



Northern Ireland
Assembly

Commissioner for Standards

Annual Report 2022-23

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 third report since taking up the role of Northern Ireland Assembly Commissioner for Standards on 7th September 2020.
- 1.2 The overall number of complaints was similar to last reporting year despite not having a fully functioning Assembly for the entirety of this reporting year. As MLAs have officially been in post and Ministers continued to assume responsibilities for part of this year, complaints continued to be submitted and considered. Notably, there was a 38% decrease in complaints against MLAs and a 12% increase in complaints received against Ministers compared with last year.
- 1.3 This report provides information on overall complaints received from 1 April 2022 to 30 March 2023, complaints carried forward from 2021-22, 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.

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 carried forward from 2021-22

- 3.1 There were 9 complaints under investigation that were carried forward from the 2021-22 reporting year. These were reported on in the current year and await a fully functioning Assembly and a newly formed Committee to consider and adjudicate.

Complaints in 2022-23

- 3.2 There was a total of 162 complaints for the 2022-23 reporting period up to 31 March 2023, a similar number to the last reporting year. Of the 162 complaints received, 160 were inadmissible, 2 were admissible and proceeded to full investigation.

Table 1. Complaints overview 2022-2023

	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Complaints received*	7	9	6	123	164	162
Complaints by member of public	5	8	4	74	147	161
Complaints by an MLA	2	1	2	49	16	1
Complaints by a Minister	0	0	0	0	1	0
Inadmissible	3	4	1	110	144	160
Admissible	2	0	2	11	19	2
Discontinued	2	5	3	2	1	0
Ongoing	0	0	0	0	9	23

*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 held 3 preliminary investigations relating to 2022-23 complaints to assess admissibility. A total of 21 decisions on admissibility were referred to the Committee and are currently awaiting the return of a fully functioning Assembly and a newly formed Committee.
- 3.4 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.

1 A referral to the Committee is an appeal of the Commissioner's decision on admissibility by the complainant

4 Complaints Against MLAs

- 4.1 There were 26 complaints received against MLAs. A total of 24 were deemed inadmissible and 2 were admissible. This was a welcome 38% reduction in complaints made against MLAs in this reporting year compared with last year.

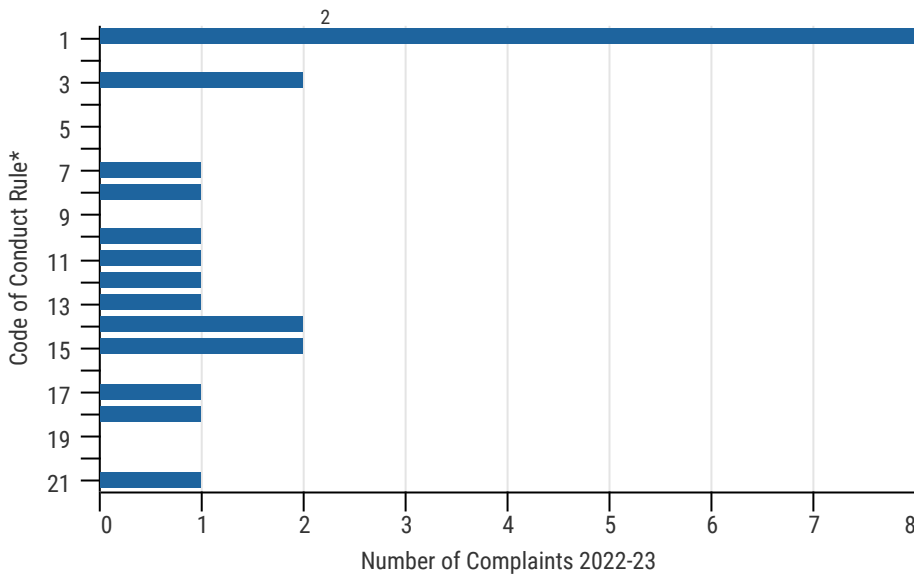
Table 2. Complaints against MLAs

	2020-21	2021-22	2022-23
Complaints received against MLAs	123	42	26
Inadmissible	110	31	24
Admissible	11	10	2
Discontinued	2	1	0
Ongoing	0	0	0
Referrals to be considered by Committee	0	0	13
Complaints (in 1 report) awaiting Committee adjudication			2

