

Periodic Report

to the

**Committee on Standards and
Privileges**

from

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

September 2010

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 submit my evaluation and conclusion to the Committee. The Committee decides whether to accept or reject my Report or it could also 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; it is the final arbiter. The Committee is however required to publish my full Report as submitted to it as an Appendix to any decision or recommendation it makes in response to my investigation.

Complaints Received

2. At the time of my last Periodic Report to the Committee in September 2009, five cases were under investigation and during the period September 2009 to August 2010 I received five new complaints. Additionally the Committee exercised its powers under Standing Order 69 A (1) (b) to refer a matter to me for investigation.
3. Of these eleven cases, three have been completed, five are with the Committee for consideration and one received recently is being examined. The remaining two cases are held in abeyance pending the completion of process by other authorities.

4. Of the five new complaints received since September 2009, three were from members of the public or representatives of public organisations and two from Members of the Assembly itself. In previous reports I have noted that some complaints were of a multiple nature ie a series of complaints against a Member arising from the same set of circumstances. That is not the case in the new complaints received in the past year.

5. **Matters Arising from Complaints**

5. 1 It must 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. Whilst it is still early days there are signs that the revised Code of Conduct has alleviated some of the misunderstandings that affected earlier complaints where the basis of complaint essentially derived from an individual complainant's personal perspective on the principles which underpin the Code.

- 5.2. An aspect of a number of the complaints which I have examined is that they continue to be based substantially on media reports and comment on statements by Members. In my previous Periodic Report for 2008/09 I expressed reservations about relying on evidence from media reports which of necessity do not always consist of a complete and detailed transcript of what has been said. Equally I expressed reservations about a reliance on websites which usually consist of a report of a report and may have been edited or altered to facilitate presentation or formatting. In a number of cases my concerns in this respect have been borne out when I have considered the complaint in detail.

As Members are aware the revised Code of Conduct re-iterated that the Committee will expect the complainant to assemble supporting evidence for

a 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.

I have therefore continued to deal with such cases on the basis set out in my previous Periodic Report, and accepted by the Committee, that I would regard such a complaint to warrant further investigation only where the report sets out the direct comments of the Member to the extent that it represents a fair and full record of the views expressed.

5.3 During the year being reported on I have dealt with complaints involving the actions and comments of Ministers. Clearly a Minister is subject to the Code of Conduct for Members where they have acted exclusively in their capacity as a Member. However the Ministerial Code places different and additional responsibilities on Members if they are acting in their Ministerial capacity and as a result confusion can arise where a complaint centres on actions taken when a Member is fulfilling their Ministerial role. The Committee does not have a remit to investigate such actions but equally there is no established procedure to deal with a complaint made under the Ministerial Code. I believe it would be inappropriate for the Committee to try to address this situation by extending the application and interpretation of the Code of Conduct for Members to cover such circumstances. Rather, it may be more appropriate for the Committee to ask the authority with responsibility for application of the Ministerial Code to address this situation.

5.4. In previous Periodic Reports I have drawn attention to 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 happy to record that I have no such comment to make in respect of the past year.

5.5. In my 2008 /09 Report I commented:

“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.”

During the past year I regret to report that I have again had to issue reminders to some Members and on one occasion I had to draw the absence of a response from a Member to the attention of the Committee. I appreciate the support and guidance I received from the Committee in that case. The fact remains that, irrespective of how a Member may view a complaint against them, it is not appropriate to ignore enquiries made to facilitate the compilation of a Report to allow this Committee to examine the complaint in order to dispose of it or to take action if Members should so decide.

Resourcing Investigation of Complaints

6. 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 cost in terms of superannuation, accommodation or administrative support has been incurred by the public purse.

Within the Office's Vote a sum of £15K is identified for this work in the current 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 1 September 2009 until 31 August 2010 to amount to £17,500. This amount includes the cost of independent legal advice in respect of two of the cases investigated and the salary costs of staff who have supported my investigations.

T Frawley

T FRAWLEY CBE

Interim Commissioner for Standards

16 September 2010