



Northern Ireland
Assembly

Commissioner for Standards

Annual Report 2020-21

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 first report since taking up the role of NI Assembly Commissioner for Standards on 7th September 2020.
- 1.2 This report provides information on complaints received from 1 April 2020 - 30 March 2021 as well as other work carried out during this year, resources associated with the Office and further recommendations. It also includes statistics on complaints received during the period where there was no Commissioner in place: 2017-2018, 2018-2019 and 2019-2020.
- 1.3 Paragraph 7 of Schedule 4 to the 2011 Act requires that, as soon as practicable after the end of each financial year, the Commissioner for Standards shall lay before the Assembly a report on her activities, including the use of resources, during that year.

2. Functions of the Commissioner

- 2.1 The functions of the Commissioner 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.
- 2.2 New legislation, the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 came into force on 22 March 2021. This legislation extends the role of the Commissioner to consider complaints of alleged contravention 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 2016 (the "2016 Direction"). At its meeting on 28 April 2021, the Committee on Standards and Privileges agreed to put in place procedures for the investigation of complaints against Ministers which will be reflected in the 2016 Direction by the end of May 2021.

3. Complaints

- 3.1 Table 1 and Figure 1 provide further details relating to 2020-21 and previous unreported years.
- 3.2 Upon taking up this role, there was a backlog of complaints. As a large number of the existing complaints were between 6 and 36 months old, it was quite possible with the passing of time that some complainants may have forgotten they had lodged a complaint, may have forgotten what their complaint related to, or the complaint may have been against people who were no longer MLAs or were deceased. In consideration of this, I wrote to anyone who lodged a complaint prior to May 2020 (3 months or older) to acknowledge their complaint and to ask if they still wished their complaint to be considered.
- 3.3 Of the 98 complainants written to, 12 no longer insisted upon their complaint (12%). In accordance with the legislation, I decided to discontinue these cases and gained approval from the Committee for the discontinuation of the twelve complaints.
- 3.4 I categorised the remaining backlog of 86 complaints and began to systematically work through the backlog, while simultaneously considering new complaints.
- 3.5 At the end March 2021, of the backlog cases for 2017-2018 (n=7), 2018-19 (n=9) and 2019-20 (n=6), I carried out 5 preliminary investigations and 4 full investigations in relation to these cases. Data relating to these complaints are at Table 1. There are currently no further complaints pending for previous years.

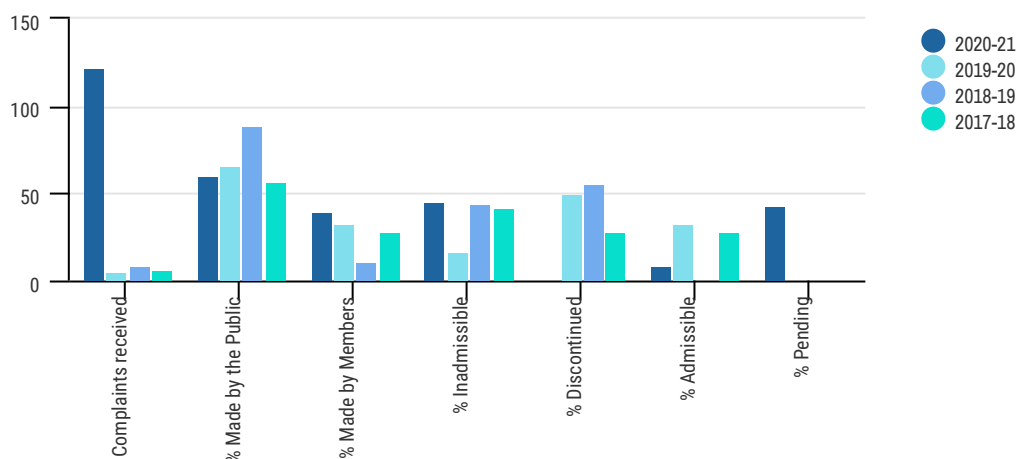
Table 1. Complaints for 2020-21 and previous unreported years

	2020-21	2019-20	2018-19	2017-18
Complaints received*	123	6	9	7
Complaint made by member of public	74	4	8	5
Complaint made by MLA	49	2	1	2
Inadmissible	56	1	4	3
Discontinued	2	3	5	2
Admissible	11	2	0	2
Pending	54	0	0	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.

