

Periodic Report

to the

**Committee on Standards and
Privileges**

from

Dr T Frawley CBE
**Interim Commissioner for
Standards**

September 2009

Introduction

1. In June 2007, on the lifting of suspension, I was asked to continue in the role of the Assembly's Interim Commissioner for Standards. This role is completely separate from my role as NI Ombudsman and therefore in this role I act solely on the authority of the Committee on Standards and Privileges. My responsibilities are to examine a complaint, if appropriate I first decide whether there is a case to answer, if the answer is yes, I conduct a detailed investigation of the complaint and report my views to the Committee. The Committee decides whether to accept or reject my Report or it may require me to undertake further inquiries or provide additional information. I have no role once my Report is submitted; the Committee can accept or reject my advice. The Committee is however required to publish my full Report as submitted to it as an Appendix to any decision or recommendation it decides to take in response to my investigation.

Complaints Received

2. At the time of my last periodic Report to the Committee in June 2008, seven cases were under investigation and during the period July 2008 to June 2009 the Clerk has referred ten new complaints to me. Additionally the Committee asked me to resume the investigation of one case which had been closed during that period.
3. Of these eighteen cases, twelve have been completed, and the remainder, three of which relate to the same set of circumstances, are nearing completion.
4. Of the ten new complaints received since July 2008, four were from members of the public or representatives of public organisations and six

from Members of the Assembly itself. It has again been a particular feature of the complaints received that a number are effectively multiple complaints ie against the same Member, in respect of similar issues but from a number of different complainants.

Matters Arising from Complaints

5. The new complaints received cover a range of issues which came within the ambit of the Code of Conduct. However a number of the complainants did not substantiate the complaint made or identify which aspect of the Code it was being alleged had been breached by the Member.

It must also be kept in mind that the complaints process is designed to investigate specific alleged breaches of the Code; it is not designed as a mechanism for examining generalised complaints or expressions of dissatisfaction with how Members have behaved or responded to a range of issues.

The revised Code of Conduct will hopefully alleviate some of the misunderstandings underlying complaints where the basis of complaint essentially derives from the particular complainant's subjective perspective on the principles which underpin the Code.

6. An aspect of the complaints which have been referred to me is the reliance by complainants on media reports and comment on statements by Members. I have reservations about relying on evidence from media reports which of necessity will rarely constitute a full detailed transcript of what has been said. Equally I have reservations about reliance on websites which usually consist of a report of a report and may have been edited or altered to facilitate presentation or formatting. I recognise however that we live in a society where much information is derived from the media. By way of clarification therefore I would regard such a complaint to warrant further investigation where the report sets out the direct comments of the Member

to an extent where it represents a fair and full record of the views expressed.

I therefore welcome the re-iteration in the revised Code of Conduct that the Committee will expect the complainant to assemble supporting evidence for the complaint and that a complaint founded upon no more than a newspaper story, television or radio report will not normally be regarded as a substantiated allegation.

A further issue which has arisen is that of complaints against Ministers. It is necessary to identify clearly the capacity in which the Member was acting to ensure that the Committee has a remit to examine the complaint. Some circumstances are clear cut such as issues relating to claims under the Office Cost Allowance but others, particularly relating to comments made or opinions expressed, can be unclear. The Committee has also helpfully commented on this matter in its Report on the Review of the Code of Conduct.

7. In my report of June 2008 I commented on the fact that some of my reports to the Committee had been leaked to the media before the Committee had opportunity consider the matter. I am aware of one similar incident during the past year.

I can only repeat my view, expressed in the previous Periodic Report, that this is a matter which affects the standing and integrity of the Committee's work. Such a circumstance undermines the Committee's credibility in carrying out its responsibilities to uphold sound standards of conduct within the Assembly. Furthermore, some of the allegations which can be made against a Member, such as a failure to register an interest, can potentially, if

substantiated, lead to prosecution. This fact alone makes it wholly unacceptable for a report to be disclosed prematurely.

I believe the rationale of public interest cannot be deployed in a case of the leaking of any of my reports of an investigation. I say this because the Committee has adopted the practice of publishing my report as an appendix to its own Report on each case. The complainant, and the public, will therefore have complete access to what is contained in my report.

8. I would also again take this opportunity to express my concern about the time taken by some Members to respond to my enquiries. Members will have noted that in a number of cases I have referred in my reports to having had to issue reminders about information and comment which I have requested. Let me again acknowledge that I realise Members are very busy but I believe responding in realistic timeframes to queries that affect the public perception of both the Assembly and its Members are not matters which should require reminders. Indeed if Members do not intend to respond to requests they should at least demonstrate respect and courtesy to the Committee by indicating that fact within a reasonable timescale. This would allow me the opportunity to convey their position to the Committee and it could then take whatever action it considered appropriate in each individual circumstance.

Resourcing Investigation of Complaints

9. The work on behalf of the Committee has been resourced from within my Office as Assembly Ombudsman and NI Commissioner for Complaints. This being so, no additional administrative costs in terms of superannuation, accommodation or administrative support have been incurred by the public purse.

Within the Office's Vote a sum of £12K is identified for this work in each financial year. That amount does not include any element for my time as my salary is a direct charge on the Consolidated Fund.

An indicative record has been maintained of the time spent on the work required to support the Committee in terms of investigating complaints, attending meetings and preparing comments on draft proposals such as the Code. I estimate the cost incurred by my Office from July 2008 until 31 August 2009 to amount to £14,135. This amount includes the cost of independent legal advice in respect of one of the cases investigated and the salary costs of staff time spent in supporting my investigations.

T Frawley

T FRAWLEY CBE

Interim Commissioner for Standards

8 September 2009