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

- 4.3 There were 2 admissible complaints leading to 1 investigation. The investigation report has been submitted to the Clerk to the Standards Committee and awaits the Assembly's return to be considered by the Committee.
- 4.4 Complaints were most frequently related to breaches of Rule 1, followed by Rules 3, 14 and 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 complaints in relation to things said by MLAs through any medium, including social media.
- 4.5 Figure 1 below shows a breakdown of complaints made against MLAs by the alleged rule breached for the year 2022-23. The MLA Code of Conduct can be found on the Commissioner's website.²

Figure 1. Complaints by alleged rule breached for 2022-23



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.

* 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.

7. You shall not, in return for payment or benefit, advocate or initiate any cause or matter on behalf of any outside body or individual. Nor shall you, in return for benefit or payment, urge any other Member to do so.

8. You shall not seek to confer benefit exclusively upon a body (or individual), from which you have received, are receiving, or expect to receive a financial or material benefit, or upon any client of such a body (or individual).

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.

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.

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

18. You shall not lobby a member of the Committee on Standards and Privileges, or the Commissioner in a manner calculated or intended to improperly influence their consideration of whether a breach of the Code of Conduct has occurred.

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

5 Reports on MLA Complaints

- 5.1 I submitted one investigation report to the Committee this year in relation to two complaints about an MLA. This report has yet to be adjudicated on by the Committee as the Assembly has not been fully functioning; discussion of this investigation will be included in next year's report once (and if) the Assembly is fully functioning.
- 5.2 It is important to note an investigation report from my last annual report, as the Assembly has not been fully functioning and this item remains outstanding. In last year's report, I outlined a complaint made by Mr Maoliosa McHugh MLA against Dr Steve Aiken MLA, which was adjudicated on by the Committee at the end of the 2017-22 mandate. The Committee concluded that Dr Aiken breached the Code of Conduct, Rules 12 and 16, and agreed that Dr Aiken's conduct was inconsistent with both the Respect and Leadership principles (the Seven Principles of Public Life). The Committee considered this "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 and in co-operating at all times with the Commissioner's investigation". It continued "In terms of the latter, the Committee firmly believes that the vital role which the independent Commissioner plays in the Assembly's ethical standards regime must be recognised, respected and safeguarded by all Members – to not do so undermines the office of the Commissioner and, consequently, the Committee and the wider Assembly."³
- 5.3 The Committee concluded that, in its view, the circumstances of the case warrant a recommendation being made to the Assembly for the imposition of a sanction upon Dr Aiken under Standing Order 69b. However, 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 the successor committee identifies an appropriate sanction for recommending to the next Assembly and tables the necessary plenary motion early in the next mandate as applicable. This item awaits a fully functioning Assembly and a newly formed Committee.
- 5.4 In its Legacy Report, 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. This item awaits a fully functioning Assembly and a newly formed Committee.

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

6 Complaints Against Ministers

- 6.1 There were 136 complaints against Ministers and I carried out two preliminary investigations; all were deemed inadmissible.
- 6.2 Of the 136 complaints received, 8 have been referred to the Committee for further consideration/appeal of the inadmissibility decision. These are awaiting consideration by a newly formed Committee once the Assembly is fully functioning.