3. Complaints

Figure 1. Complaints for 2020-21 and previous unreported years



- 3.6 One case from 2017 was investigated in full and led to rectification. The case was against Ms Clare Sugden MLA and related to her failure to disclose an interest when representing a second cousin of her then fiancée when assisting him with a planning application. After a thorough investigation, it became clear that the perception by the complainant (Mr Raj Kher) meant that Ms Sugden should have declared the interest. However, Ms Sugden did not believe the connection was close enough to require such a disclosure and therefore inadvertently failed to declare the interest. I recommended rectification to Ms Sugden, and she agreed to this route as is required under the legislation. Ms Sugden then wrote to the Committee to apologise for the inadvertent failure to declare (as is required under the legislation) and the Committee agreed the rectification of the complaint.
- 3.7 There was a total of 123 complaints for the 2020-21 reporting period. Upon taking up Office on 7th September 2020, there were 76 existing complaints and I received a further 47 complaints up to 31 March 2021. Of these, I have held 36 preliminary investigations to assess admissibility and 11 have proceeded to full investigation. The reports for these investigations are being presented to the Committee on Standards and Privileges in May and June 2021.
- 3.8 There are currently 54 complaints ongoing or pending for the year 2020-21. Some of these are complaints that I have had to suspend until external agencies complete investigations and others are at various stages in the complaints process.

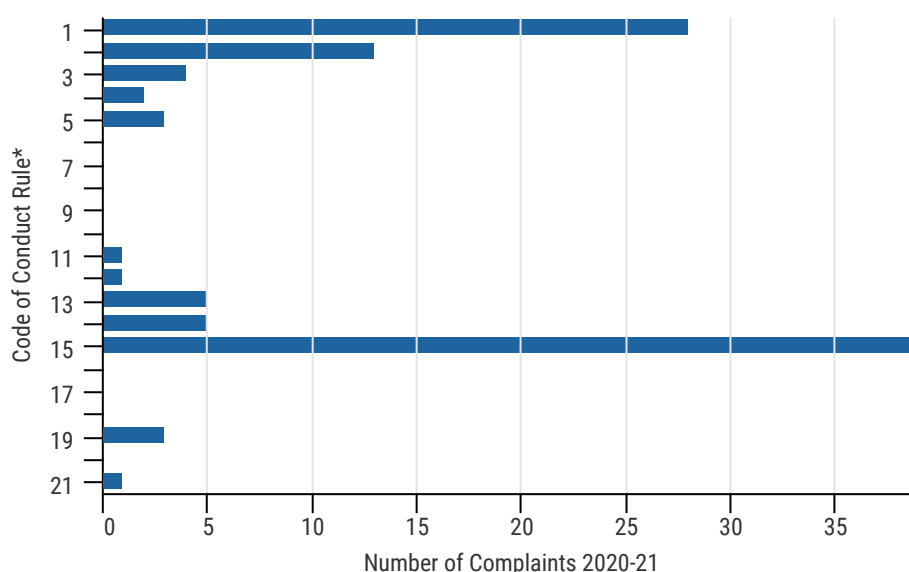
3. Complaints

3.10 The Figure 2 below shows a breakdown of complaints by the alleged rules breached for the year 2020-21.

3.11 Complaints were most frequently related to breaches of Rule 1 and Rule 15.

3.12 Rule 1 relates to acting in the public interest at all times. Rule 15 relates to unreasonable and excessive personal attack and reflects the complaints received in relation to things said by MLAs through any medium, including social media. The full Code of Conduct is available on the Commissioner's website.

