act regarding notices; and amending the General Procedures Direction to recognise the Commissioner's discretion on admissibility requirements. The Committee also recommended to its successor committee that it examines the case for legislation to amend section 33 of the 2011 Act to make clear that the restriction on the disclosure of information applies to complainants and respondents and to create a statutory offence for breaches of this requirement.

11 **Acknowledgements**

I am grateful to all of those in the Assembly Secretariat who have provided me with an exceptional level of assistance and support over the past year including Shane McAteer, the Clerk of Standards and the Committee staff, Jonathan McMillen and the Assembly Legal Services team, and secretarial support from Rose Morwood and Elizabeth McKenna. I would also like to thank John Devitt for his continued support and assistance. I have also been fortunate to have had support from Standards Commissioners across the UK and locally from the PSNI for which I am extremely grateful.

Melissa McCullough

Northern Ireland Assembly Commissioner for Standards

17 June 2024

6 <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/standards-and-privileges/reports/>



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An electronic copy of this report can be found on the NI Assembly Commissioner for Standards website:

<https://standardscommissionerniassembly.org>

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