Table 3. Complaints against Ministers 2022-23

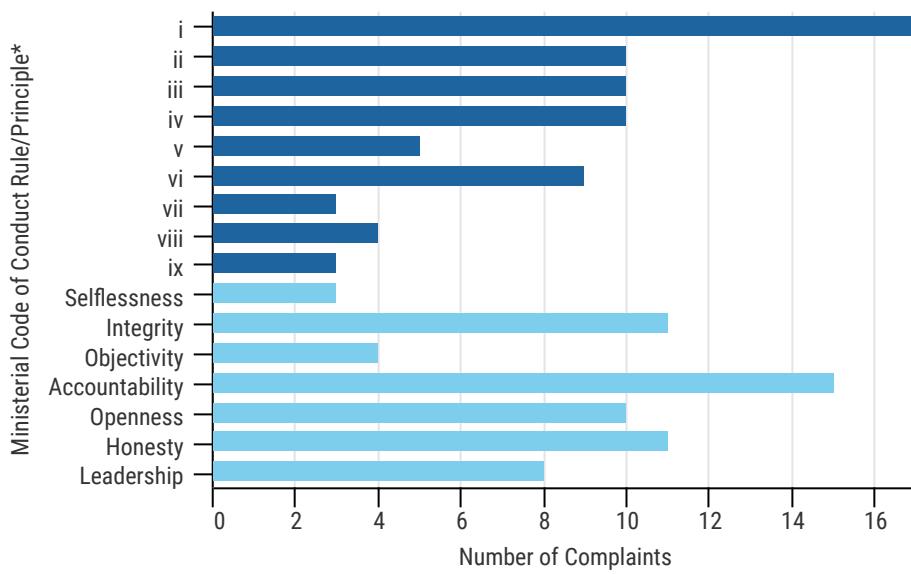
	2021-22	2022-23
Complaints received against Ministers	122	136
Inadmissible	113	136
Admissible	9	0
Discontinued	0	0
Ongoing Investigations	9	0
Referrals to be considered by Committee	0	8
Complaints (in 2 reports) awaiting Committee adjudication	0	9

*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 Complaints against Ministers made up 84% (n=136) of all complaints received (n=162). There was a 12% increase in complaints relating to Ministers compared with the 2021-22 reporting period.
- 6.4 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. The vast majority of complaints were related to the exercise of legislative powers by Ministers, which is not an issue of conduct, but a policy decision 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.
- 6.5 Two investigations into 9 ongoing ministerial complaints from 2021-22 were completed and submitted to the Committee in this reporting year. They are currently awaiting a newly formed Committee once the Assembly is fully functioning.

6.6 Ministerial complaints were most frequently related to breaches of Rules 1 (i), 2 (ii), 3 (iii) and 4 (iv). Rule 4 relates to following the Seven Principles of Public Life; alleged breaches relating to accountability, honesty and integrity were most frequently cited in complaints. Figure 2 below shows a breakdown of complaints by the alleged rules breached for the year 2022-23 for all complaints against Ministers. The Ministerial Code of Conduct is available on the Commissioner's website.⁴

Figure 2. Complaints by alleged rule and/or principle breached for 2022-23



- * 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 In addition to considering current in-year complaints and carrying out to completion investigations from 2021-22 and 2022-23, I also updated policies in accordance with GDPR, attended internal and external meetings, and contributed to external consultations.
- 7.2 The Commissioner for Standards website had 893 new users in this reporting period, an increase of 22% on last year. The website was set up in 2021 with the aim of engaging with the public, explaining the complaints processes and creating a space to promote awareness of the importance of high standards in public life.
- 7.3 I regularly met, both virtually and in-person, with Standards Commissioners from the other UK jurisdictions. In May 2022, I hosted a visit from the Parliamentary Commissioner for Standards, Ms Kathryn Stone OBE and a member of her Office.
- 7.4 I attended the Standards Network on 30 and 31 March 2023 which was hosted on this occasion by the Welsh Parliament and took place in Cardiff. The Standards Network is made up of representatives from the Offices of the Commissioners for Standards and the parliamentary staff with standards-related responsibilities in the House of Commons, the House of Lords, the Scottish Parliament, the Welsh Parliament, the Northern Ireland Assembly and the Houses of the Oireachtas (as well as from the legislatures in Jersey, Guernsey and the Isle of Man). It provides a forum for knowledge exchange and shared learning and meets approximately every eighteen months. The meeting provided an opportunity for open and frank discussion of issues of mutual interest relating to legislative ethics and standards of conduct, including best practice and developments across the jurisdictions.
- 7.5 I attended the Regulator and Oversight Forum on 23 September 2022. This forum includes the leaders of Northern Ireland Public Service Ombudsman (NIPSO), Northern Ireland Audit Office (NIAO), Equality Commission, Regulation and Quality Improvement Authority (RQIA), Northern Ireland Commissioner for Children and Young People (NICCY), Commissioner for Public Appointments for Northern Ireland (CPANI), Criminal Justice Inspection Northern Ireland (CJINI), Charity Commission for Northern Ireland, Police Ombudsman for Northern Ireland (PONI), Information Commissioners Office (ICO), Civil Service Commission and the Commissioner for Older People. I additionally hosted the following Forum Meeting on the 24 March 2023 in Parliament Buildings.
- 7.6 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 46% reduction in Commissioner's pay and expenses. This reduction is due to the backlog of complaints from 2017-20 having been cleared, the majority of in year complaints being inadmissible (so fewer proceeding to investigation), and the Assembly not being fully functioning. The sums paid under paragraph 8(a) are set out in Table 4.