Figure 2. Complaints by alleged rule breached for 2020-21



*

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

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

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

4. You shall register in the Assembly's Register of Members' Interests details of all registrable interests. A registrable interest means an interest specified in Chapter 1 of the Guide to the Rules.

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.

11. You shall use information which you receive in confidence only in your capacity as a Member. You shall never use, nor attempt to use, such information for the purpose of financial gain.

12. You shall disclose confidential or protectively marked information only when you are authorised to do so.

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

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

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

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

21. You shall not urge another Member to contravene any rule of conduct.

4. Other Work

- 4.1 Since taking up the role in September 2020, I have focussed on addressing the backlog and current complaints, updating internal processes for complaints handling, updating policies in line with GDPR, attending multiple meetings, contributing to external consultations, and developing a new Commissioner for Standards website.
- 4.2 GDPR came into force when there was no Commissioner in post. Work is currently underway to develop policies and processes to ensure the Office is working to best practice in terms of GDPR.
- 4.3 I procured WorkPro, a complaint handling software system used by many Ombudsman in the UK and internationally. The system will enable the Office to be more efficient, focussed and GDPR compliant and will facilitate the move to paperless.
- 4.4 I started the process of updating the Commissioner for Standards website, with the purpose of using the website to engage with the public, explain the complaints process and create a space to promote awareness of the importance of high standards in public life. Additionally, when the website is live, the WorkPro complaints form will be able to be accessed via the website, making the process more streamlined and easier for complainants to use.
- 4.5 I met with Standards Commissioners from all of the other UK jurisdictions. I also met with the NI Public Services Ombudsman, NI Police Ombudsman and the NI Prisons Ombudsman. I attended the Network of Ethical Standards Investigators and appeared at an online evidence session for Westminster's Committee on Standards in Public Life as part of their Standards Matter 2 Review.
- 4.6 In the main, I have worked remotely in line with Covid regulations and have successfully carried out preliminary and full investigations through remote interviewing. In line with good practice, I enlisted the services of a second investigator/analyst to assist with complaints that proceed to full investigation.
- 4.7 Throughout the year since September 2020, I complied with the Code governing my conduct and registered all relevant financial and other interests and all hospitality received.

5. Resources

5.1 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.'

5.2 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.'

5.3 The sums paid under paragraph 8(a) are set out in Table 2.

Table 2. Commissioner's pay and expenses

	2020-21
Commissioner's pay	£55,451.89
Employer's National Insurance Contribution	£7,046.25
Travel and Subsistence	£8.55
TOTAL	£62,506.69

5.4 I was provided with an office within Parliament Buildings and with IT and office equipment required to do my work.

5.5 The original budget for expenses and other goods and services (not including Commissioner's pay) was £11,050.00 as agreed with the Assembly Commission.

Table 3. Expenditure 2020-21

	2020-21
Training and development	£996.00
Complaint processing software	£5000.00
Data Protection Registration	£40.00
Specialist Staff Support	£2,016.00
Interview Transcription	£726.49
TOTAL	£8,778.49

6. Promoting High Standards

- 6.1 I had the opportunity to provide my views to the Committee on Standards and Privileges' stage 1 'General review of the Code and Guide' which focused mainly on urgent and straightforward amendments.
- 6.2 The Committee on Standards and Privileges' stage 2 review will focus on more complex and detailed issues and I look forward to providing my views in relation to ensuring best practice and ethical standards, in particular:
1. Ensuring there is a meaningful representation of all of the principles within the rules; notable 'honesty' is not currently reflected fully within the Rules.
 2. Enhancing the admissibility criteria to better reflect the public interest.
 3. Widening the scope for rectification where possible to allow resolution and/or informal solutions at earlier stages in the process for less serious breaches.
- 6.3 New functions that came into force on 22 March 2021 with the passing of the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021 means that complaints against Ministers will now be considered by the Commissioner for Standards. This new function, which is unique to Northern Ireland among the UK jurisdictions, is very welcome and undoubtedly in the public interest that complaints of this nature are considered by this Office. Work is continuing to ensure the processes and policies for Ministerial complaints are reflected in the 2016 Direction and clearly articulated to both Ministers and complainants. However, the 2016 Direction will only cover the procedures for considering and investigating complaints; there is an urgent need for clarity on the scope of the Ministerial Code of Conduct and where responsibility for guidance and review of the Ministerial Code falls.
- 6.4 A number of welcome changes are being developed in line with recommendations made in the New Decade New Approach including incorporating three lay members on the Committee on Standards and Privileges and ensuring the petition of concern is not used in relation to sanctions arising from complaints. These changes were recommended by my predecessor, Mr Douglas Bain, during his term in office and are changes that will strengthen the public's trust in the Assembly and will further promote the highest standards in public life.