Table 4. Commissioner's pay and expenses

	2022-23
Commissioner's pay	73,116
Employer's National Insurance Contribution	9,514
Travel and Subsistence	765
TOTAL	£83,395

- 8.4 I was provided with an office within Parliament Buildings and with IT and office equipment required to do my work.
- 8.5 The original budget for expenses and other goods and services (not including Commissioner's pay) was £18,505.80 as agreed with the Assembly Commission; the reduction equates to a 50% decrease in expenditure vs budget.

Table 5. Expenditure

	2022-23
Complaint processing software	5,190
Data Protection Registration	40
Specialist Support	3,510
Interview Transcription	108
Other	444
Total	£9,292

9 Promoting High Standards

9.1 Induction

I took part in Code of Conduct induction sessions for all newly elected MLAs soon after the May 2022 election. The informal induction sessions were offered to all parties and were held with myself and the Clerk of Standards. Additionally, along with the Clerk of Standards, we took part in making a short training video that all MLAs can access online.

9.2 Standards Forum

Early this year, I put forward a proposal and offer to all parties for the development of a Standards Forum, the aim of which is to create a space for further training and reflection on ethics and standards in public life. Interest has been expressed by a number of parties to date, however, it is my hope that once there is a fully functioning Assembly this will be developed more fully.

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 this year 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 NIPSO, 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. 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. I have received no correspondence to date to confirm whether or when the Ministerial Code will be updated nor have I any further clarity on the aforementioned vitally important issues.

10.2 Committee's procedure for Ministerial Complaints

A final decision on how the Committee will consider investigation reports relating to Ministerial conduct investigations has yet to be finalised this year as the Assembly was not fully functioning. In February 2022, the Committee decided that its preferred approach will be to seek procedural changes to ensure that it has no role in the consideration of investigation reports on the behaviour of Ministers, but recommended that the incoming Committee takes forward this matter in the next Assembly mandate, including consideration of any consequential issues arising from this decision and the necessary procedural changes. Undoubtedly, there will be many consequential issues and I look forward to working with the Committee when the Assembly is fully functioning.

10.2 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 once the Assembly is fully functioning and a new Committee is formed. This would include consideration of recommendations made in my reports to date and other changes as required and necessary to promote high standards.

10.3 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 once a new Committee is formed and the Assembly is fully functioning.

10.4 Lay Members

I look forward to the incorporation of lay members on the Committee. It is my view that this proposed change will strengthen the public's trust in the Assembly and will further aid in promoting the highest standards in public life. It was envisaged that this welcome change would occur this reporting year; however, as with many other items in this report, I await the return of a fully functioning Assembly and a newly formed Committee.

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 Elizabeth McKenna and Rose Morwood. I would also like to thank John Devitt for his continued support and assistance. I have also been fortunate to have had support from the Standards Commissioners across the UK and locally from the PSNI for which I am extremely grateful.



Melissa McCullough
Northern Ireland Assembly Commissioner for Standards

24 May 2023



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Assembly

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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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