6. Promoting High Standards

- 6.5 I am concerned about the number of complaints I receive relating to offensive language by some MLAs, especially on social media. While the ECHR Article 10 (Freedom of Expression) means that politicians are afforded enhanced protection relating to political speech, the number of complaints relating to offensive language (Rule 15) is not only alarming but the outcome often times leaves complainants feeling let down. This is because many of these complaints are inadmissible due to the Article 10 protection or other admissibility criteria. I believe work can be done to raise standards in relation to what some MLAs say and how they say it, to not only avoid unnecessary offence and hurt to people but to provide good example for everyone in relation to language and respect for each other. During the stage 2 review of the Code and Guide, I hope to open a discussion around how other forms of resolution, perhaps in the form of an apology, may help to change behaviours and language used by some MLAs.
- 6.6 A recent recommendation I put to the Committee, that focussed training was needed for MLAs on how they can avoid using offensive language on social media and how they can best deal with the abuse they are subject to on social media, has been acted upon by the Committee who have procured a training program that is in the process of being rolled out. This is very welcome and much needed.

7. Year ahead

- 7.1 The Commissioner's new functions relating to the Ministerial Code of Conduct will require engagement with Ministers including enhancing their knowledge of the Ministerial Code of Conduct and the processes for considering complaints. As the Ministerial Code of Conduct is currently as wide as the MLA Code of Conduct is narrow, issues will inevitably arise in relation to differences in admissibility of similar alleged breaches in conduct depending on whether the complaint falls under the Ministerial Code of Conduct or the MLA Code of Conduct.
- 7.2 The launch of the new Commissioner website will provide a platform for engaging the public, MLAs and Ministers in relation to standards and processes for complaints and will allow ease of use for complainants to submit their complaint.
- 7.3 The new complaints software will be used for all complaints received from 1 April 2021. The benefits to be realised include improved case handling, increased security, reduced risk, enhanced reporting with more accurate and complete data and a more user-friendly platform for complainants.

7. Year ahead

- 7.4 The CSP Stage 2 review will hopefully lead to more fully reflected principles in the MLA Code of Conduct rules, will assess the admissibility criteria for fairness and public trust considerations and will examine possibilities for widening the scope for rectification in for example, Rule 15 cases, where an apology may be the only and best outcome for complainants and for ensuring wider public trust.
- 7.5 I hope to become involved in outreach and engagement especially through the induction program for MLAs. I believe there should be meaningful and engaging training relating to the Code of Conduct for MLAs. This may also be something of benefit to Ministers in relation to their Code of Conduct.
- 7.6 I welcome the establishment of a joint working group made up of Members from the Committee on Standards and Privileges and the Commission on the development of a policy on unacceptable behaviours including bullying, harassment and sexual misconduct. I look forward to engaging with that group and others in relation to best practice elsewhere.

8. Acknowledgements

- 8.1 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 7 months since taking up the Commissioner role. Shane McAteer, the Clerk of Standards and Elizabeth McKenna my Personal Secretary have been particularly generous with their time and have undoubtedly been integral to the many achievements throughout this reporting period. I would also like to thank John Devitt for his support and assistance in consideration of a number of cases. I have also been very lucky to have had support from the three Standard Commissioners across the UK, and locally from the NI Police Ombudsman and NI Public Services Ombudsman and its staff for which I am extremely grateful.